OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 08/25/1989

DEQ

State of Oregon
Department of Environmental Quality

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ENVIRONMENTAL QUALITY COMMISSION

Legislative Retreat
Friday, August 25, 1989
8:00 a.m. - 4:00 p.m.

Jenkins Estate
Grabhorn Road at S. W. 209th & Farmington Road
Aloha, Oregon 97006
642-3855

A G E N D A

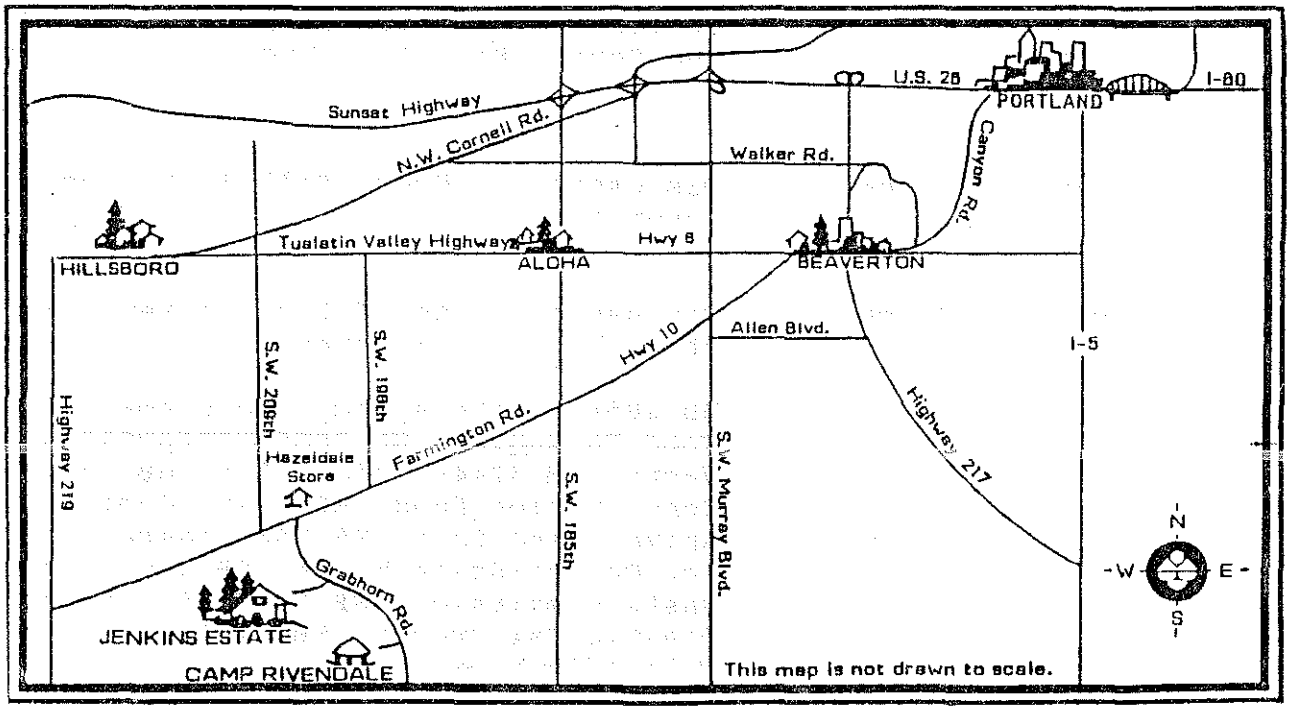
8:00 am - 11:30 am	Discussion of House Bill 3515--Toxic Use, Groundwater, Environmental Cleanup, Solid Waste Presentation on the DEQ budget
11:30 am - 12:30 pm	The Commission will have lunch and continue discussion of House Bill 3080 and Senate Bill 167--Underground Storage Tanks
12:30 am - 1:15 pm	Discussion of House Bill 3235--Superfund Inventory
1:15 pm - 4:00 pm	Discussion of the following key bills and other bills of interest to the EQC: HB 2854--State Agency Procurement of Food Packaging; HB 2865--Infectious Waste; HB 3244--Indoor Air; HB 3482--Conservation Fund; HB 3445--Confined Animal Feed Lots; SB 855--Waste Reduction for Out-of-State Waste; SB 1192--Solid Waste Commission; SB 1083--Reclaimed Plastic Tax Credit; SB 1100--Chlorofluorocarbons

agenda.1

TUALATIN HILLS PARK & RECREATION DISTRICT

ADMINISTRATION OFFICE

15707 SW Walker Road • Beaverton, Oregon 97006 • 645-6433



OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

MEASURE SUMMARY

HOUSE BILLS

HB 2178

Amends the pollution control tax credit to continue the credit at the 50 percent level until December 1, 1995. Makes several generally technical changes regarding administration and eligibility.

HB 2854

Prohibits purchase by state agencies of food packaging products composed of material that is not biodegradable or recyclable. Prohibits sale of food in or use of such food packaging products by a vendor who leases space from a state agency. Requires the DEQ to establish the percentages of plastic material that must be recycled before a recycling program is considered effective. Allows the EQC to exempt specific products from the prohibition if no acceptable alternative exists or if compliance would cause a hardship. Requires coordination between the DEQ and General Services.

HB 2865

Regulates the disposal, storage, and transportation of infectious and pathological wastes. Authorizes the EQC to adopt rules for storage and handling of such wastes at solid waste disposal sites and the PUC to establish rules for transportation of such wastes. The Health Division is also directed to issue rules related to handling and sterilization of materials used in the processing and disposal of infectious waste.

HB 3080

Will provide a partial solution to the financial costs imposed on owners and permittees of underground storage tanks by new federal environmental regulations. The bill provides 50 percent grants, not to exceed $3000 to test sites for oil contamination and tanks and piping for tightness; a loan guarantee of 80 percent, not to exceed $64,000, to upgrade or replace tanks used for retail dispensing of gasoline by small businesses, and an interest rate buydown to 7-1/2 percent through a tax credit to commercial lending institutions. The program will be funded by a new $10 fee on each load of petroleum picked up at a bulk terminal. Total annual revenue is expected to be less than $3 million.

HB 3235

Amends the procedures by which the DEQ establishes an inventory of hazardous substance release sites. Provides new procedures, guidelines, and requirements for rulemaking regarding the lists of contaminated sites.

HB 3244

Authorizes the Health Division to establish indoor air pollution programs along with indoor air quality standards to take effect after July 1, 1991. Requires, by September 1, 1990, completion of comprehensive assessment of indoor air quality problems and submission of a report to the Sixty-sixth Legislative Assembly. Requires the administrator of building codes to adopt ventilation standards, and allows establishment of programs for voluntary accreditation and contractor certification. Requires the EQC to set fees to pay for programs. Establishes an Indoor Air Pollution Task Force and prescribes membership, duties, and powers.

HB 3305

Prohibits the disposal of lead-acid batteries except by delivery to a dealer, authorized collection or recycling facility, or permitted lead smelter. Requires a person who sells a new lead-acid battery to accept a used lead-acid battery of the same type for trade-in. Directs the DEQ to study battery recycling and report to the Sixty-sixth legislative session.

HB 3445

Provides for the environmental regulation of confined animal feeding operations.

HB 3456

Creates an Oil Heat Commission prescribing the membership, duties and powers. Allows the commission to assess oil marketers for the expenses of the commission and to take actions related to the inspection, monitoring, and remedial actions required in the case of leaking heating oil tanks. Provides additional authorities including education and conservation and the regulation of persons who initiate remedial actions for heating oil tanks.

HB 3475

Establishes programs to address slash burning. Creates an advisory committee to assist the State Forester on matters related to forestry smoke management. Requires a report to the Legislature analyzing information gathered from projects funded through the bill, recommendations made to the EQC or Board of Forestry relating to the smoke management program and an analysis of alternatives for managing slash residues. Creates the Oregon Forest Smoke Management Account as a separate fund. Funds consist of fees levied on forest land managers within western Oregon.

HB 3482

Establishes, but does not fund, the Resource Conservation Trust Fund. The fund is proposed to serve two separate purposes: funding projects related to habitat conservation and funding projects related to waste reduction. A new seven member "Waste Reduction Trust Fund Board" is responsible for allocating funds from the waste reduction sub-account. In addition, a new seven member "Habitat Conservation Trust Fund Board" is responsible for allocating funds from the habitat conservation sub-account.

HB 3493

Provides for civil penalties and makes it a misdemeanor for a person to negligently or intentionally discharge oil into Oregon waters. Establishes an Oil Spillage Control Fund from the penalties collected to fund cleanup of affected fish and wildlife.

HB 3515

Combines the substantive provisions of seven bills relating to hazardous materials, solid waste, and groundwater. The principal focus of HB 3515 is to address the following programs:

GROUNDWATER
Establishes a comprehensive strategy for groundwater management. It will increase the state's ability to identify situations where groundwater problems are developing and implement effective management plans. Focus will be on improved monitoring and assessment activities, control of non-point sources of pollution, public education projects, and local involvement in developing preventative programs. Involves extensive interagency cooperation.

HAZARDOUS MATERIALS SPILL RESPONSE
The State Fire Marshall will establish a state-wide hazardous material emergency response system with ten regional teams.

TOXIC USE AND HAZARDOUS WASTE REDUCTION
Provides for trained DEQ staff to deliver intensive technical assistance to help industry develop processes to minimize hazardous wastes. Oregon companies will be required to evaluate their waste reduction practices, establish specific performance goals for hazardous waste reduction and report annually on their progress.

ENVIRONMENTAL CLEANUP
Establishes an account to pay for the cleanup of contaminated sites which are abandoned or have bankrupt owners.

SOLID WASTE MANAGEMENT
Establishes pilot programs for the disposal of household hazardous waste and exempt small quantity generator waste. Also provides funds for solid waste planning and limited recycling program.

Various fees and charges are assessed to fund the above programs.

SENATE BILLS

SB 166

Provides the DEQ with the clear authority to regulate the handling and recycling of used oil.

SB 167

The Underground Storage Tank Insurance Fund is directed to receive unused revenues from the loading fee in HB 3515. The fund can be used to meet federal requirements for corrective action and third party damages from leaking underground storage tanks.

SB 168

Provides the DEQ the authority to charge fees for the processing of 401 certifications for hydroelectric projects.

SB 482

Prohibits the use of waste tires in construction of artificial reefs in ocean waters. Allows such use in bays or estuaries.

SB 555

Prohibits transfer, sale or use of property that was used as an illegal drug manufacturing site without full written disclosure of its status or as certified decontaminated by the Health Division.

SB 855

Requires that any waste originating in another state must meet Oregon's waste reduction requirements before it can be disposed of in Oregon.

SB 987

Broadens eligibility for sewage connection costs to include connections made consistent with an agreement between a local government and the EQC.

SB 1038

Requires ships that transport oil in bulk to provide evidence of financial responsibility. Maritime pilots are to check for and report failures to provide financial assurance.

SB 1039

Involves DEQ, DOE, Fish and wildlife, and the Fire Marshal in developing oil spill contingency plans for the entire Oregon coast.

SB 1079

Directs the DEQ to establish a task force on phosphates and other nutrients in the state's waters. A report is to be provided to the Sixty-sixth Legislative Assembly which shall determine whether it is appropriate to ban specific sources of phosphorus including but not limited to phosphates in detergents.

SB 1083

Provides a tax credit for reclaimed plastic including the equipment used to collect, transport, or process it.

SB 1097

Allows public agencies to borrow directly from the Water Pollution Control Revolving Fund.

SB 1100

Prohibits sale of certain products that contain chlorofluorocarbons (CFCs) such as packaging, fire extinguishers, coolants and cleaners. Encourages a CFC recycling program.

SB 1192

Establishes a Regional Solid Waste Commission to study issues related to the transportation and disposal of solid waste in the Northwest.

SJR 41

Proposes an amendment to the Oregon Constitution to allow pollution control bonds to be sold to provide funds for "activities" related to the cleanup of hazardous waste sites.

8:15

Fred - Background

Familiarity w/ issue
Direction from EQC
Framework for strategic planning

Loewy

How to do

Wessinger - tight timeline
Castle - Budget

What comes next?

Lydia (transition) access - strategize

Strategic planning - safety margin?

Legislative - produce related involvement w/ Ag comm (NPS) financing sol to environ problems

public sector [illegible]

standards - trigger for reg. action
in some area

interim stds w/ 90 -
Fed drinking water stds

Action plan - regional problems
authority for [illegible]
how to phase in
slow
voluntary

- ambient [illegible] program
- [illegible]
- [illegible]
- coop prog w/ [illegible]

timeline [illegible]
July 1 1990 - interim action plan
Rule making

real estate transaction test for a well

* WQ stds [illegible]

CAFOs - go w/ Ag to [illegible]
not budget

Waste reduction -
3 classes - toxic user
Sept 1991 - waste reduction plan
EQC approve what went into plan
- SQ - Sept 1992

Annual report - way to track progress

what Chemicals - on toxic use list?

Rules to EQC - Oct

regulating process

Spill Response
want a change at state level for lead agencies
- resp to St Fire marshal
DEQ benefit - trained & equipped people
- clean up abandoned containers

Recycle rds for pkg used by State

Pharmacies - no funding provided
pharmacy education - revised by CDC

HSW — Tobacco — Asthma — Diabetes — Lead — Injury — Violence — Safety — Nutrition — Physical activity — Obesity — Immunization — Infectious diseases — Oral health — Maternal and infant health — Environmental health — Public health preparedness and response — Genomics

SW

3 Changes - SW Legislature Tobacco
- Reg. Tobacco by Sw dispensers
- Reg. Spec. Drugs by Sw Wholesale pharmacies

Partnership - SOF - Domestic Sw
Documents - Ref. Diseases, Issues
papers prepared on behalf of public health

50 for accreditation - Committee on Public Health
Practice for
Issued for
- Appx on SOF
- Annual Report for
- Public Health Practice Standards
- Quality - CDC has not adopted for
- Public Health Practice

Fund - Council of DOC
50 Sec

July 1, 1990 - injection waste
ceases

mandate disposal facilities to take waste

3089

allocation should
Energy, nuclear - dept 7, 8

ECD

fund for remedial action
financial assistance

orphan - site account

AQ - workstations - dept - certification - work should
FD bring before

air conditioner in cont - EQC

Budget -

problem & benefit - needs to be defined

document why activities must
be done

- Target goals
- Bell. Analysis
- Need to develop constituent support work w/ criterion committee

Bldg. Name - Key People

★ - Overview of timeline for EQI
- work sessions & lead time
-

Groundwater Protection Act Summary

HB 3515 Sections 17 through 66

1. Goal: Section 18 of the Act establishes the following groundwater quality protection goal.

   "it is the goal of the people of the State of Oregon to prevent contamination of Oregon's groundwater resource while striving to conserve and restore this resource and to maintain the high quality of Oregon's groundwater resource for present and future uses.

   Following sections of the Act establish this goal in statutes governing the operations of the State Highway Division, Health Division, Water Resources Department, Department of Agriculture, DEQ, Soil and Water Conservation Districts, Strategic Water Management Group, Department of Geology and Mineral Industries, and Department of Land Conservation and Development.

2. Policies: Section 19 of the Act establishes a number of policies that shall guide the activities of the State in managing and using it's groundwater resource. In summary those policies are:

   a. Public education, research, and demonstration projects shall be utilized.

   b. All State agency programs and rules shall be consistent with the goal.

   c. State-wide groundwater characterization and identification programs must be conducted.

   d. Programs requiring the use of best practicable management practices shall be established.

   e. Groundwater contamination levels shall be used to trigger specific governmental actions designed to prevent those levels from being exceeded or to restore groundwater quality to those levels.

   f. All groundwater of the State must be protected for both existing and future beneficial uses so that they may continue to provide for whatever uses the natural quality would allow.

3. Strategy: Section 20 establishes a groundwater protection strategy to be implemented by the Strategic Water Management Group. This strategy includes such elements as: interagency coordination; promoting public awareness and education; coordinate the development of local groundwater protection plans, including well head protection; awarding grants; and establishing a centralized repository for groundwater information.

4. Grants: Sections 21 and 22 establish the conditions under which the Strategic Water Management Group can award grants for groundwater projects. Not more than one third of the funding available can be used for projects directly related to issues pertaining to a groundwater management area. This insures that the emphasis will remain on preventative programs and that all the resources will not be spent in responding to problems.

5. Groundwater Standards: Section 24 establishes a technical advisory committee whose function is to develop criteria and methods for the Environmental Quality Commission to use in adopting by rule maximum levels of contaminants in groundwater that shall be protective of public health and the environment.

   Section 25 requires the Environmental Quality Commission (EQC) to initiate rulemaking within 90 days of receiving the recommendations of the advisory committee.

   Section 26 requires the EQC to adopt within 90 days of the effective date of the Act federal drinking water standards as interim numerical standards for maximum measurable levels of contaminants in groundwater. These standards shall be used until final maximum measurable levels for contaminants in groundwater are adopted.

6. SWMG Staff Support: Section 27 states that the Department of Environmental Quality shall provide staff for project oversight and day to day operations of the Strategic Water Management Group in implementing most of the activities authorized in the Act.

7. Monitoring Program: Section 29 requires the Department of Environmental Quality to conduct a state-wide groundwater monitoring and assessment program.

8. Domestic Well Testing: Section 30 requires that domestic water supply wells be tested for nitrates and bacteria by the seller when real estate property is sold, and the results are to be submitted to the Health Division.

9. Area of Groundwater Concern: Sections 31 through 33 establish the conditions for the declaration of an area of groundwater concern. Basically, such an area shall be declared when contaminants are found in groundwater and result, at least in part, from nonpoint sources.

Section 34 establishes actions to be taken by Strategic Water Management Group upon the declaration of an area of groundwater concern. Those are:

1. Appoint a local advisory committee.

2. Focus research and public education on area.

3. Provide for necessary monitoring.

4. Assist local advisory committee in developing an action plan.

5. In absence of local advisory committee, develop action plan.

10. Local Groundwater Management: Section 35 contains the conditions and procedures for establishing local groundwater management committees and developing local action plans. The action plan developed by the local groundwater management committee for areas of groundwater concern would rely primarily on voluntary programs.

11. Groundwater Management Area: Sections 36 through 38 contain the conditions under which a groundwater management area would be declared. For all but nitrates this would occur when groundwater contaminant concentrations reach 50% of the levels established in Section 25 or 26 of the Act. For nitrates the trigger level would be 100% of the Section 25 or 26 level for 2 years after the effective date of the Act then it would drop to 70% of the level.

12. Local Committee Role: The role of the local groundwater management committee when a groundwater management area has been declared is established in Sections 39 and 40.

13. Groundwater Management Area Action Plan: Sections 41 through 43 contain the procedures and requirements for the development of an action plan for a groundwater management area. When an area moves from an area of groundwater concern to a groundwater management area, the lead role in the development and implementation of an action plan moves from the local level to the State. The Strategic Water Management Group shall designate a lead agency for the development of a groundwater management area action plan. Such an action plan could contain mandatory actions. Because of the severity of the problem at this point, the implementation of regulatory programs by the appropriate authorities may be necessary to maintain or restore groundwater quality within levels adequate to protect beneficial uses.

    The process for the development of a groundwater management area action plan includes ample opportunity for public review and comment.

14. Repealing Groundwater Management area: The criteria for repealing a declaration of a groundwater management area is established in Section 44.

15. Amendments to existing statutes: Sections 46 through 66 primarily contain amendments to existing statutes for a number of agencies to ensure the coordinated implementation of the Act and its goals and policies. These include requirements for consistency with the goal contained in Section 18 of the Act, and requirements for reporting groundwater information to the groundwater information repository.

16. Strategic Water Management Group: Section 52 establishes the Strategic Water Management Group role in coordinating the interagency management of groundwater. It requires the preparation of a biennial report to the legislature on the status of groundwater in Oregon.

17. Exempt Uses of Water: Sections 54, 55, and 57 establish authority for the Water Resources Commission to institute control over groundwater uses exempted from requirements for application for permits under ORS 537.545. Such controls could be implemented either through the classification process, or in a groundwater management area.

18. Well abandonment: Section 59 establishes authority for the Water Resources Commission to order the permanent abandonment of a well that is causing pollution of the groundwater.

19. Well Construction, Operation, and Maintenance: Section 60 establishes authority for the Water Resources Commission to require antibacksiphoning devices.

20. Fertilizer Inspection Fee: Section 65 increases the fertilizer inspection fee from 20 to 45 cents per ton, 25 cents of which will be used for funding research on the interaction of pesticides or fertilizers and groundwater. It is estimated this will generate $250,000 per biennium for those research activities.

21. Pesticide Use: Section 66 establishes that the Department of Agriculture may restrict a pesticide use or take a number of other actions upon the declaration of a groundwater management area.

SIXTY-FIFTH OREGON LEGISLATIVE ASSEMBLY

Summaries of Environmental Legislation

1989 Session

August 25, 1989

Department of Environemtal Quality
811 S.W. Sixth Avenue
Portland, Oregon 97204

TABLE OF CONTENTS

HOUSE BILL 2178
POLLUTION CONTROL FACILITIES TAX CREDIT

SUMMARY:

HB 2178 provides the following changes to the pollution control tax credit laws:

1) Extends the pollution control tax credit program for five years, until December 31, 1995. Under current law the program sunsets December 31, 1990.

2) Repeals the requirement for preliminary certification. An application may be submitted within two years of the substantial completion of a facility. The Department will offer an informal review upon an applicant's request.

3) Continues the 50% tax credit of the certified cost of a facility until December 31, 1995.

4) Extends tax credit non-eligibility of the following to all pollution control facilities:
   a) Office building and furnishings;
   b) Parking lots and road improvements;
   c) Landscaping;
   d) External lighting;
   e) Company or related signs; and
   f) Automobiles.

   Under current law, these are non-eligible items for solid waste, hazardous waste or used oil facilities.

5) Adds asbestos abatement as an activity not eligible for tax credit. This provides legislative concurrence with the EQC's determination of non-eligibility.

6) Limits the cost certified for tax credit to the taxpayers' own cash investment in a facility. Applicants that receive federal funding for facilities will be eligible for tax credit for their own contribution amount.

7) Adds language inadvertently omitted from a 1987 legislative amendment which eliminated energy recovery facilities from tax credit eligibility.

8) Adds ORS chapters 466 and 468 as reference statutes. Chapter 466 relates to hazardous wastes and hazardous materials and chapter 468 contains provisions for the tax credit program.

ENVIRONMENTAL IMPACT:

HB 2178 provides a 50% tax credit for facilities that limit entry of pollutants into the environment and, provides tax credit for facilities that recover useful material from solid waste, hazardous waste, or used oil.

IMPLEMENTATION STEPS:

Administrative rules need to be revised and administrative procedural changes are necessary due to the removal of the requirement for preliminary certification.

ALTERNATIVE IMPLEMENTATION STRATEGIES:

None

REQUIRED EQC ACTIONS:

Approval of revised rules.

RESOURCES:

Existing program resources.

POLICY ISSUES:

None.

HOUSE BILL 2854

STATE AGENCY PROCUREMENT OF NON-BIODEGRADABLE AND NON-RECYCLABLE FOOD PACKAGING MATERIAL

SUMMARY

HB 2854 has the following provisions:

1. establishes the concept of "existing effective recycling program" for recyclable food packaging products;

2. prohibits state agencies from purchasing food packaging products composed of material that is not biodegradable or recyclable;

3. prohibits vendor who leases space from a state agency from selling food in or using food packaging products which are not biodegradable or recyclable;

4. requires the Department to establish percentages by resin type of plastic material that must be recycled before a recycling program for that resin type is considered effective;

5. allows the Commission to exempt specific products from prohibition if no acceptable alternative exists or compliance would cause undue hardship;

6. sets minimum recycling goal for all plastic resins of 15% by 1992;

7. sets effective date of January 1, 1990.

ENVIRONMENTAL IMPACT

HB 2854 will reduce to a minimum the amount of non-biodegradable or non-recyclable food packaging products purchased by state agencies or vendors who lease property from the state. This recycling could result in a reduction of solid waste from these facilities.

IMPLEMENTATION STEPS AND DEADLINES

Adopt rules which establish percentages of plastic material that must be recycled before a recycling program is considered an effective recycling program. Percentages should be established by January 1990 to meet the effective date of the bill. An emergency rule may be needed to meet this deadline.

ALTERNATIVE IMPLEMENTATION STRATEGIES

None

REQUIRED EQC ACTIONS

Approve rules, review applications and grant exemptions where necessary.

RESOURCES

None provided in this bill. Implementation will require up to 0.5 FTE.

POLICY ISSUES

None

Minority Report
A-Engrossed House Bill 2865

SUMMARY - Infectious Waste Management

Regulates the disposal, storage, and transportation of infectious and pathological wastes. Infectious wastes include biological wastes, cultures and stocks, tissues and body parts, and sharps. Generators who produce less than 50 lbs. of infectious waste per month are exempt from the requirements.

Requires infectious waste to be stored separately from other wastes, and for sharps to be contained in leakproof, puncture resistant containers.

Pathological wastes must be incinerated, or, if incineration is not feasible, sterilized prior to disposal. Cultures and stocks must be sterilized prior to disposal. Blood and liquid wastes may be discharged into a sewer system

The Public Utility Commission may establish rules for transportation of infectious wastes.

The Environmental Quality Commission may require an incinerator to accept infectious waste generated in Oregon.

ENVIRONMENTAL QUALITY IMPACT:

The major environmental impact from this legislation is to prevent health impacts to waste handlers from contact with sharps or other infectious wastes.

IMPLEMENTATION STEPS AND GUIDELINES:

The EQC may adopt rules for storage and handling of infectious waste at a solid waste disposal site. Infectious waste handling and management will need to be added to solid waste disposal permits and the list of items inspected for at solid waste disposal sites.

ALTERNATIVE IMPLEMENTATION STRATEGIES:

The Department could survey all known medical facilities to determine that infectious wastes are being managed according to law. However, regulation of sources was not anticipated in the fiscal impact analysis of this bill. The state health division is the more appropriate agency to inspect medical facilities.

REQUIRED EQC ACTIONS:

No actions are required. The EQC may adopt rules for disposal sites and may require solid waste incinerators to accept infectious waste.

RESOURCES:

It is anticipated that an additional fiscal impact of .2 FTE for a Senior Environmental Engineer will be required to review permits and plans for new infectious waste incinerators expected because of the new requirements. The funding for this additional FTE should come from permit fees.

HOUSE BILL 3080

SUMMARY:

House Bill 3080 would provide a partial solution to the immense financial costs imposed on owners and permittee of underground storage tanks by new Federal environmental regulations. The bill would provide 50% grants not to exceed $3000 to test sites for soil contamination and tank and piping for tightness; a loan guarantee of 80% not to $64,000 to upgrade or replace tanks used for retail dispensing of gasoline by small businesses and an interest rate buydown to 7 1/2% through a tax credit to commercial lending institutions. The program would be funded by a new $10 fee on each load of petroleum picked up at a bulk terminal. Total annual revenue to be about $3 million.

Over the life of the three year program, the Department expects to process 1130 site assessments grants for $3,390,000; 245 loan guarantees for $13,752,249; pay out $3,498,655 in interest subsidies through tax credits to lending institutions; $687,612 for loan defaults and $3,583,747 in administrative expenses. Total revenue to be collected over four years is estimated to be $12,000,000. In order for the program to provide the amount of loan guarantees identified it may be necessary to temporarily borrow up to $12,000,000 from the State Treasury, in the form of a standby letter of credit, to cover all outstanding loan guarantees.

ENVIRONMENTAL QUALITY IMPACTS:

Leaks from underground storage tanks currently contaminate groundwater and pose public safety problems because of potential fire and explosion hazards from fumes. As steel tanks age, we expect the problems from leaking tanks to increase. HB 3080 will provide financial assistance to encourage early leak detection through site assessments and tank and piping tightness testing. In addition, the loan guarantee program will allow small businesses to finance on a more reasonable basis the costs to upgrade or replace tanks or carry out simple soil cleanups.

The results should be less future contamination because we will have discovered existing problem sites and should be able to see more, and earlier, private party cleanups.

IMPLEMENTATION STEPS AND DEADLINES:

Because of the impending federally-mandated insurance deadline of October 26,1990, the bill carries an emergency clause and early implementation dates. It is expected that the Department will be providing grants and loans by September 1, 1989.

That will require emergency rules in the following areas:

1. Priorities for dispensing grant and loan guarantee monies.

2. For the soil assessment and tank and piping testing program.

3. For the loan guarantee program.

ALTERNATIVE IMPLEMENTATION STRATEGIES:

Early implementation of the loan guarantee program will require significant technical assistance from the commercial lending institutions. Contact has been made to request one or more executives for up to six months to help put the financial aspects of the program together and to train DEQ's staff who will have to carry out the program over time. Preliminary indications are the lending institutions are willing to help out.

REQUIRED EQC ACTIONS:

Emergency rules by September 1, 1989 and final rules by March 1, 1990.

RESOURCES:

Eleven new positions (9.95 FTE) and $5,453,395 of expenditure limitation for the first biennium will be requested of the Emergency Board on September 1, 1989.

POLICY ISSUES THAT REQUIRE EQC DISCUSSION:

Priority scheme for dispensing grant and loan guarantee funds to small businesses in rural areas.

(HB3080S)

Briefing Paper — House Bill 3235

1. Summarize what the new legislation does

House Bill 3235 amends ORS 466.557, which pertains to the inventory of hazardous substance release sites. Under the new law, the DEQ will be operating under a significantly different approach. The new law requires the Department to develop two lists--the List of Confirmed Releases and the Inventory of Facilities Needing Further Action. HB 3235 requires the agency to notify the owner and operator of a facility before the facility is placed on either list. The owner or operator then has an opportunity to provide comments. The Department's decision to add a facility to either list is final and not appealable.

2. Describe the Environmental Quality impact of the new legislation

HB 3235 provides new procedures, guidelines and requirements for rulemaking regarding the lists of contaminated sites. However, it does not directly impact environmental quality. In fact, Section 6 provides that nothing in the requirements relating to either list shall be construed to be a prerequisite to or otherwise affect the authority of the Department to undertake, order or authorize a removal or remedial action.

3. Clearly outline significant implementation steps and deadlines

- o First draft of rules complete. (Mid-July)
- o Meetings with Environmental Cleanup Advisory Committee. (7-25-89, 8-23-89, 9-27-89, 10-25-89)
- o Request for hearing authorization from EQC. (11-30-89)
- o Public hearings. (12-XX-89)
- o Request for rule adoption from EQC. (2-XX-90)

4. Identify alternative implementation strategies (if appropriate)

Rules identified below are the minimum required by law, however, the EQC may decide to adopt additional rules.

5. Identify required or expected EQC actions

The law requires the EQC to adopt rules within nine months regarding the following:

- o Removal from the List or Inventory - Section 4 requires the EQC to adopt rules providing a procedure to remove facilities from the list or inventory or both when the Director determines that the facility has attained a degree of clean up that is protective, that no further action is necessary to assure protection of present and future public health, safety, welfare and the environment, or that the facility satisfies other appropriate criteria to assure protection of public health, safety, welfare

and the environment. Section 7 requires the EQC to adopt criteria to be applied by the director in determining whether to remove a facility from the list or inventory.

- o Definition of confirmed release - Section 7 requires the EQC to adopt a definition of confirmed releases. The EQC must exclude from the list and inventory the following releases to the extent the EQC determines they pose no significant threat to present or future public health, safety, welfare or the environment:

    1. De minimis releases;

    2. Releases that by their nature rapidly dissipate to undetectable or insignificant levels;

    3. Releases specifically authorized and in compliance with a current and legally enforceable permit issued by the Department or EPA; and

    4. Other releases the EQC finds pose no significant threat.

- o Definition of preliminary assessment - Section 7 also requires the EQC to adopt rules to define the contents of a preliminary assessment.

- o Hazard Ranking Rules - Section 8 requires the EQC to adopt rules for ranking facilities on the inventory based on the short-term and long-term risks they pose to present and future public health, safety, welfare and the environment.

6. Identify resources that are provided for implementation

No resources specifically identified.

7. Identify Policy Issues that require EQC discussion

Policy issues that require EQC discussion include any direction the Commission may want to give the agency in the rule development outlined above. The EQC may also want the agency to develop additional rules not required by HB 3235.

Additionally, Section 7 requires that four categories of releases of hazardous substances are to be excluded from the lists. The EQC should discuss the fourth category which includes those "releases the EQC finds pose no significant threat."

Sara Laumann 229-6704
July 5, 1989

Attachments:

Schedule for Rule Development

HB 3235: SCHEDULE FOR RULE DEVELOPMENT

Schedule for rule adoption required by HB 3235. Legislation requires that rules be adopted within 9 months of enactment. Bill signed on June 28, 1989 and rules must be adopted by March 28, 1990.

(Note: the Environmental Cleanup Division Advisory Committee is referred to as "ECAC".)

	Event	Topic
7/25/89	ECAC Meeting #1	Brief overview of HB 3235 and proposed rules, distribute draft rules and additional support/educational materials.
8/23/89	ECAC Meeting #2	Brief overview of rules. Discuss definition of confirmed release,[1] definition of PA[2] and delisting rules.[3] If possible, complete discussion of definition of confirmed release and definition of PA.

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[1] Rule to Define Confirmed Releases. Use definition of confirmed release developed from the Site Assessment 3 part definition which includes: (1) an observation documented by a government inspector; (2) a written statement from the owner, operator or authorized representative of the facility stating that a release has occurred; or (3) laboratory data indicating that the hazardous substance has been detected at levels at or greater than the analytical detection limit.

[2] Rule to Define Preliminary Assessments. Review and amend the existing definition in OAR 340-122-060 as necessary.

[3] Rules to Provide a Procedure and Criteria for Removal of Facilities from the List or Inventory. Review and amend the delisting rules initially proposed for EQC adoption on 1/20/89.

9/27/89	ECAC Meeting #3	Complete discussion of delisting rules and begin discussion of ranking rules.[4]
10/25/89	ECAC Meeting #4	Complete discussion of ranking rules and discuss any other necessary rules.[5]
11/15/89	Staff Report Due	Request Hearing on rules to implement HB 3235.
11/15/89	(ECAC Meeting)	(Use if necessary)
11/30/89	EQC Meeting	Request hearing authorization.
12/**/89	Public Hearing	Public Hearing(s) on proposed rules.
12/13/89	ECAC Meeting #5	Discuss comments on proposed rules.
1/**/90	Staff Report Due	Respond to comments, amend proposed rules, request rule adoption.
2/**/90	EQC Meeting	Request rule adoption.

Sara Laumann
schHB3235
July 3, 1989

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[4] Hazard Ranking Rules. Use EPA HRS1 as starting point for ranking rules and amend as necessary.

[5] Develop other rules (and related policies/procedures) as recommended or necessary

BRIEFING PAPER FOR HOUSE BILL 3244
(Establishes Comprehensive Indoor Air Quality Program)

Background: National studies have characterized indoor air pollution as posing among the highest public health risks of all major environmental issues. Last year a joint DEQ and Health Division advisory committee developed a legislative concept that would establish a comprehensive public education, technical assistance and regulatory program that would effectively reduce and prevent contamination of the indoor environment. HB 3244 as introduced was patterned after these recommendations.

While generally broadly supported, tobacco lobbyists and some industrial representatives raised significant concern about some of the regulatory provisions of HB3244 and as a result the bill was significantly modified. Major revisions included deletion of designated smoking area requirements, permissively allowing indoor air quality standards to be set no earlier than July 1, 1991 (in lieu of mandating them), allowing only rules to be developed to require inspection of buildings for compliance with indoor air quality standards and minimum ventilation system maintenance with the next legislative assembly to decide if these should be enforced and deletion of major program funding provisions. Additionally the role of DEQ in the program was diminished by giving the Health Division the authority to adopt the indoor air quality standards and potentially enforce the building inspection programs.

HB 3244 ultimately passed both House and Senate Committees unanimously and passed both floors by wide margins.

Summary : Despite significant amendments HB 3244 still contains most all of the elements of the original bill in some form and can provide an excellent foundation to build a strong state indoor air program. DEQ's role in the program is still significant. Major provisions of the Bill are as follows:

o Establishes Indoor Air Pollution Task Force jointly appointed and administratively supported by DEQ and the Health Division. By Sept. 1, 1990 the Task Force is to assess the extent of the IAQ problem in Oregon, advise the Health Division on the need for IAQ standards and building inspection programs and propose specific rules, advise the Building Codes Agency on establishment of code changes, and advise the EQC on a proposed program for voluntary product labeling. The Health Division is to provide a report to the next legislature on the results of this effort.

o Allows Health Division to establish IAQ standards and to recommend to the next legislature a schedule of penalties for violations.

o Allows Health Division to establish a public recognition

program for public areas and office workplaces that consistently meet and exceed all requirements under the bill.

o Allow Building Codes Agency to change code requirements for residential and commercial buildings upon advise of the IAQ Task Force.

o Allows EQC to establish a pilot program (which could include restriction of sale or hazard labeling) for any household or office product that is not adequately regulated by Federal Law to protect human health from IAQ problem, and to establish a voluntary program to label products that have a low potential to cause IAQ problems.

o Requires EQC to establish a voluntary accreditation program for firms providing IAQ sampling services and a voluntary certification program for firms that provide IAQ remedial action for residences.

Environmental Impact: Program could begin to reduce and prevent among the highest environmental health risks through the public education and recognition programs, building code changes and product restrictions and labeling authority. Testing lab and remedial contractor certification should also improve the effectiveness of IAQ control actions. Ultimately increased effectiveness could be achieved if IAQ standards and ventilation system maintenance provisions are authorized for enforcement by the next legislature.

Significant Implementation Steps and Deadlines for DEQ

- o Establish IAQ Task Force - No Deadline
- o Complete IAQ Task Force study and recommendations - Sept. 1,1990
- o Establish product labeling/restriction programs upon advice of IAQ Task Force.- No Deadline
- o Establish testing lab and contractor certification program - No deadline.

Resources Provided: None directly. Up to $500 is authorized in fees per accredited lab and testing contractor. We can apply to the E-Board for up $20,000/yr for fiscal impact identified to minimally staff IAQ task force and begin product labeling. Potential exists for an EPA pollution prevention grant for up to $300,000 for all involved agencies to do first class job. Grant must emphasize multimedia pollution prevention so labeling program could be emphasized and scoped to require manufacture and packaging of low indoor air polluting products to be environmentally exemplary as well.

Policy Issues for EQC Discussion: EQC needs to decide when to proceed with contractor accreditation/certification, the scope of interest in the labeling program, and whether other resources should be sought/shifted to insure that the highest quality program commensurate with health risks is developed.

HOUSE BILL 3305

LEAD-ACID BATTERY RECYCLING

SUMMARY

HB 3305 contains the following provisions:

1. prohibits diposal of used lead-acid batteries in municpal solid waste, waste landfills, or incinerators;

2. requires battery retailers and wholesalers to post information signs and to take back used lead-acid batteries for reuse or recycling, retailers must accept from any person up to one more used battery than sold to that person;

3. requires the Department to conduct a study of lead-acid battery recycling and report to the next legislative assembly;

4. provides penalties for violation of provisions 1 and 2;

5. sets an effective date of January 1, 1990.

ENVIRONMENTAL IMPACT

HB 3305 will significantly reduce the amount of lead in municipal solid waste and municipal solid waste incinerator ash. It will result in increased recycling of lead-acid batteries. The required DEQ study will provide an assessment of the environmental impact of the act.

IMPLEMENTATION STEPS AND DEADLINES

The Department will distribute informational material to battery retailers and wholesalers through trade associations, provide direct notification to solid waste collectors, recyclers and disposal site operators, design and implement lead-acid battery recycling study, and report to 1991 legislative session.

ALTERNATIVE IMPLEMENTATION STRATEGIES

None

REQUIRED EQC ACTIONS

None

RESOURCES

None provide in the bill. Implementation including notice and the study and report to the legislature should take up to .1 FTE.

POLICY ISSUES THAT REQUIRE EQC DISCUSSION

None

HOUSE BILL 3445 - A-ENGROSSED

SUMMARY:

This bill provides additional permitting and enforcement authority for water pollution control facility permits for confined animal feeding operations (CAFO). CAFOs are facilities such as dairies and feedlots that concentrate animals in a limited area.

The bill requires that each permit for a CAFO specify the allowable number of animals for the particular site based upon its capacity to handle the wastewater. In addition, it also specifies a minimum civil penalty for a CAFO of $500 if the operation does not have a permit. The bill also provides authority to the Department of Agriculture to assess a $25 dollar annual fee for each CAFO under permit. CAFOs assessed a civil penalty for violation of a permit condition are subject to a $1000 a year permit fee for three years following assessment.

ENVIRONMENTAL QUALITY IMPACT:

CAFOs can create enormous quantities of animal waste which, if inadequately controlled, can contribute large quantities of oxygen-demanding organics, toxic ammonia, and phosphorus to Oregon's waterways. The bill puts added emphasis on CAFO operators to properly dispose of waste water created by their operations. The bill should prompt operators to resolve their water pollution problems on their own volition and to assure that they do not house more animals than they can adequately handle. (Currently, through an agreement with the Department of Agriculture(ODA), the initial investigation of pollution problems from CAFOs is done by ODA).

Fortunately, the legislature also provided $157,000 of general fund to finance added resources at ODA and DEQ to increase the regulatory presence and enforcement for CAFOs.

IMPLEMENTATION STEPS AND DEADLINES:

The provisions of the bill become effective on January 1, 1990. The Department will have to review its agreement with ODA to determine if changes to it are necessary. DEQ should also review Oregon Administrative Rule(OAR) 340-12 - Enforcement Procedure and Civil Penalties - to see if revisions to the enforcement policy are necessary as a result of the bill. In addition, the Department's rules on permitting and fees should be reviewed and revised to reflect the requirements of this bill. Finally, a person needs to be hired to fill the half-time position provided to DEQ by the legislature. These items listed above should be accomplished by January 1, 1990.

ALTERNATE IMPLEMENTATION STRATEGIES:

None, except for not carrying out the provision of the new bill.

REQUIRED EQC ACTIONS:

Authorization of hearings on proposed rules and final adoption or rules as appropriate to carry out the provisions of the bill.

RESOURCES:

The legislature provided one half-time Program Coordinator 1 position and general funds to support the position.

POLICY ISSUES THAT REQUIRE EQC DISCUSSION:

None.

HOUSE BILL 3456

SUMMARY:

Establishes an Oil Heat Commission and a Heating Oil Remedial Action Account. Staff for Oil Heat Commission will be in the Executive Department. Heating Oil Remedial Action Account can be used to pay the cost, on a reimbursable basis, of a remedial action required to cleanup a spill or release of heating oil. The cleanup standards to be followed are those adopted by the EQC. The role of the Oil Heat Commission is to insure money is made available on a timely basis for eligible projects. 100 percent of the cleanup costs are eligible, subject to money being available in the account. Revenue for the account is a new fee of 1.25 percent on the gross operating revenue of heating oil distributors. The bill also expands DEQ's licensing programs for underground storage tank service providers to cover companies and supervisors doing simple cleanups involving hazardous substances or heating oil.

ENVIRONMENTAL QUALITY IMPACTS:

In the case of a spill or release of heating oil from any above ground or underground tank, money is made available from the account to pay for a remedial action. This should insure quicker response and more complete and appropriate cleanups then we've seen before. In addition, the licensing program, including certification of supervisors, should raise the level of knowledge in the cleanup business.

IMPLEMENTATION STEPS AND STRATEGIES:

The Oil Heat Commission is responsible to develop the rules to administer the Heating Oil Remedial Action Account. Since no staff currently are hired, it will be next April or May that final rules may be developed. We expect to adopt the licensing and certification rules by April, 1990 to precede a supervisor exam scheduled for early July, 1990.

ALTERNATE IMPLEMENTATION STRATEGIES:

It would be possible to consider emergency rules to have the program available before a planned certification exam offering in January, 1990 or delay six months to coincide with the exam offering tentatively planned for January, 1991.

REQUIRED EQC ACTIONS:

Authorize public hearings on licensing of cleanup contractors and supervisors in January, 1990. Final rule adoption in March or April of 1990.

RESOURCES FOR IMPLEMENTATION:

Budget approval of $32,504 in licensing fees and 0.25 FTE.

POLICY ISSUES FOR EQC DISCUSSION:

When to schedule rule adoption, including a fee schedule, for contractor and supervisor licenses.

(HB3456S)

BRIEFING PAPER FOR HOUSE BILL 3475
(Establishes programs to enhance slash burning and air quality)

Background: Because of increasing public and air quality regulatory pressure, forest land managers have found it increasingly difficult to accomplish the levels of forestry prescribed (slash) burning that they feel is necessary. As a result, foresters have felt a strong need for forestry smoke management program improvements and slash burning research work. A principal difficulty has been the lack of funding. HB3475 was originally conceived by the Oregon Forest Industry Council as a means of funding projects they have seen as beneficial to air quality while allowing more burning opportunities. The Bill drafted in cooperation with and supported by the Oregon Department of Forestry as well as the US Forest Service and Bureau of Land Management. The Department did not feel that the Bill would provide significant environmental benefits.

Summary: The Bill was adopted without significant amendment. It establishes:

1. An advisory committee to assist the State Forester on matters related to forestry smoke management;

2. A report to the Legislature analyzing information gathered from projects funded though the Bill, recommendations made to the EQC or Board of Forestry relating to the smoke management program and an analysis of alternatives for managing slash residues.

3. The Oregon Forest Smoke Management Account as a separate fund. Funds consist of fees ($0.50/acre to register and $1.50/acre of burned slash) levied on forest land managers within western Oregon.

Funds raised would be used for aerial monitoring of slash burning smoke, establishment of a system to track the location of burned units, development of information to the DEQ on slash burning emission trends and alternative forms of slash disposal and to assist land owners wishing to evaluate alternative burning and nonburning strategies. The Bill sunsets on Dec. 31, 1991.

Environmental Impact: The program could be beneficial in reducing slash burning emissions if sufficient emphasis is placed on nonburning slash disposal methods. The aerial monitoring elements are intended to track slash smoke plumes to determine if additional burning can be accomplished.

Significant Implementation Steps and Deadlines for DEQ: None

Resources Provided: None of the funds come to DEQ. Funds are used exclusively by the Department of Forestry.

Policy Issues for EQC Discussion: None

HOUSE BILL 3482

RESOURCE CONSERVATION TRUST FUND

SUMMARY

1. HB 3482 establishes, but does not fund, the Resource Conservation Trust Fund. (HB 3482 was originally proposed with funding derived from a 0.75% surcharge on the sale of disposal items and packaging. The Legislature felt that the details of the proposed funding were not well enough worked out to allow passage this session, but that a complete funding proposal could be developed during the interim between sessions.)

2. The trust fund is proposed to serve two separate purposes: funding projects relating to habitat conservation, and funding projects related to waste reduction.

3. The trust fund is to be managed by the Commission.

4. Monies to fund waste reduction projects are to be placed in a separate waste reduction account of the trust fund.

5. A new seven-member "Waste Reduction Trust Fund Board" is responsible for allocating funds from the waste reduction subaccount.

6. Members of the Waste Reduction Trust Fund Board are to be appointed by the Governor, the Speaker of the House, and the President of the Senate.

7. The Department serves as staff to the new board.

8. The Commission is to adopt a "needs assessment" on the types of projects that should be funded and the level of funding needed.

9. The Department is responsible for developing a long-range plan for funding projects under the trust fund.

10. The Waste Reduction Trust Fund Board is to approve the long range plan prepared by the Department, and to adopt rules relating to the funding of projects.

11. The Commission is to determine the appropriate level of "diversion credits" to be paid to recyclers on a per-ton basis for the tonnage of particular materials recycled.

12. Monies to fund wildlife habitat conservation projects are to be placed in a separate habitat conservation account of the trust fund.

13. A new seven-member "Habitat Conservation Trust Fund Board" is responsible for allocating funds from the habitat conservation

subaccount. Members are to be appointed in a manner similar to the Waste Reduction Trust Fund Board.

14. The long range plan for funding projects is to be developed by the Department of Fish and Wildlife, in conjunction with other state agencies.

15. The Habitat Conservation Trust Fund Board is to approve the long range plan for funding habitat conservation projects, and to allocate funds for projects.

16 The Department of Fish and Wildlife provides staffing for the Habitat Conservation Trust Fund Board.

17. Because matching federal funds are available to fund habitat conservation projects, the habitat conservation subaccount may receive donations or other revenue in order to obtain matching federal funds even though no funding was provided by the Legislature.

ENVIRONMENTAL QUALITY IMPACT:

This bill will have little impact until such time as a funding source is implemented. Donations to the habitat conservation subaccount, if any, will result in preservation of wildlife habitat for future generations.

IMPLEMENTATION STEPS AND DEADLINES:

Neither of the trust fund boards are authorized to allocate money before January 1, 1992. No earlier deadlines are set for appointment of the boards or development of the long range plans.

ALTERNATIVE IMPLEMENTATION STRATEGIES:

1. The Department and the Commission could take an active role in negotiating proposals for the level and type of funding to be submitted to the Legislature in 1991. Alternatively, the Department and the Commission could limit their role to just the activities called for in the law, including developing the plan and the needs assessment for waste reduction.

2. Complete implementation of the existing HB 3482 could be delayed until 1991 to allow the Legislature the chance to make further changes in the law in addition to determining a funding source. Alternatively, the Department and the Commission could proceed early with the actions required under HB 3482, so as to not delay the funding of programs as soon as a source of funds becomes available.

REQUIRED EQC ACTIONS:

1. management of the overall trust fund

2. oversight of the long range waste reduction plan to be prepared by the Department

3. approval of a needs assessment for waste reduction funding

4. approval of the funding level (credit per ton) of diversion credits for recycling different materials.

RESOURCES:

No resources were provided for implementation of HB 3482. It is estimated that a minimum of 0.25 FTE is necessary to provide staffing for the EQC action items above and for staffing of the new waste reduction trust fund board.

POLICY ISSUES THAT REQUIRE EQC DISCUSSION:

Three main issues need to be resolved. These are:

1. the degree of involvement with regards to further legislative development of the Resource Conservation Trust Fund;

2. the timing of implementation of HB 3482; and

3. further determination of the roles to be played by the new trust fund boards, the Commission, the Department, and other agencies in implementing the trust fund programs.

PHSPENDE\WORDP\HB3482.D97

HOUSE BILL 3493

SUMMARY:

Allows a civil penalty in the amount of damage incurred from the wilful or negligent discharge of oil into waters of the state. Collected penalties to be deposited into a new Oil Spillage Control Fund. Money in the fund can be used to cleanup oil spills and rehabilitation of fish and wildlife. Makes intentional or negligent violation a Class A misdemeanor.

ENVIRONMENTAL QUALITY IMPACT:

Provides full recovery of state cleanup costs and natural resource damages. Money collected can be used for future clean up events and rehabilitation of the environment.

IMPLEMENTATION STEPS AND DEADLINES:

None listed in the bill. Makes sense to implement this concurrent with SB 1038 (financial responsibility for ships carrying oil in bulk). That would mean rules by January 1, 1990.

ALTERNATIVE IMPLEMENTATION STRATEGIES:

Delay rulemaking until later in the biennium.

REQUIRED EQC ACTION:

Authorization to hold hearings on proposed rules and adoption of final rules.

RESOURCES:

None. Will have to carry out with existing staff.

POLICY ISSUES THAT REQUIRE EQC DISCUSSION:

None.

Department of Environmental Quality

House Bill 3515 B-Engrossed

TABLE OF CONTENTS

July 12, 1989

Note: This table of contents is sketchy in some sections and should not be relied upon for accurate descriptions of the scope of each section or group of sections.

ENVIRONMENTAL CLEANUP DIVISION (except sec. 112, 119)

101 - 111 Financial Assistance Program

112 HSW Rules mandate for toxics use reduction certification

113 Orphan Site Account/HSRAF

114, 115 Pollution Control Fund and Pollution Control Sinking Fund

116 Statutory reference to Sections 117, 132, 133
117 "Unwilling" PRP and Nonbinding review by independent expert
118 Repeal date of Sec. 117

119 HSW Operative date of S. 99; toxic uses rules mandate

120 Statutory reference to Sections 121-131, 134, 135
121-131 Hazardous substances fee (s.a. sec 134, 173)

132 Fees increase authority for EQC

133 Liability preservation

134 Legislative approval of Hazardous substance fee requirement

135 Hazardous substance fee exclusion for local govts for statutorily required uses

136 Statutory reference to Sections 137, 138

137 Solid waste collection services charge

138 Solid waste disposal site fee, domestic solid waste

139-148 Petroleum bulk fee (s.a. sec. 159, 173)

SOLID WASTE

149 Statutory reference to SectionS 150-153
150-153 Domestic solid waste

154 Schedule of fees for disposal site permits

155 Out of state solid waste disposal surcharge for SW program

156 Legislative approval requirement; basis for fee

UNDERGROUND STORAGE TANKS

157-158 UST

ALTERNATIVE FEES IF PETROLEUM FEE FOUND UNCONSTITUTIONAL

159-160 Constitutional exclusion for petroleum bulk fee, Legislative intent and Repeal of sec 139-148; petition to supreme court

161 Operative date of sec. 161-168 contingency subject to Suprem Court determination

162 Petroleum supplier assessment on gross operating revenue

163 Railroad fee on hazardous substances

164 Motor carrier fee

165 Orphan Site Account deposits; uses -- emerg. response & OSA

166-167 Fee collection provisions

168 Legislative approval requirement for fees

169-172 Conforming amendments to HSRAF sec 113, PCF in sec. 114, EQC fee increases in sec 132 and to liability preservation clause in sec. 133

FEES RESTRICTIONS

173 E-board approval of bond issuance requirement prior to fees

174 Fee revenue restricted to paying debt service on bonds

REPEAL

175 Repeal of ORS 466.653, .660, .665

APPROPRIATIONS

176 Community right to know
177 Dept of Revenue
178 SFM
179 SFM
180 DOE
181 EMD
182 SFM
183 Dept of AG
184 Dept of Higher Ed
185 Health Division

EMERGENCY CLAUSE
186 Emergency clause

HOUSE BILL 3515

(SECTIONS 1 THROUGH 16)

TOXIC USE REDUCTION AND HAZARDOUS WASTE REDUCTION ACT
(Formerly HB 2334)

SUMMARY

HB 3515 creates a new program with the following components:

1. Requires users of toxic substances and generators of hazardous waste to develop and implement toxic use reduction and hazardous waste reduction plans;

2. Requires annual progress reporting on implementation of above plans;

3. Expands the Department's hazardous waste reduction technical assistance program to provide in-the-field assistance in developing these plans;

4. Stipulates that technical assistance services must be seperate from regulatory inspections and enforcement aspects of DEQ.

ENVIRONMENTAL IMPACT

Will reduce the amount of toxic substances used by businesses and industries within Oregon, and reduce the amount of hazardous waste generated, through comprehensive planning efforts and direct technical assistance. Reduced waste will also reduce costs and long-term potential environmental impact and liabilities associated with waste management.

IMPLEMENTATION STEPS

1. Establish an advisory committee to assist in rule development;

2. The EQC needs to adopt planning guidelines by September 1, 1990;

3. Staff will need to do research regarding the development of waste reduction plans and the setting of measurable performance goals (12/89);

4. DEQ to notify generators of the new requirements and provide training and technical assistance regarding what will be required under the rules. At this time, regional staff will be hired to work individually with users to prepare plans;

5. The first plans are due September 1, 1991;

6. During the 1991-93 biennium, staff will monitor the submittal of plans and progress reports and review plans and progress reports;

7. The Department will provide technical assistance to generators, training workshop and information clearinghouse activities.

ALTERNATIVE IMPLEMENTATION STRATEGIES

None.

REQUIRED EQC ACTIONS

1. Rule adoption for planning guidelines by September 1, 1990; Other issues which should be resolved at the same time include enforcement procedures and progress reporting.

2. Develop list of toxic substances subject to the Act. The EQC has the authority to add or remove toxic substances subject to the Act, but is not required to do so.

RESOURCES

Funding for the bill: new hazardous substance user fees ($550,000 for FY 89-91) administered by the State Fire Marshall.

New positions: 1.5 positions in headquarters and 4 positions in the regions.

POLICY ISSUES THAT REQUIRE EQC DISCUSSION

1. At what level should the performance goals be established?

2. How should progress toward these goals be reported?

3. Can the technical assistance services and staff provided under this act be seperated from regulatory inspections and enforcement activities of the agency?

4. If/how the Act should be enforced?

5. Report to the 1991 Legislature.

EQC BRIEFING PAPER
House Bill 3515
Groundwater Protection Act Sections

Sections 17 through 66 of HB 3515 contain the sections that were originally contained in SB 423, the Groundwater Protection Act.

The Groundwater Protection Act of 1989, establishes a comprehensive groundwater management program. There are many existing programs in several state agencies that affect the management and protection of groundwater. The Groundwater Act will provide an overall framework for ensuring that these activities are conducted in a coordinated fashion, and help ~~resolve~~ conflicts by clearly establishing state groundwater protection goals and policies.

The Act addresses four areas that were previously lacking under existing law. Those are:

1. Clearly defined groundwater protection goals and policies, particularly with regard to groundwater quality;

2. Methods for ensuring the systematic coordination of state agencies in responding to complex groundwater management issues;

3. The ability to address groundwater management on a regional basis; and

4. The development and implementation of preventative groundwater protection programs, with an emphasis on non-regulatory programs.

Because groundwater issues cut across so many traditional agency lines, the Strategic Water Management Group (SWMG) was given a very large role in the Act. Under the Act SWMG is responsible for: coordinating interagency management of groundwater as necessary to achieve the goals of the Act; developing programs to reduce adverse impacts on groundwater; providing educational and informational materials to the public; awarding grants for groundwater protection research, demonstration projects and educational programs; preparing biennial reports to the legislature on groundwater protection efforts; developing and maintaining a groundwater information repository; appointing a technical advisory committee to develop guidance for the EQC to use in establishing groundwater quality standards; appointing local groundwater management committees; and adopting groundwater action plans for regional groundwater management areas.

In the past, most state groundwater activities have been in the reaction to problems. The emphasis in this legislation is to establish a more preventative groundwater protection program.

The Act was primarily developed in response to complex regional groundwater quality problems resulting from non-point sources.

Traditional pollution control programs that were developed to address point sources are inappropriate or ineffective in dealing with these types of contamination problems. The strategies and programs contained in the Act should provide for a more effective approach to ameliorating and preventing groundwater contamination from non-point sources. Sections of the Act containing goals, policies, numerical standards and groundwater management areas will undoubtedly have a significant impact on future point source activities as well, both in terms of providing guidance on what may be permitted, and in selecting appropriate remedial actions under the Environmental Clean-up Program.

Under the Act the Department and the EQC will have to conduct the following activities:

1. The Department will provide staff support for SWMG activities mentioned above.

2. Develop and adopt rules for the designation of "areas of groundwater concern", and "groundwater management areas". This rulemaking is not required by the act but is thought to be necessary, therefore there are no statutory timeframes.

3. Within 90 days of the effective date of the Act adopt interim numerical standards for contaminants in groundwater.

4. Within 90 days of receiving the recommendations of the technical advisory committee begin rulemaking, then adopt within 180 days of that final standards for groundwater.

5. Establish a statewide groundwater assessment program.

6. Identify and declare "areas of groundwater concern" and "groundwater management areas".

7. Conduct detailed assessments in areas of concern and groundwater management areas.

The Governors recommended budget for implementation of the Act was 4.2 million dollars. Approximately 1.9 million dollars was the amount finally approved. This money will provide for 7 FTE for DEQ, 3 FTE for the Department of Agriculture, 2 FTE for the Health Division, one FTE each for OSU and WRD, $248,000 capital outlay (lab equipment), and $250,000 for grants on fertilizer and pesticide research.

At this level of funding all of the program activities contained in the Act can not be conducted. The budget that was approved by Ways and Means was based upon only two activities; the development and initiation of a statewide groundwater monitoring and assessment program, and the development and implementation of a groundwater water management action plan for the Northeastern Malhuer County area. These activities along with mandatory rule making should receive highest priority, and other issues should be addressed as resources and time allow.

Department of Environmental Quality

House Bill 3515 B-Engrossed

SUMMARY OF ENVIRONMENTAL CLEANUP PROVISIONS

July 17, 1989

WHAT THE BILL DOES

House Bill 3515 accomplishes 5 major objectives in regard to environmental cleanup of sites contaminated by hazardous substances:

1. Creates a new Orphan Site Account to conduct remedial action at sites with responsible parties that are unknown, unable or unwilling to conduct the cleanup. It also establishes a process for determining when a responsible party is "unwilling" that may include a nonbinding review by an independent expert.

2. Establishes 3 new fees that provide revenue for the Orphan Site Account: the hazardous substances fee, the petroleum withdrawal or import delivery fee and the solid waste tipping fee.

3. Authorizes the use of the Pollution Control Fund for orphan site cleanups and to advance funds for local or state governments for site cleanups.

4. Requires local governments to impose a solid waste collection services charge (or an alternate revenue source) to raise funds and deposit them in a Local Government Remedial Action Fund to be used solely to pay for remedial action costs at solid waste disposal sites they either own or operate, or to which they have contributed waste.

5. Creates a Financial Assistance Program to provide innovative methods of financing for responsible parties who cannot pay for a site cleanup.

These 5 objectives are summarized below. The subsequent headings are organized using the above numbers to reference the appropriate objective.

1. ORPHAN SITE ACCOUNT

The bill creates the Orphan Site Account within the existing Hazardous Substances Remedial Action Fund to be used for:

1) Department expenses for remedial action at orphan sites

2) Grants and loans to local government units for remedial action.

The bill establishes several requirements regarding the use of the Account:

Limits the amount that the Department may obligate to facilities with an **"unwilling"** responsible party (see below), to a maximum of 25% of the funds in the Orphan Site Account (derived from fee revenue from the hazardous substances fee, the petroleum fees and bond proceeds) unless the Legislative Assembly or Emergency Board approves a larger amount.

Before the Department can obligate revenues derived from the fees on a site with an "unwilling" responsible party, the Department must first determine, in accordance with rules set by the Environmental Quality Commission, whether there is a need for **"immediate"** removal or remedial action to protect public health and the environment.

Provides that revenue from the hazardous substances fee, petroleum fee and solid waste tipping fee, which are deposited into the Account shall be first used, and in 1989-91 may **only** be used, to pay the principal and interest on any bonds for remedial action purposes.

Authorizes the use of the Orphan Site Account to pay claims for reimbursement under ORS 466.570(7).

Prohibits the use of the Orphan Site Account to pay remedial action costs at facilities owned by the state.

UNWILLING RESPONSIBLE PARTY DETERMINATIONS AND NONBINDING REVIEW OR ARBITRATION

The bill establishes two circumstances under which a potentially responsible party (PRP) is considered to be "unwilling": 1) if the PRP refuses to enter into negotiations within 60 days after the Department's written request or 2) if the PRP and the Department cannot reach agreement and the PRP refuses to agree to nonbinding review or to the independent expert's decision

It provides procedures for any party to request that unresolved issues be submitted to a nonbinding review by an independent expert selected either by mutual agreement or by the circuit court. Provides that any PRP or the Department may refuse to agree to the independent expert's decision. This provision will be repealed on July 1, 1993.

The bill requires the Environmental Quality Commission to establish rules regarding the subjects that may be resolved by nonbinding review.

2. NEW REVENUE SOURCES FOR CLEANING UP ORPHAN SITES

Hazardous Substances Fee

The bill establishes a new fee on the possession of hazardous substances to be paid by persons who are required to submit hazardous substance surveys under the Community Right to Know and Protection Act according to fee schedules established by the State Fire Marshal. The State Fire Marshal must obtain approval of the fees from the Ways and Means Committee or the Emergency Board, as appropriate, before adoption or amendment of rules to institute the fee schedules.

The fee revenue will annually raise $1 million for the Orphan Site Account annually beginning in January 1990. This fee will have a cap of $9000 per facility and $25,000 per employer. This fee revenue cannot be used for solid waste disposal sites subject to the solid waste tipping fee or the solid waste collection services charge.

(In addition, fees will be imposed to raise revenue for expenditures related to the Community Right to Know and Protection Act as well as the Toxics Use Reduction and Hazardous Waste Reduction Act.)

The Department of Revenue will administer the fee collection and will transfer the appropriate amounts to the DEQ, the State Fire Marshal and the Orphan Site Account in accordance with expenditures approved by the Legislature.

Petroleum Withdrawal or Import Delivery Fees (Petroleum fee)

The bill imposes a fee on persons who order a petroleum product for delivery directly into a cargo tank or a barge. The fee may not exceed $10. The fee is collected by the seller (from the purchaser) beginning September 1, 1989.

It also imposes a fee, of not more than $10 for each delivery, on persons who import petroleum products in a cargo tank or a barge for delivery into a storage tank not connected to a bulk facility.

The fees may provide up to $1 million annually to fund the Orphan Site Account plus the amount approved by the Legislature to carry out the state's emergency response program, although it may not exceed the $10 maximum.

The Department of Revenue will be responsible for registering operators of bulk facilities and importers of petroleum products by August 1, 1989 and for collecting the fee revenue.

By September 1, 1989, the State Fire Marshal must report to the Emergency Board the amount of the fees needed to fund the statewide hazardous material emergency response system and then, upon approval, immediately adopt the fee amounts by rule.

Alternative Fees if petroleum withdrawal/import delivery fees found to be unconstitutional

The bill provides that if the Oregon Supreme Court finds the petroleum withdrawal and import delivery fees to be unconstitutional, then three alternative fees are automatically and immediately imposed to raise funds for the Orphan Site Account and the statewide hazardous material emergency response system:

1. Petroleum suppliers assessment: The bill would establish an assessment on petroleum suppliers to annually raise up to $1 million for the Orphan Site Account plus the amount of the fees needed to funds the statewide hazardous material emergency response system.

   The fee will be calculated to be equal to the proportion that an individual petroleum supplier's annual gross operating revenue is to the total gross operating revenue of all petroleum suppliers, multiplied by the total amount to be raised. For example, if $1 million is to be raised, and Company A's gross revenues are $10 million compared to $100 million for all companies gross revenues, then Company A will owe 10% of $1 million, or $100,000.

2. Railroad company hazardous substances transporter fee: The bill would establish a biennial fee on railroad companies that transport hazardous substances in Oregon based on the proportional amount of track owned by each company vs the total in the state multiplied by up to $100,000.

3. Motor carrier fee: The bill would establish a fee on all motor carriers not to exceed $100 for motor carriers transporting hazardous substances nor more than $25 for other motor carriers.

Revenue from these 3 fees would be collected by the Department of Revenue and credited to the appropriate accounts as approved by the Legislative Assembly. This fee revenue cannot be used for solid waste disposal sites subject to the solid waste tipping fee or the solid waste collection services charge.

Solid Waste Tipping Fee

The bill imposes a fee on solid waste disposal sites that receive domestic solid waste (excluding transfer stations) beginning when the Emergency Board approves the sale of bonds to provide funds for the Orphan Site Account and then annually thereafter. The fee will annually raise up to $1 million.

The revenue may be used to pay the costs of remedial action at:

1) Solid waste disposal sites owned or operated by a local government unit and

2) Orphan (privately owned or operated) solid waste disposal sites that receive domestic solid waste.

The revenue may be used to pay the remedial action costs of a local government unit provided it:

1) Is responsible for conducting the remedial action and

2) Repays any moneys equal to the amount that may be raised by the solid waste collection services charge (except the first $100,000 expended for remedial action costs).

Provisions affecting all 3 fees (excluding the alternative to the petroleum withdrawal/import delivery fees)

1. Approval of bonds: None of the revenue from these 3 fees can be collected until the Emergency Board approves the issuance of bonds to provide funding for the Orphan Site Account.

2. Dedication to bond debt service: During the 1989-1991 biennium, the fee revenue may be used only to pay the debt service on the bonds issued to provide funding for the Orphan Site Account.

3. EQC Authority to Increase the Fees: The bill authorizes the Environmental Quality Commission after July 1, 1991 to increase the annual hazardous substances fee, the annual petroleum fee, and the solid waste tipping fee provided two specified requirements are met: 1) the fee cannot exceed identified site costs and 2) the fee must be approved by the Ways and Means Committee or the Emergency Board.

3. POLLUTION CONTROL FUND

The bill authorizes the existing Pollution Control Fund to be used:

1) For the costs of remedial action at orphan sites, provided that the revenue from the hazardous substances fee, petroleum fee and solid waste tipping fee will be sufficient to pay the debt service on the bonds

2) To advance funds by various means (e.g., contracts, loans) to state and local governments for remedial action

4. SOLID WASTE COLLECTION SERVICES CHARGE LOCAL GOVERNMENT REMEDIAL ACTION FUND

Solid Waste Collection Services Charge

The bill requires local government units, which are responsible for conducting a remedial action at a solid waste disposal site, to impose a charge on solid waste collection services unless the local government provides adequate funds from another source. The solid waste collection services charge will be the amount necessary to fund the local government's remedial action costs and administrative expenses but may not exceed the equivalent of $12 per capita per year, nor more than $60 per capita per local government unit. It requires solid waste collectors, and in some cases, solid waste disposal operators, to collect the charge and allows them to add it to the customer's bill and deduct 5% for collection expenses.

The bill requires the local government unit to place revenue in a Local Government Remedial Action Fund dedicated to paying for the local government's remedial action costs.

5. FINANCIAL ASSISTANCE PROGRAM

The bill authorizes the Department to establish a financial assistance program to develop innovative financing methods to assist individuals and businesses to pay the costs of remedial action.

A program of financial assistance to these individuals and businesses will:

-- Provide responsible persons with needed funds to pay for remedial action

-- Reduce economic hardship or bankruptcy by enabling the responsible business owner or operator to remain in business and pay back the loan

-- Increase the share of cleanups costs paid by responsible persons

-- Greatly reduce the probability of the state having to take control of the cleanup process at specific sites

-- "Leverage" the funds available for cleanup so that each dollar can support several dollars of cleanup

-- Decrease the total amount of state funds needed for cleanups

-- Reduce the burden on persons who pay the fees or taxes that provide the revenue for the state cleanup fund

The Department can provide, **within funding constraints**, financial assistance to persons who meet statutory eligibility requirements. The applicants must be able to demonstrate that: another source of financing was not available, they are able to repay the bank loan, and the cleanup will be conducted under an agreement with the Department.

ENVIRONMENTAL QUALITY IMPACT

The bill provides a revenue stream to pay for investigations and cleanups at sites that would not be cleaned up otherwise because there is no known responsible party, no financially viable responsible party, or no willing responsible party.

SIGNIFICANT IMPLEMENTATION STEPS

1. **Orphan Site Account**

a. The expenditure restrictions on the Orphan Site Account will necessitate careful planning and the establishment of several accounts and subaccounts with complex accounting systems to control and track expenditures.

b. The Department will develop criteria and procedures for: identifying "unwilling" responsible parties and the need for "immediate" remedial action, conducting a nonbinding review process, and identifying independent experts.

2. **New Fees**

a. Before the fees can be imposed, the Department must develop a bond issuance proposal that will be approved by the Emergency Board.

b. The Department may have to work with the Attorney General's Office if there is a constitutional challenge on the petroleum withdrawal or import delivery fees.

c. The Department will develop criteria and procedures for selecting which sites will receive cleanup funds derived from the solid waste tipping fee and procedures for its repayment.

3. Pollution Control Fund

a. Any sales of pollution control bonds will necessitate significant administrative efforts to conduct these sales and administer the bond proceeds.

b. The Department may establish a policy and process to advance funds (loans, grants) to local governments.

4. Solid Waste Collection Services Charge; Local Government Remedial Action Fund

a. The implementation of the Solid Waste Collection Services Charge is primarily up to local governments.

b. The Department will determine that repayment by a local government is possible before approving expenditure of funds derived from the solid waste tipping fee.

5. Financial Assistance Program

a. The Department will be responsible for all **startup** activities for the Financial Assistance Program such as setting up fee schedules, rulewriting, writing financial assistance agreements, developing financing methods, establishing screening criteria and developing contracts or interagency agreements.

b. The Department will also be involved in **ongoing** activities such as program development, contractor oversight, contract administration, cost estimates and tracking, auditing, review and approval of contractor's recommendations on loan applications, education about these services, and fund management and reporting.

c. Most of the services needed to administer the actual financial assistance agreements will be **contracted out** to either a goyernmental agency or a contractor who already provides these types of services. Such services will include application intake and review, credit checks, preparation of loan packages, initial approvals (i.e., recommendations to the Department), closings, contract execution, disbursement of funds, monitoring repayment, pursuing delinquent borrowers, etc.. In other words, all of the

services normally provided by a financial institution or agency responsible for financing a project.

Alternative implementation strategies

5. Financial Assistance Program

The program is designed to be innovative and to allow the Department to develop and implement diverse approaches to financial assistance. There are four approaches that are currently under consideration:

a. Loans: The Department will loan funds from the Hazardous Substances Remedial Action Fund (HSRAF) to responsible parties for cleanups. These loans will be administered similarly to most other loans except that the borrower will have to meet DEQ's eligibility requirements.

b. Rapid Loan Assumption: A variation on the approach in (a) above will provide that a bank will promise to assume the HSRAF loan once the site was cleaned up. This approach enables the HSRAF to be rapidly paid back and the funds immediately made available for other loans.

c. Environmental Cleanup Loan Guarantees: Banks will loan their own funds to responsible parties for cleanups in conjunction with a loan guarantee backed by the HSRAF. It is possible that loan guarantees will leverage HSRAF funds from two to ten times, i.e., $1 million worth of HSRAF monies can guarantee from $2 to $10 million of bank loans.

d. Small Business Administration and Environmental Cleanup Loan Guarantees: This is similar to the approach in (c) above except that if the business qualifies for "small business" status, the Small Business Administration will provide loan guarantees to cover loan defaults resulting from normal credit risks. The HSRAF will guarantee loan defaults resulting from environmental risks, primarily cleanup cost overruns. This approach greatly reduces the scope of the risk to the HSRAF from loan defaults.

Resources needed for implementation

1. **Orphan Site Account**
2. **New Fees**
3. **Pollution Control Fund**
4. **Solid Waste Collection Services Charge; Local Government Remedial Action Fund**

Implementation of these fiscal systems will require substantial amounts of staff and resources to write rules, develop fiscal

management systems, cost accounting, recordkeeping and various other tasks.

The amount and source of resources that will be required have not yet been determined.

5. Financial Assistance Program

The scope of the Financial Assistance Program for the next biennium will probably be limited to approximately $500,000. This amount could, for example, provide loan guarantees for about 10 sites.

In 1989-1991, the Financial Assistance Program will require approximately .75 FTE to startup and administer the program. In 1991-1993, this will expand to 1.0 FTE.

The revenue to pay for this staffperson could be raised as part of the fee to pay for the costs of administering the program.

Policy issues for the EQC

1. Orphan Site Account

The EQC must determine: which sites with "unwilling" responsible parties require "immediate" action and therefore justify the expenditure of funds from the Orphan Site Account; and also the subjects that are resolvable by nonbinding review.

2. New Fees

By July 1, 1991 the EQC may want to have fee increases approved by the Legislature and rules adopted in order to pay debt service for bonds.

3. Pollution Control Fund

The EQC may wish to consider the extent to which the environmental cleanup program uses bonds as a means of raising large amounts of funds in the short term and fee revenue to pay debt service in the long term.

Also, it may wish to consider the extent to which bond proceeds are used to advance funds to state or local governments.

Required or expected EQC actions

1. Orphan Site Account

The EQC must adopt rules to guide the Department in determining whether there is a need for immediate removal or remedial action to protect public health and the environment and also what subjects may be resolved through nonbinding review.

2. New Fees

The EQC may exercise its discretionary authority in 1991 to increase the fees if the revenue derived is not sufficient to pay the debt service on bonds.

3. Pollution Control Fund

The EQC must authorize and approve the sale of each bond issue.

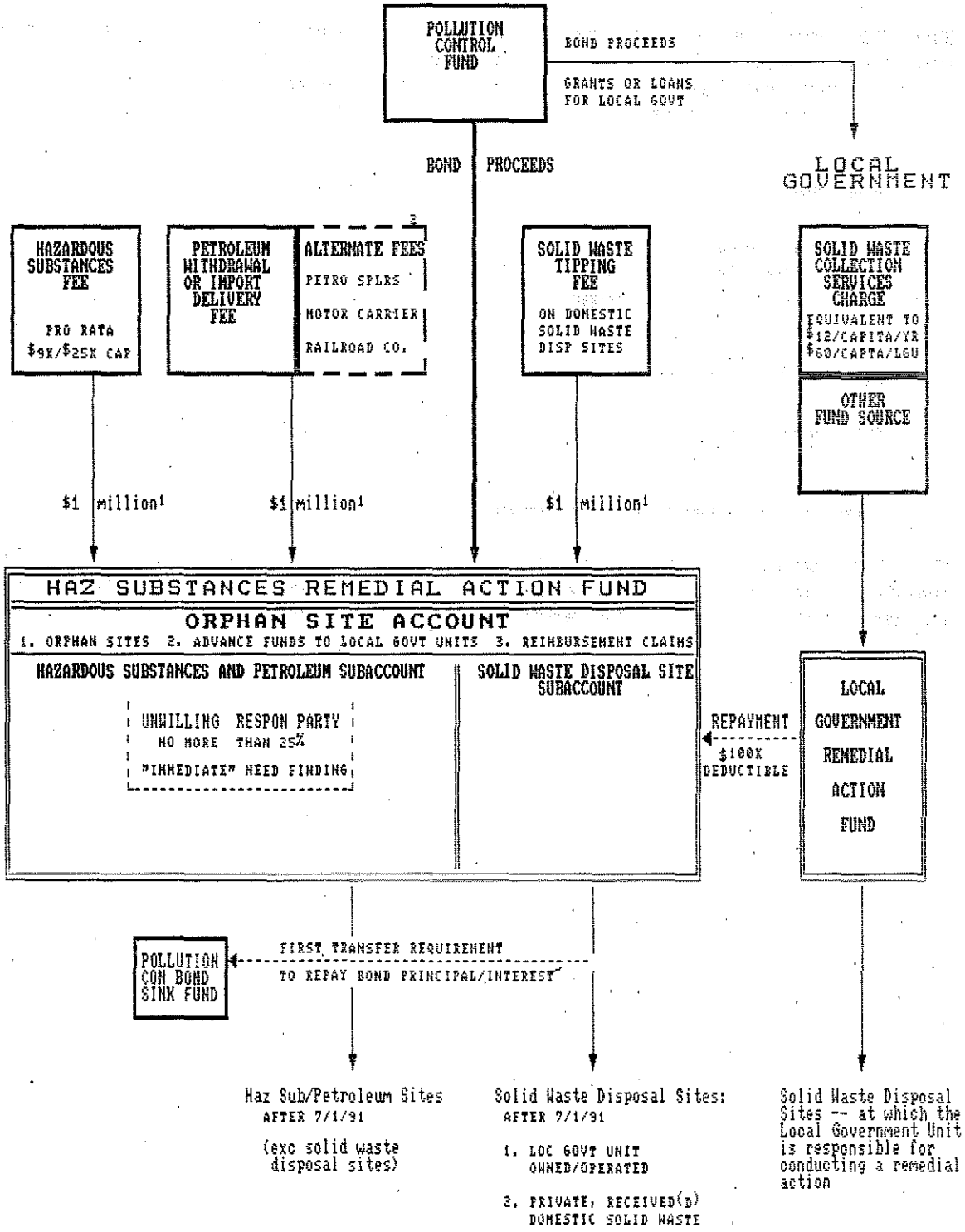
5. Financial Assistance Program

The EQC will be expected to establish fees, and to adopt rules as needed, however, it is expected that rules will not be necessary or desirable until the approaches have been further developed and tested.

HOUSE BILL 3515

NEW REVENUE SOURCES

7/17/89



1 EQC authorized to increase the total amount collected annually as necessary to pay the debt service on bonds sold to pay for remedial action at orphan sites, provided the Legislature approves the fee increase.

2 ALTERNATE FEES TAKE EFFECT AUTOMICALLY AND IMMEDIATELY IF THE OREGON SUPREME COURT FINDS THA THE PETROLEUM DELIVERY FEE IS SUBJECT TO THE OREGON CONSTITUTION.

B-Engrossed House Bill 3515

(Sections 67-76 and 149-156)

SUMMARY - Solid Waste Management (formerly SB 424)

Establishes a $.50 per ton fee on all domestic solid waste to be used for the following programs:

1. Pilot programs for Household hazardous waste collection outside the Portland metropolitan area, and for collection of Conditionally Exempt Generator waste within the Portland metro area.

2. DEQ programs to promote waste reduction and recycling, including data collection, performance measurement, education and promotion, and demonstration projects.

3. Solid waste planning grants for local governments, including planning for special waste disposal, regional disposal sites, development of new capacity, and closure of existing sites.

4. Groundwater monitoring and enforcement of groundwater protection standards at solid waste landfills.

The Department originally proposed a $2.00 per ton fee, which would have established an Oregon Recycling Account to fund local recycling programs and would have provided additional resources for groundwater protection and solid waste planning.

ENVIRONMENTAL QUALITY IMPACT:

Will provide a realistic disposal alternative for Conditionally Exempt Generators of hazardous waste, reducing the quantity of hazardous material in landfills and illegal disposal sites. Will also allow the Department to better monitor groundwater quality at solid waste landfills and detect problems at an earlier stage so that protective action can be taken. Assists local governments in meeting new environmental standards for solid waste management and disposal.

IMPLEMENTATION STEPS AND GUIDELINES:

The per-ton fee is to be established by the Commission through rule-making and go into affect by July 1990. A separate fee on out-of-state waste is to be set by the Commission prior to January 1991.

The Department shall conduct a study of management options for hazardous waste generated by conditionally exempt generators, and implement the pilot project after completion of the study.

In the second year of the biennium, the Department will set up a $250,000 grant program for local governments for solid waste planning and recycling demonstration projects.

The Department will hire a program coordinator in the second year of the biennium and select a contractor to perform the household hazardous waste collection program statewide.

ALTERNATIVE IMPLEMENTATION STRATEGIES:

The Department could begin the study of CEG management options earlier in the biennium, with savings from hiring staff after July 1, 1990. The study could be conducted through contracted professional services (consultant) rather than by staff.

REQUIRED EQC ACTIONS:

Rulemaking for per-ton permit fees.

Rulemaking for out-of-state fees.

RESOURCES:

The Department was given six positions to implement this legislation: 1 Program Coordinator plus $435,000 for the Household Hazardous Waste and Conditionally Exempt Generator waste programs; An Environmental Specialist 2 and Environmental Specialist 3 to implement the $250,000 per year grant program to local governments; and an Environmental Specialist 3 and two laboratory positions to improve groundwater monitoring and enforcement at landfills.

Revenue for the program will be approximately $1 million per year, generated by a $.50 per ton fee on domestic solid waste.

HOUSE BILL 2156

(SECTIONS 81 THROUGH 94 OF HOUSE BILL 3515)

SUMMARY - Interagency Spill Response Program:

Expands State's interagency spill response capability by:

1. Establishing ten regional oil and hazardous material emergency response teams under the direction of the State Fire Marshal. Teams will generally be staffed by firefighters with hazardous material training.

2. Continuing 24-hour emergency medical and toxicological technical assistance services from Poison Center.

3. Creating three emergency communications officers in the Emergency Management Division to handle after hours and weekend calls involving spills and releases of oil and hazardous material.

4. Providing funding for the Hanford Waste Board.

Not funded were a long-term chronic exposure research program within the Health Division and DEQ's emergency planning position, money to arrange pickup of abandoned containers and money to establish temporary storage sites to hold abandoned containers and confiscated illegal drug lab chemicals.

ENVIRONMENTAL QUALITY IMPACT:

Will significantly upgrade local and state capability to timely and safely respond to oil and hazardous material incidents. Local and state responders will receive proper training and equipment to meet new State emergency responder health and safety standards. Should reduce number of minor incidents that DEQ field staff currently have to respond to.

Timely response reduces extent of contamination, minimizes damage to natural resources and results in less costly cleanups.

IMPLEMENTATION STEPS AND DEADLINES:

Two years to get ten teams established and trained. A regional response procedures plan also needs to be adopted by the State Fire Marshal. The Poison Center's existing operation will continue without disruption for the next two years. Emergency Management should be able to hire the communication officers in the second year of the biennium. The Hanford Waste Board is currently operating under the auspices of the Department of Energy and will continue to do so for the next two years.

ALTERNATIVE IMPLEMENTATION STRATEGIES:

None.

REQUIRED EQC ACTIONS:

None.

RESOURCES:

State Fire Marshal was given three positions and $4,023,666 to get the ten teams established, equipped and trained. The Poison Center was given 1.5 FTE and $183,484 to provide emergency medical and toxicological advice. The Emergency Management Division was given 2.62 FTE and $67,000 for the three communications officers. The Department of Energy was given $33,000 for support to the Hanford Waste Board.

Revenue for this program is a combination of $700,000 from an existing fire insurance premium tax and $3,607,150 from a new fee imposed on petroleum products. The fee is collected when petroleum is withdrawn from bulk storage and loaded into a cargo tank. The Department of Revenue will be collecting the cargo tank fee. If the petroleum fee is successfully challenged in court and found to be dedicated to the highway trust fund, backup fees on railroads ($100,000), truckers ($700,000) and petroleum suppliers ($3,507,150) would automatically kick in. The petroleum fee would be based on non-motor fuel gross operating revenue of petroleum suppliers.

POLICY ISSUES THAT REQUIRE EQC DISCUSSION:

None.

(HB2156S)

HOUSE BILL 2155

(SECTIONS 121 THROUGH 131 AND SECTION 134 OF HOUSE BILL 3515)

SUMMARY

Imposes fees on the possession of hazardous substances. The fees will support three programs: toxic use reduction and the orphan site account at DEQ, and the Community Right to Know and Protection program under the State Fire Marshall (SFM).

ENVIRONMENTAL IMPACT

No direct impact anticipated, as this is a funding mechanism only. However, businesses may reduce the amount of hazardous materials they use in order to avoid the fees.

IMPLEMENTATION STEPS

By November 1, 1989, the SFM must establish three schedules of fees to be submitted annually by each employer who returns a hazardous substance survey. Fees shall be based upon the aggregate amount of the single largest substance that is manufactured, stored or used at the facility.

By November 15, 1989, the SFM must send out the first billing; the Department of Revenue collects the fees and disperses to DEQ and the SFM.

ALTERNATIVE IMPLEMENTATION STRATEGIES

None.

REQUIRED EQC ACTIONS

None.

RESOURCES

Funds positions for the DEQ and the SFM, and up to $1 million to be deposited into the Orphan Site Account.

POLICY ISSUES THAT REQUIRE EQC DISCUSSION

There is the broad policy issue of funding more and more DEQ programs through fees on the regulated community. This is a policy issue that the EQC may wish to tackle at some point.

SENATE BILL 167

(SECTIONS 157 AND 158 OF HB 3515)

SUMMARY:

SB 167 would maintain the current underground storage tank compliance fee at $25 per tank per year. In addition, if an underground storage tank insurance fund is established, up to 15% of the premiums could be used to administer the program. By staying at $25, field compliance positions in Bend and Pendleton are fully funded.

ENVIRONMENTAL QUALITY IMPACT:

Without compliance positions in Bend and Pendleton, it would have been more difficult to assure compliance with the federal underground storage tank requirements in Eastern Oregon. The risk of more public safety incidents and greater ground water contamination from underground storage tank leaks would have been higher.

IMPLEMENTATION STEPS AND DEADLINES:

Positions are currently filled and working on underground storage tank compliance issues. Maintains this capability rather than shifting efforts to other programs or potentially laying off two staff people.

ALTERNATIVE IMPLEMENTATION STRATEGIES:

None.

REQUIRED EQC ACTIONS:

None.

RESOURCES:

Maintains existing 2 FTE and raises $190,000 of other Funds (underground storage tank fees of $25 per tank per year).

POLICY ISSUES THAT REQUIRE EQC DISCUSSION:

None.

(SB167S)

SENATE BILL 166

USED OIL/ROAD OIL REGULATIONS

SUMMARY

Senate Bill 166 contains the following provisions:

1. The Department is provided with clear authority to regulate the use and recycling of used oil.

2. The Commission is directed to adopt rules prohibiting the spreading of untested used oil on roads or in the environment. Road oiling could be allowed if the used oil is tested and found to meet standards set by the Commission.

3. An exemption is provided which allows a property owner to spread their own oil on their own property, provided that the oil does not contain or has not been mixed with PCBs or hazardous waste.

4. The effective date of the act is October 2, 1989, although rule adoption is not required until October 2, 1990.

ENVIRONMENTAL QUALITY IMPACT

This bill should reduce the possibility that used oil contaminated with PCBs, solvents, or other hazardous waste is mismanaged and becomes a threat to public health and the environment.

IMPLEMENTATION STEPS AND DEADLINES

Rules related to the use of oil for dust suppression are to be adopted by October 2, 1990 (twelve months after the effective date of the act). It would be advisable to adopt the rules prior to spring of 1990 when the next road oiling season begins.

ALTERNATIVE IMPLEMENTATION STRATEGIES

None

REQUIRED EQC ACTIONS

Adopt rules relating to spreading used oil for dust suppression.

RESOURCES

No resources were provided by the legislature for implementing this act. This bill is expected to have minimal fiscal impact (0.1 FTE) and can be implemented with present resources.

POLICY ISSUES THAT REQUIRE EQC DISCUSSION

How stringent should testing requirements be for using used oil for dust control? Are other controls necessary for safe used oil management?

PHSPENDE\WORDP\SB166.D97

SENATE BILL 167 - B-ENGROSSED

SUMMARY:

In 1987, the legislature established a discretionary Underground Storage Tank Insurance Fund financed by a per tank per year financial responsibility fee. The fund could be used to meet Federal requirements for corrective action and third party damages. The Department never proposed rules to activate the fund because the regulated community could not agree on the details of a program.

SB 167 modifies the revenue stream into the insurance fund from a tank fee to the unused revenue from the loading fee in HB 3515. It is estimated that that may make available up to $2 million a biennium to be used to meet a portion of the financial responsibility requirements on behalf of the regulated community.

ENVIRONMENTAL QUALITY IMPACT:

Leaking tanks are an increasing threat to the State's groundwater, as well as, presenting public safety problems from potential fire and explosion. By meeting a portion of the federal financial responsibility requirements, SB 167 helps to insure that future money is immediately available to conduct corrective action or pay third party damages. Timely corrective action will minimize environmental damage and reduce threats to public safety.

IMPLEMENTATION STEPS AND DEADLINES:

The Federal financial responsibility deadline for 1 to 12 tanks is October 26,1990. Revenue into the insurance fund may began as early as September 1, 1989. Up to $2 million may be in the insurance fund by October 1, 1990.

EQC rules are required to use revenue from the insurance fund. Emergency Board review of proposed EQC actions is also required. Proposed rules could be drafted for hearing authorization by April, 1990 for adoption in October, 1990. E-Board review should be sought before both the hearing authorization and final adoption.

ALTERNATE IMPLEMENTATION STRATEGIES:

None, other than continuing to take no action to get the State involved in providing financial responsibility for private parties.

REQUIRED EQC ACTIONS:

Authorization of hearings on proposed rules and final adoption of rules.

RESOURCES:

No staffing and only $1 of other funds spending limitation subject to future E-Board action.

POLICY ISSUES THAT REQUIRE EQC DISCUSSION:

While $2 million is a lot of revenue, it pales in comparison to resources necessary to fully fund a financial responsibility program for underground tanks. It is not unusual to hear quotes of $500 per tank per year for insurance premiums. Multiplied by 19,000 tanks that means annual premium payments approaching $9,500,000. Most insurance programs require a first year capitalization payment. Average quotes are $2000 per tank. Multiplied by 19,000 tanks that means capitalization of $38,000,000! The challenge is to figure out how to effectively use $2 Million to solve a portion of the financial responsibility requirements. To do that, we intend to solicit the expert advice of the insurance industry, as well as, the regulated community that would receive the benefits derived from spending this revenue.

(SB167BS)

BRIEFING PAPER FOR SENATE BILL 168
(Fee Program for 401 Certification)

Background: The Clean Water Act in Section 401 requires any applicant for a federally permitted or licensed project to obtain a statement certifying that water quality standards will not be violated. This statement of certification in Oregon is issued by the Department. For the operation of hydroelectric projects, ORS 468.732 and 468.734 require the Director to either certify or deny certification for such projects.

Summary: SB 168 requires an applicant for certification of a new or existing hydroelectric project to pay costs incurred by the Commission and Department in the overall process of reviewing the application. Each applicant must submit an upfront fee when the application for certification is filed. There are two upfront fee schedules--$5,000 for a new project and $3,000 for the relicensing of an existing project. If the cost of processing and evaluating an application is in excess of 110 percent of the upfront fee, the Department must notify the applicant. The maximum total fee for a new project is $40,000 and for relicensing an existing project, $30,000. If the costs incurred are less than the upfront fee, the excess must be refunded to the applicant.

Environmental Quality Impact: None.

Significant Implementation Steps and Deadlines:

1. Legislation is effective beginning July 1, 1989.

2. The accounting system currently in place will accommodate the special cost tracking requirements of this bill.

Required or Expected EQC Actions: None.

Resources Provided for Implementation: An estimated cost of $5,000 per biennium for 0.05 FTE Environmental Specialist 4 to develop, implement, and track the fee program.

Policy Issues for EQC Discussion: At present rules are in place for certification of compliance with water quality requirements and standards (OAR 340-48). The language in SB 168 setting forth the fee requirements is clearly stated. Thus, should the Commission adopt rules to implement SB 168? The advantage of adding rules on fee requirements in OAR 340-48 is that this action would make this division of the rules complete.

PM\WJ1984

A-Engrossed Senate Bill 482

SUMMARY - Solid Waste Control

Amends the 1987 Waste Tire Act to prohibit use of waste tires in construction of artificial reefs in ocean waters. Allows such use in bays or estuaries.

Correspondingly amends the statute governing uses of waste tires eligible for reimbursement from the Waste Tire Recycling Account.

ENVIRONMENTAL QUALITY IMPACT:

Will prohibit construction of artificial reefs in open ocean waters where heavy wave action may pull them apart. Will allow reefs in protected situations such as bays where they may provide useful habitat for marine life.

IMPLEMENTATION STEPS AND GUIDELINES:

The bill becomes effective on October 1, 1989. The Department will conduct rulemaking to incorporate the new provisions into the Waste Tire Program rules by early 1990. Public information materials on the Waste Tire Program will be changed to reflect the new provisions.

ALTERNATIVE IMPLEMENTATION STRATEGIES:

Adopt an emergency rule at an earlier date.

REQUIRED EQC ACTIONS:

Rulemaking to adopt new restrictions concerning reefs.

RESOURCES:

No new resources were provided to the Department. Existing Waste Tire Program staff, funded by the $1 fee on new replacement tires, will carry out the tasks.

SENATE BILL 855

IN-STATE AND OUT-OF-STATE WASTE REDUCTION PROGRAMS

SUMMARY

SB 855 contains the following provisions:

1. Before a local government unit sends more than 75,000 tons per year of waste to an Oregon landfill located in an area zoned for exclusive farm use, the local government must develop and implement a waste reduction program acceptable to the Department. Previously, only Oregon local governments using new landfills in exclusive farm use zoned areas were required to implement waste reduction programs. Out-of-state local governments, and local governments using existing farm-use-zoned landfills, had no waste reduction program requirements.

2. Waste reduction programs are required to include at least the minimum requirements of the Recycling Opportunity Act.

3. Jurisdictions implementing a waste reduction program are not required to be certified under ORS 459.305 as providing the opportunity to recycle (since requirements for the opportunity to recycle are present in the waste reduction program).

4. Waste reduction programs will no longer be required for local government units that produce less than 75,000 tons per year (Gilliam and Morrow Counties).

ENVIRONMENTAL QUALITY IMPACT

The waste reduction programs established pursuant to this act should reduce the amount of potentially recyclable material that is disposed in Oregon landfills.

IMPLEMENTATION STEPS AND DEADLINES

There is no deadline for specific action by the Department or the Commission. Existing rules for waste reduction programs and certification may require modification to be compatible with SB 855.

ALTERNATIVE IMPLEMENTATION STRATEGIES

None.

REQUIRED EQC ACTIONS

Some modification of existing waste reduction program and certification rules may be required.

RESOURCES

No resources were provided by the Legislature for implementing SB 855 or examining additional waste reduction programs required to be submitted. The Department estimates that, depending on the number of jurisdictions sending waste to Oregon landfills, 0.1 to 0.5 FTE will be required. The exemption from ORS 459.305 for jurisdictions required to submit a waste reduction program means that these jurisdictions now cannot be charged a certification fee under ORS 459.305 (the Commission has not yet adopted such a certification fee under ORS 459.305).

POLICY ISSUES THAT REQUIRE EQC DISCUSSION

How stringent should the requirements be for waste reduction programs under ORS 459.055 as amended by SB 855?

SENATE BILL 1038

SUMMARY:

Requires ships over 300 gross ton that transport oil in bulk to provide evidence of financial responsibility in the amount of $1 million or $150 per gross ton, whichever is greater. Financial responsibility could be insurance, surety bond, self insurance or other equivalent assurance. Maritime pilots are to check for, and report failures to provide, financial assurance. Provides for assessments of civil penalties. (NOTE - a nearly identical bill passed in Washington and served as a model for SB 1038.

ENVIRONMENTAL QUALITY IMPACTS:

In the case of a spill or release of oil from a ship, the financial responsibility may be used for cleanup costs, payment of fines and penalties and natural resource damages. Spills should be cleaned up quicker and money will be available to restore environment.

IMPLEMENTATION STEPS AND STRATEGIES:

Requires rules by January 1, 1990. Will also require education of ship owners and maritime pilots. Occasional enforcement cases will need to be pursued after January 1.

ALTERNATIVE IMPLEMENTATION STRATEGIES:

None.

REQUIRED EQC ACTIONS:

Authorize public hearings around September, adopt rules by January 1, 1990.

RESOURCES FOR IMPLEMENTATION:

Fiscal impact submitted as 0.25 FTE and about $31,000. No resources were given to actually carry out program.

POLICY ISSUES FOR EQC DISCUSSION:

What other forms of financial assurance might be acceptable. What documentation will be need to kept on the ship, if any, to assist maritime pilots in making their determination.

(SD1038S)

SENATE BILL 1039

SUMMARY - Senate Bill 1039 requires four major outputs:

1. Oil spill contingency plans for the entire coast. This requires 14 distinct area plans to be prepared. Plans will identify oil spill response procedures and natural resources at risk.

2. Coordination between Oregon's contingency plans and those of Washington and California and federal agencies. (NOTE - this bill is extremely timely in that the Department will shortly be joining a 3-State and Province of British Columbia Oil Spill Task Force intended to do what is required by 1, 2 and 3.).

3. An index of response capability that lists people and equipment available in case of an oil spill.

4. Placement of the natural resource data collected on the Department of Energy's geographic information system (GIS).

ENVIRONMENTAL QUALITY IMPACT:

Principal environmental benefit is to reduce response time to get to oil spills and get them cleaned up more quickly. If this can be accomplished, less area should become contaminated, for a shorter period of time. That should mean less damage to the environment and wildlife. Restoration of wildlife and habitat should also be enhanced.

IMPLEMENTATION STEPS AND DEADLINES:

We have until July 1, 1991 to publish oil spill contingency plans for the Oregon Coast. We should be able to get the project started October 1, 1989.

ALTERNATIVE IMPLEMENTATION STRATEGIES:

None.

REQUIRED EQC ACTION:

None.

RESOURCES PROVIDED:

For DEQ 1.76 FTE (2 positions) and $160,000. For Fish and Wildlife 0.88 FTE (1 position) and $50,000. For the Department of Energy $40,000. Total project cost is $250,000 of general fund money. The State Fire Marshal will prepare the index of response capability out of funding provided in HB 3515 (specifically the

resources attached to the spill response program previously in HB 2156).

POLICY ISSUES FOR EQC DISCUSSION:

None.

(SB1039S)

SB 1079

SUMMARY

The new legislation requires the department to establish a task force on phosphorus and other nutrients in the state waters for the purpose of identifying:

- nutrient sources in wastewater
- the relative contribution of various nutrient sources in wastewater
- the potential impact of regulating or eliminating phosphorus from detergents and other sources.

The legislation requires the department to report its findings to the next legislature which will determine whether it is appropriate to eliminate specific sources of phosphorus, including but not limited to detergents.

ENVIRONMENTAL IMPACT:

There is no direct environmental impact from the legislation which only requires a study. Legislative action following the study may impose restrictions or a ban on phosphate detergents. Such action could reduce the nutrient loads to the environment. While a ban would not be the total answer to reducing nutrient loads to the environment, such action would have the added benefit of focusing the publics attention on the need to reduce nutrient loads.

IMPLEMENTATION STEPS AND DEADLINES

The following outline suggests a potential schedule for the required task force evaluation:

January 1991	DEQ report available to legislature
December 1990	EQC approval of staff recommendation
November 1990	Staff report to EQC re: potential phosphate detergent ban
October 1990	Task force report to DEQ
September 1990	Finish field investigations/literature review
May 1990	Initiate any field support investigation
November 1989	Initiate literature review
September 1989	Establish task force

REQUIRED EQC ACTION

The Environmental Quality Commission will make a recommendation to the legislature based on the work of the task force.

RESOURCES PROVIDED FOR IMPLEMENTATION

No funding was provided for the implementation of the legislation.

POLICY ISSUES

The policy issue will be to determine whether the potential benefits derived from a phosphate detergent ban, or restrictions, justify the increased cost associated with a ban.

In general a detergent ban will result in a 20 to 50 percent reduction of phosphorus to municipal sewage treatment plants. This will result in a reduction to instream phosphorus loads. The amount of instream reduction is typically much less and will depend on the relative contribution of background and nonpoint source loads.

The costs associated with a ban are primarily user costs. Non-phosphate detergents are currently available. Industry spokesmen claim that a ban would restrict consumer selection and increase consumer costs. If nutrient limits are required in a stream, then removal at treatment plants may provide a more cost effective method.

SENATE BILL 1083

RECLAIMED PLASTIC TAX CREDIT

SUMMARY

SB 1083 extends the Reclaimed Plastic Product Tax Credit Program with the following changes:

1. provides tax credit of 50% over 5 years on capital investments in collection, transportation, or processing of reclaimed plastic or manufacture of a reclaimed plastic product (Previous tax credit only covered manufacture of a reclaimed plastic product.);

2. expands the definition of "reclaimed plastic" to include shredded plastic, regrind, pellets or any similar product manufactured from waste plastic from Oregon industrial consumers, commercial users or post-consumer waste and sold for the purpose of making an end product out of reclaimed plastic;

3. expands eligible investments to include machinery, property, and equipment necessary to collect, transport or process reclaimed plastic or manufacture a reclaimed plastic product (Eligible investments in previous tax credit were limited to machinery and equipment.);

4. sets effective date of October 2, 1989;

5. establishes sunset date of July 1, 1995;

6. prohibits an applicant from claiming a reclaimed plastic tax credit and a pollution control tax credit on the same facility. Prohibits an applicant from claiming a reclaimed plastic tax credit and a Department of Energy recycling tax credit on the same facility.

ENVIRONMENTAL IMPACT

SB 1083 could substantially reduce the amount of plastic in the wastestream by providing a tax incentive for individuals and businesses to invest in equipment to collect, transport, or process reclaimed plastic or manufacture reclaimed plastic products.

IMPLEMENTATION STEPS

Rules will need to be revised and a new fee schedule adopted.

ALTERNATIVE IMPLEMENTATION STRATEGIES

None

REQUIRED EQC ACTIONS

Approve revised rules and adopt a new fee schedule.

RESOURCES

SB 1083 allows the Commission to adopt fees which will cover the cost of the program. It is estimated that 0.15 FTE is necessary to carry out the provisions of this bill.

POLICY ISSUES THAT REQUIRE EQC DISCUSSION

None

BRIEFING PAPER FOR SENATE BILL 1100
(Chlorofluorocarbon Control Measures)

Background It has been generally recognized that chlorofluorocarbon (CFC) and halon reductions required by the Montreal Protocol will not be sufficient to arrest depletion of upper atmospheric ozone. State action to further reduce unnecessary emissions of ozone depleting substances will enhance international and federal efforts.

Summary: SB 1100 prohibits wholesale after July 1, 1990 and any sale after January 1, 1991 of: (1) Chlorofluorocarbon motor vehicle coolant in containers weighing less than 15 pounds; (2) Hand-held halon fire extinguishers for residential use; (3) Party streamers and noisemakers containing CFCs; (4) Noncommercial/nonmedical CFC-containing electronic and photographic equipment cleaners and chilling agents; (5) Polystyrene foam food containers containing CFCs. One year after EQC makes a determination of availability and affordability, SB 1100 requires recovery and recycling of automobile air conditioner CFCs, using equipment approved under EQC rules. Small auto repair shops are exempt for one year. SB 1100 also gives DEQ authority to carry out the general purpose of CFC reduction and recycling and to enforce CFC controls.

Environmental Quality Impact: CFC and halon controls required by SB 1100 will reduce the amount of ozone depleting substances emitted statewide.

Significant Implementation Steps and Deadlines:

1. Legislation became effective July 1, 1989.

2. Sales prohibitions become effective July 1, 1990 and January 1, 1991.

3. The effective date of automobile CFC recycling requirements is wholly dependent upon the time frame in which the EQC determines availability and affordability of recycling and recovery equipment.

4. The EQC must promulgate rules establishing standards for approved recycling equipment within a year after it determines availability and affordability.

Required or Expected EQC Action:
EQC is expected to make a determination that automobile CFC recovery and recycling equipment is available and affordable. EQC is required to establish by rule standards for approved equipment.

Resources Provided for Implementation:
Although DEQ submitted an impact of 1/4 of an FTE for program development and rule writing, the legislature provided no funding for a position. The E-Board and EPA grant funds are potential resources.

Policy Issues for EQC Discussion:

1. Does the Commission want to commit resources to the enforcement of SB 1100 ?

2. Does the Commission want to develop a reduction and recycling program extending beyond the scope of automobile CFC recycling ?

Senate Bill 1192

SUMMARY - Oregon Solid Waste Regional Policy Commission.

Establishes an Oregon Solid Waste Regional Policy Commission to study regional solid waste issues, including the environmental and economic impacts of accepting waste generated out of state. The commission shall prepare an interim and final report to the Governor and the Legislature.

The Commission shall consist of four legislators, the DEQ Director, two representatives of local government, and two citizens appointed by the Governor.

ENVIRONMENTAL QUALITY IMPACT:

The commission will evaluate the impacts of accepting waste from out of state, including a review of probable import levels of solid waste.

IMPLEMENTATION STEPS AND GUIDELINES:

In order to complete an interim report by July 1, 1990, the members of the committee should be designated by September 1, 1989. The first meeting of the Committee should be in October, and it is anticipated that a minimum of five meetings will be needed prior to issuance of the interim report.

Because the state of Washington will be the major focus of study of potential waste exporters, an initial meeting with State of Washington officials will be necessary. A subsequent survey of local governments in Washington may be necessary to determine the probable timing and sources of imported waste.

ALTERNATIVE IMPLEMENTATION STRATEGIES:

In addition to staffing the commission, the Department may wish to contract with an outside consultant to perform the economic and environmental impact analysis of importing waste from out of state. If this is the strategy chosen, a request for proposals would have to be developed by October, so that the contracted work could begin in January. No funds were included in the budget for this purpose.

REQUIRED EQC ACTIONS:

No action is required. However, it is expected that the EQC would review the interim and final reports.

RESOURCES:

It is expected that staffing the committee will require a portion of time from the Solid Waste Analyst position (ES 4) currently funded in the Solid Waste Section. No new positions were anticipated. A consultant contract would require an additional $40,000 to $50,000 in professional services.

SIXTY-FIFTH OREGON LEGISLATIVE ASSEMBLY

Bills Passed Relating to the Department of Environmental Quality

1989 Session

August 25, 1989

Department of Environmental Quality
811 S. W. Sixth Avenue
Portland, Oregon 97204

TABLE OF CONTENTS

B-Engrossed
House Bill 2178

Ordered by the House June 27
Including House Amendments dated May 26 and June 27

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Presession filed (at the request of Department of Environmental Quality)

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.

Extends pollution control tax credit to December 31, 1995. **Applies to certain pollution control facilities certified on or after September 27, 1987.** Revises list of items not included in pollution control facility for tax credit. Repeals provisions regarding preliminary certification of facilities **and for offset of federal grants or tax credits against state income or excise tax credits for pollution control facilities certified on or after January 1, 1989.**

[*Declares emergency, effective July 1, 1989.*]

A BILL FOR AN ACT

Relating to pollution control tax credits; creating new provisions; amending ORS 307.405, 316.097, 317.116, 468.155, 468.165, 468.170 and 468.180; and repealing ORS 314.250 and 468.175.

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

SECTION 1. ORS 307.405 is amended to read:

307.405. (1) A pollution control facility or facilities which have been constructed in accordance with the requirements of ORS 468.165 (1), and have been certified by the Environmental Quality Commission pursuant to ORS 468.170 are exempt to the extent of the highest percentage figure certified by the Environmental Quality Commission as the portion of the actual cost properly allocable to the prevention, control or reduction of pollution. The exemption shall be allowed only if the taxpayer is a corporation organized under ORS chapter 61 or 62, or any predecessor to ORS chapter 62 relating to incorporation of cooperative associations, or is a subsequent transferee of such a corporation. If the subsequent transferee is organized under other than ORS chapter 61 or 62, the exemption shall only be allowed if the transfer occurs after the expiration of five years from the date of original certification by the commission.

(2) To qualify for the ad valorem tax relief:

(a) The pollution control facility must be erected, constructed or installed in connection with the trade or business conducted by the taxpayer on Oregon property owned or leased by said taxpayer.

(b) The taxpayer must be the owner of the trade or business that utilizes Oregon property requiring a pollution control facility to prevent or minimize pollution or a person who, as a lessee under a written lease or pursuant to a written agreement, conducts the trade or business that operates or utilizes such property and who by the terms of such lease or agreement is obliged to pay the ad valorem taxes on such property. As used in this subsection, "owner" includes a contract purchaser.

(3) The ad valorem exemption of a facility shall expire, in any event, [:]

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

[*(a) Twenty*] **20** years from the date of its first certification for any owner or lessee by the Environmental Quality Commission. [*; or*]

[*(b) For a facility whose erection, construction or installation is commenced after June 30, 1989, and completed before December 31, 1990, 10 years from the date of its first certification for any owner or lessee by the Environmental Quality Commission.*]

(4) Upon any sale, exchange, or other disposition of a facility, notice thereof shall be given to the Environmental Quality Commission who shall revoke the certification covering such facility as of the date of such disposition. The transferee may apply for a new certificate under ORS 468.170, but the number of years of ad valorem tax exemption that may be claimed by the transferee is the remainder of the exemption period specified in subsection (3) of this section.

(5) If the facility also functions to prevent pollution from operations conducted on other property owned or leased by the taxpayer, the Environmental Quality Commission shall state in its certification of the facility the percentage of the facility used to prevent pollution from such qualifying trade or business conducted on such qualifying property. The exemption from ad valorem taxes under this section shall be limited to such percentage of the value of the facility.

SECTION 2. ORS 316.097 is amended to read:

316.097. (1) A credit against taxes imposed by this chapter for a pollution control facility or facilities certified under ORS 468.170 shall be allowed if the taxpayer qualifies under subsection (4) of this section.

(2) For a facility certified under ORS 468.170, the maximum credit allowed in any one tax year shall be the lesser of the tax liability of the taxpayer or [*either of the following:*]

[*(a) for a facility whose erection, construction or installation is commenced before July 1, 1989, and completed before December 31, 1990,*] one-half of the certified cost of the facility multiplied by the certified percentage allocable to pollution control, divided by the number of years of the facility's useful life. The number of years of the facility's useful life used in this calculation shall be the remaining number of years of useful life at the time the facility is certified but not less than one year or more than 10 years.

[*(b) For a facility whose erection, construction or installation is commenced after June 30, 1989, and completed before December 31, 1990, one-quarter of the certified cost of the facility multiplied by the certified percentage allocable to pollution control, divided by the number of years of the facility's useful life. The number of years of the facility's useful life used in this calculation shall be the remaining number of years of useful life at the time the facility is certified but not less than one year or more than 10 years.*]

(3) To qualify for the credit the pollution control facility must be erected, constructed or installed in accordance with the provisions of ORS 468.165 (1) **and must be issued certification under ORS 468.170 prior to December 31, 1995.**

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

(A) The owner of the trade or business that utilizes Oregon property requiring a pollution control facility to prevent or minimize pollution;

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

(C) A person who, as an owner or lessee owns or leases a pollution control facility used for resource recovery as defined in ORS 459.005. Such person may, but need not, operate such facility or conduct a trade or business that utilizes property requiring such a facility. If more than one

person has an interest under this subparagraph in a resource recovery facility, only one may claim the credit allowed under this section. The person claiming the credit as between an owner and lessee under this subparagraph shall be designated in a written statement signed by both the lessor and lessee of the facility; this statement shall be filed with the Department of Revenue not later than the final day of the first tax year for which a tax credit is claimed. As used in this paragraph, "owner" includes a contract purchaser; and

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

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

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

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

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

(6) For a facility certified under ORS 468.170, the maximum total credit allowable shall not exceed[:]

[*(a)*] one-half of the certified cost of the facility multiplied by the certified percentage allocable to pollution control. [*; or*]

[*(b) For a facility whose erection, construction or installation is commenced after June 30, 1989, and completed before December 31, 1990, one-quarter of the certified cost of the facility multiplied by the certified percentage allocable to pollution control.*]

(7) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the facility to which the taxpayer otherwise may be entitled under this chapter for such year.

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

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

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

(11) If the taxpayer is a shareholder of an electing small business corporation, the credit shall

be computed using the shareholder's pro rata share of the corporation's certified cost of the facility. In all other respects, the allowance and effect of the tax credit shall apply to the corporation as otherwise provided by law.

SECTION 3. ORS 317.116 is amended to read:

317.116. (1) A credit against taxes imposed by this chapter for a pollution control facility or facilities certified under ORS 468.170 shall be allowed if the taxpayer qualifies under subsection (4) of this section.

(2) For a facility certified under ORS 468.170, the maximum credit allowed in any one taxable year shall be the lesser of the tax liability of the taxpayer or [*either of the following:*]

[*(a) for a facility whose erection, construction or installation is commenced before July 1, 1989, and completed before December 31, 1990,*] one-half of the certified cost of the facility multiplied by the certified percentage allocable to pollution control, divided by the number of years of the facility's useful life. The number of years of the facility's useful life used in this calculation shall be the remaining number of years of useful life at the time the facility is certified but not less than one year or more than 10 years.

[*(b) For a facility whose erection, construction or installation is commenced after June 30, 1989, and completed before December 31, 1990, one-quarter of the certified cost of the facility multiplied by the certified percentage allocable to pollution control, divided by the number of years of the facility's useful life. The number of years of the facility's useful life used in this calculation shall be the remaining number of years of useful life at the time the facility is certified, but not less than one year or more than 10 years.*]

(3) To qualify for the credit the pollution control facility must be erected, constructed or installed in accordance with the provisions of ORS 468.165 (1) **and must be issued certification under ORS 468.170 prior to December 31, 1995.**

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

(A) The owner of the trade or business that utilizes Oregon property requiring a pollution control facility to prevent or minimize pollution;

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

(C) A person who, as an owner or lessee owns or leases a pollution control facility used for resource recovery as defined in ORS 459.005. Such person may, but need not, operate such facility or conduct a trade or business that utilizes property requiring such a facility. If more than one person has an interest under this subparagraph in a resource recovery facility, only one may claim the credit allowed under this section. The person claiming the credit as between an owner and lessee under this subparagraph shall be designated in a written statement signed by both the lessor and lessee of the facility; this statement shall be filed with the Department of Revenue not later than the final day of the first tax year for which a tax credit is claimed. As used in this paragraph, "owner" includes a contract purchaser; and

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

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

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

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

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

(6) For a facility certified under ORS 468.170, the maximum total credit allowable shall not exceed[:]

[*(a)*] one-half of the certified cost of the facility multiplied by the certified percentage allocable to pollution control. [*; or*]

[*(b) For a facility whose erection, construction or installation is commenced after June 30, 1989, and completed before December 31, 1990, one-quarter of the certified cost of the facility multiplied by the certified percentage allocable to pollution control.*]

(7) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the facility to which the taxpayer otherwise may be entitled under this chapter for such year.

(8) Upon any sale, exchange, or other disposition of facility, notice thereof shall be given to the Environmental Quality Commission who shall revoke the certification covering such facility as of the date of such disposition. The transferee may apply for a new certificate under ORS 468.170, but the tax credit available to such transferee shall be limited to the amount of credit not claimed by the transferor. The sale, exchange or other disposition of a partner's interest in a partnership shall not be deemed a sale, exchange or other disposition of a facility for purposes of this subsection.

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

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

SECTION 4. ORS 468.155 is amended to read:

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

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

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

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

(A) The disposal or elimination of or redesign to eliminate industrial waste and the use of

treatment works for industrial waste as defined in ORS 468.700;

(B) The disposal or elimination of or redesign to eliminate air contaminants or air pollution or air contamination sources and the use of air cleaning devices as defined in ORS 468.275;

(C) The substantial reduction or elimination of or redesign to eliminate noise pollution or noise emission sources as defined by rule of the commission;

(D) The use of a material recovery process which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005, hazardous waste as defined in ORS 466.005, or used oil as defined in ORS 468.850; or

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

(2) "Pollution control facility" or "facility" does not include:

(a) Air conditioners;

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

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

(d) Any distinct portion of a [*solid waste, hazardous waste or used oil*] **pollution control** facility that makes an insignificant contribution to the **principal or sole** purpose of [*utilization of solid waste, hazardous waste or used oil*] **the facility** including the following specific items:

(A) Office buildings and furnishings;

(B) Parking lots and road improvements;

(C) Landscaping;

(D) External lighting;

(E) Company **or related** signs; **and**

[*(F) Artwork; and*]

[*(G)*] **(F)** Automobiles;

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

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

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

(f) Asbestos abatement; or

[*(f)*] **(g)** Property installed, constructed or used for clean up of emergency spills or unauthorized releases, as defined by the commission.

SECTION 5. ORS 468.165 is amended to read:

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

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

(b) The noise pollution control facility was erected, constructed or installed on or after January

1, 1977.

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

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

(B) The facility will utilize material that would otherwise be solid waste as defined in ORS 459.005, hazardous waste as defined in ORS 466.005 or used oil as defined in ORS 468.850 by [*burning,*] mechanical process or chemical process or through the production, processing including presegregation [*or otherwise*], or use of, [*materials for their heat content or other forms of energy of or from the material, or the use of*] materials which have useful chemical or physical properties and which may be used for the same or other purposes, or materials which may be used in the same kind of application as its prior use without change in identity;

(C) The end product of the utilization is [*a usable source of power or other*] **an** item of real economic value;

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

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

(d) The hazardous waste control facility was erected, constructed or installed on or after January 1, 1984, and if:

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

(B) The facility is designed to treat, substantially reduce or eliminate hazardous waste as defined in ORS 466.005.

(2) The application shall be made in writing in a form prescribed by the department and shall contain information on the actual cost of the facility, a description of the materials incorporated therein, all machinery and equipment made a part thereof, the existing or proposed operational procedure thereof, and a statement of the purpose of prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or recycling or appropriate disposal of used oil served or to be served by the facility and the portion of the actual cost properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil as set forth in ORS 468.190 (2).

(3) The director may require any further information the director considers necessary before a certificate is issued.

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

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

(6) The application shall be submitted within two years of substantial completion of construction

of the facility. Failure to file a timely application shall make the facility ineligible for tax credit certification. An application shall not be considered filed until it is complete and ready for processing. The commission may grant an extension of time to file an application for circumstances beyond the control of the applicant that would make a timely filing unreasonable. If a facility is completed before January 1, 1984, the application shall be submitted within two years after January 1, 1984.

SECTION 6. ORS 468.170 is amended to read:

468.170. (1) The commission shall act on an application for certification before the 120th day after the filing of the application under ORS 468.165. The action of the commission shall include certification of the actual cost of the facility and the portion of the actual cost properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or properly disposing of used oil as set forth in ORS 468.190 (2). **The actual cost or portion of the actual cost certified shall not exceed the taxpayer's own cash investment in the facility or portion of the facility.** Each certificate shall bear a separate serial number for each such facility.

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

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

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

(A) Was erected, constructed or installed in accordance with the requirements of ORS 468.165 (1) [*and 468.175*];

(B) Is designed for, and is being operated or will operate in accordance with the requirements of ORS 468.155 (1) and (2); and

(C) Is necessary to satisfy the intents and purposes of ORS 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745, ORS chapters 459, **466** and 467 and this chapter and rules thereunder.

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

(c) If one or more facilities constitute an operational unit, the commission may certify such facilities under one certificate. A certificate under this section is effective for purposes of tax relief in accordance with ORS 307.405, 316.097 and [*317.072*] **317.116** if erection, construction or installa-

tion of the facility was completed before December 31, [*1990*] **1995.**

(5) A person receiving a certificate under this section may take tax relief only under ORS 316.097 or 317.116, depending upon the tax status of the person's trade or business except if the taxpayer is a corporation organized under ORS chapter 61 or 62, or any predecessor to ORS chapter 62 relating to incorporation of cooperative associations, or is a subsequent transferee of such a corporation, the tax relief may be taken only under ORS 307.405.

(6) If the person receiving the certificate is an electing small business corporation as defined in section 1361 of the Internal Revenue Code, each shareholder shall be entitled to take tax credit relief as provided in ORS 316.097, based on that shareholder's pro rata share of the certified cost of the facility.

(7) If the person receiving the certificate is a partnership, each partner shall be entitled to take tax credit relief as provided in ORS 316.097, based on that partner's pro rata share of the certified cost of the facility.

(8) Certification under this section of a pollution control facility qualifying under ORS 468.165 (1) shall be granted for a period of 10 consecutive years which 10-year period shall begin with the tax year of the person in which the facility is certified under this section, except that if ad valorem tax relief is utilized by a corporation organized under ORS chapter 61 or 62 the facility shall be exempt from ad valorem taxation for a period of 20 consecutive years[*, or 10 years if construction is commenced after June 30, 1989, and completed before December 31, 1990, from the date of its first certification by the commission*].

(9) Portions of a facility qualifying under ORS 468.165 (1)(c) may be certified separately under this section if ownership of the portions is in more than one person. Certification of such portions of a facility shall include certification of the actual cost of the portion of the facility to the person receiving the certification. The actual cost certified for all portions of a facility separately certified under this subsection shall not exceed the total cost of the facility that would have been certified under one certificate. The provisions of ORS 316.097 (8) or 317.116 (8), whichever is applicable, shall apply to any sale, exchange or other disposition of a certified portion of a facility.

SECTION 7. ORS 468.180 is amended to read:

468.180. (1) No certification shall be issued by the commission pursuant to ORS 468.170 unless the facility, facilities or part thereof was erected, constructed or installed [*in accordance with the requirements of ORS 468.175 and*] in accordance with the applicable provisions of ORS 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745, [*this chapter and*] ORS chapters 459, **466** and 467 **and this chapter** and the applicable rules or standards adopted pursuant thereto.

(2) Nothing in this section [*or ORS 468.175*] is intended to apply to erection, construction or installation of pollution control facilities begun before October 5, 1973.

SECTION 8. (1) ORS 314.250 and 468.175 are repealed.

(2) The repeal of ORS 314.250 by subsection (1) of this section applies to pollution control facilities or portions thereof certified under ORS 468.170 on or after January 1, 1989.

SECTION 9. (1) The amendments to ORS 307.405 by section 1 of this Act relating to the period of property tax exemption for certain pollution control facilities apply to facilities certified on or after September 27, 1987.

(2) The amendments to ORS 316.097 and 317.116 by sections 2 and 3 of this Act relating to the amount of cost upon which income or excise tax credit for certain pollution control facilities is

based apply to facilities certified on or after September 27, 1987. For all prior certifications, the law applicable for those certifications shall remain applicable.

A-Engrossed
House Bill 2854

Ordered by the House June 9
Including House Amendments dated June 9

Sponsored by Representatives PETERSON, CALHOON, CEASE, EDMUNSON, GERSHON, HOSTICKA, HUGO, KEISLING, McTEAGUE, RIJKEN, SOWA, STEIN, Senators BRADBURY, HAMBY

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.

Prohibits purchase [*of polystyrene foam food packaging products*] by state agencies **of food packaging products composed of material that is not biodegradable or recyclable.** Prohibits sale **of food in** or use of [*polystyrene foam*] **such** food packaging products by vendor who leases space from state agency. [*Prohibits sale of food in, or use of, products for packaging food that contain or are composed of polystyrene foam at activity requiring state permit.*] **Requires Department of Environmental Quality to establish percentages of plastic material that must be recycled before recycling program is considered effective.** Allows Environmental Quality Commission to exempt specific product from prohibition if no acceptable alternative exists **or compliance would cause hardship.** Specifies operative date of January 1, 1990.

[*Declares emergency, effective on passage.*]

A BILL FOR AN ACT

Relating to the environment.

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

SECTION 1. As used in sections 1 to 5 of this Act, "state agency" means any state officer, department, board, commission or court created by the Constitution or statutes of this state, including the Legislative Assembly, its committees, officers and employes.

SECTION 2. A state agency may not purchase any product to be used for packaging food if the product is composed of material that is not either biodegradable or recyclable through an existing effective recycling program.

SECTION 3. A vendor who leases space from a state agency shall not sell food in, or use for food packaging, any product containing or composed of material that is not either biodegradable or recyclable through an existing, effective recycling program.

SECTION 4. Notwithstanding sections 2 and 3 of this Act, the Environmental Quality Commission may exempt specific products from the requirements of sections 2 and 3 of this Act if the applicant for the exemption demonstrates:

(1) There is no acceptable alternative for the product; and

(2) Compliance with the conditions of sections 2 and 3 of this Act would cause undue hardship.

SECTION 5. The Department of Environmental Quality shall establish percentages of plastic material that must be recycled before a recycling program is considered an effective recycling program. In establishing the percentages the department:

(1) Shall establish percentages for each different type of plastic resin;

(2) Shall require that at least 15 percent of each plastic resin type be recycled state wide in 1992; and

(3) May not establish a required percentage of more than 75 percent before December 31, 1999.

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

SECTION 6. Sections 2 to 5 of this Act become operative on January 1, 1990.

Minority Report

A-Engrossed

House Bill 2865

Ordered by the Senate June 23
Including Senate Minority Report Amendments dated June 23

Sponsored by Representatives CEASE, BURTON, CARTER, HUGO, KOTULSKI, ROBERTS, SAYLER, WEHAGE, Senators CEASE, McCOY, OTTO, ROBERTS

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.

Regulates disposal, storage and transportation of infectious and pathological wastes. Authorizes Environmental Quality Commission to adopt rules for storage and handling of such wastes at solid waste disposal sites and Public Utility Commission to establish rules for transportation of such wastes.

Becomes operative July 1, 1990.

Allows local government unit to apportion part of user fee for enhancement of area surrounding publicly owned, franchised or privately owned solid waste disposal site. Requires local government unit to appoint citizen advisory committee if local government unit apportions part of user fee.

A BILL FOR AN ACT

Relating to solid waste disposal; creating new provisions; and amending ORS 459.005, 459.225, 459.284, 459.290 and 459.995 and section 9, chapter 679, Oregon Laws 1985.

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

SECTION 1. Sections 2 to 9 of this Act are added to and made a part of ORS 459.005 to 459.385.

SECTION 2. The Legislative Assembly finds and declares that:

(1) The collection, transportation, storage, treatment and disposal of infectious waste in a manner that protects the health, safety and welfare of the workers who handle the waste and of the public is a matter of state-wide concern.

(2) The public health, safety and welfare is best protected by an infectious waste collection system that serves as many persons as possible in this state, including medical care and laboratory facilities, nursing care facilities and private residences.

(3) In the interest of public health, safety and welfare, it is the policy of this state to establish requirements for collection, transportation, storage, treatment and disposal of infectious waste that will establish priority in methods of treating and disposing of infectious waste.

SECTION 3. As used in sections 2 to 8 of this 1989 Act:

(1) "Disposal" means the final placement of treated infectious waste in a disposal site operating under a permit issued by a state or federal agency.

(2) "Infectious waste" includes:

(a) "Biological waste," which includes blood and blood products, excretions, exudates, secretions, suctionings and other body fluids that cannot be directly discarded into a municipal sewer system, and waste materials saturated with blood or body fluids, but does not include diapers soiled with urine or feces.

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

(b) "Cultures and stocks," which includes etiologic agents and associated biologicals, including specimen cultures and dishes and devices used to transfer, inoculate and mix cultures, wastes from production of biologicals, and serums and discarded live and attenuated vaccines. "Cultures" does not include throat and urine cultures.

(c) "Pathological waste," which includes biopsy materials and all human tissues, anatomical parts that emanate from surgery, obstetrical procedures, autopsy and laboratory procedures and animal carcasses exposed to pathogens in research and the bedding and other waste from such animals. "Pathological waste" does not include teeth or formaldehyde or other preservative agents.

(d) "Sharps," which includes needles, IV tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes that have been removed from their original sterile containers.

(3) "Storage" means the temporary containment of infectious waste in a manner that does not constitute treatment or disposal of such waste.

(4) "Transportation" means the movement of infectious waste from the point of generation over a public highway to any intermediate point or to the point of final treatment.

(5) "Treatment" means incineration, sterilization or other method, technique or process approved by the Health Division of the Department of Human Resources that changes the character or composition of any infectious waste so as to render the waste noninfectious.

SECTION 4. (1) No person who generates infectious waste shall discard or store such waste except as provided in section 5 of this 1989 Act.

(2) No person shall transport infectious waste other than infectious waste that is an incidental part of other solid waste except as provided in subsection (6) of section 5 and section 10 of this 1989 Act.

SECTION 5. (1) Infectious waste shall be segregated from other wastes by separate containment at the point of generation. Inclosures used for storage of infectious waste shall be secured to prevent access by unauthorized persons and shall be marked with prominent warning signs.

(2) Infectious waste, except for sharps, shall be contained in disposable red plastic bags or containers made of other materials impervious to moisture and strong enough to prevent ripping, tearing or bursting under normal conditions of use. The bags or containers shall be closed to prevent leakage or expulsion of solid or liquid wastes during storage, collection or transportation.

(3) Sharps shall be contained for storage, collection, transportation and disposal in leakproof, rigid, puncture-resistant red containers that are taped closed or tightly lidded to prevent loss of the contents. Sharps may be stored in such containers for more than seven days.

(4) All bags, boxes or other containers for infectious waste and rigid containers of discarded sharps shall be clearly identified as containing infectious waste.

(5) Infectious waste shall be stored at temperatures and only for times established by rules of the Health Division of the Department of Human Resources.

(6) Infectious waste shall not be compacted before treatment and shall not be placed for collection, storage or transportation in a portable or mobile trash compactor.

(7) Infectious waste contained in disposable bags as specified in this section shall be placed for collection, storage, handling or transportation in a disposable or reusable pail, carton, box, drum, dumpster, portable bin or similar container. The container shall have a tight-fitting cover and be kept clean and in good repair. The container may be of any color and shall be conspicuously labeled with the international biohazard symbol and the words "Biomedical Waste" on the sides so as to

be readily visible from any lateral direction when the container is upright.

(8) Each time a reusable container for infectious waste is emptied, the container shall be thoroughly washed and decontaminated unless the surfaces of the container have been protected from contamination by a disposable red liner, bag or other device removed with the waste.

(9) Trash chutes shall not be used to transfer infectious waste between locations where it is contained or stored.

(10) Generators that produce 50 pounds or less of infectious waste in any calendar month shall be exempt from the specific requirements of subsections (5), (7) and (8) of this section.

SECTION 6. (1) Pathological wastes shall be treated by incineration in an incinerator that provides complete combustion of waste to carbonized or mineralized ash. The ash shall be disposed of as provided in rules adopted by the Environmental Quality Commission. However, if the Department of Environmental Quality determines that incineration is not reasonably available within a wasteshed, pathological wastes may be disposed of in the same manner provided for cultures and stocks.

(2) Cultures and stocks shall be incinerated as described in subsection (1) of this section or sterilized by other means prescribed by Health Division rule. Sterilized waste may be disposed of in a permitted land disposal site if it is not otherwise classified as hazardous waste.

(3) Liquid or soluble semisolid biological wastes may be discharged into a sewage treatment system that provides secondary treatment of waste.

(4) Sharps and biological wastes may be incinerated as described in subsection (1) of this section or sterilized by other means prescribed by Health Division rule. Sharps may be disposed of in a permitted land disposal site only if the sharps are in containers as required in subsection (3) of section 5 of this 1989 Act and are placed in a segregated area of the landfill.

(5) Other methods of treatment and disposal may be approved by rule of the Environmental Quality Commission.

SECTION 7. The Environmental Quality Commission may adopt rules for storage and handling of infectious waste at a solid waste disposal site.

SECTION 8. The requirements of sections 2 to 8 of this 1989 Act shall not apply to waste, other than sharps as defined in section 3 of this 1989 Act, that is:

(1) Generated in the practice of veterinary medicine; and

(2) Not capable of being communicated by invasion and multiplication in body tissues and capable of causing disease or adverse health impacts in humans.

SECTION 9. Each person who transports infectious waste for consideration, other than waste that is an incidental part of other solid waste, shall:

(1) Provide written certification to a person who discards more than 50 pounds per month of infectious waste that such waste will be disposed of in compliance with the provisions of sections 2 to 9 of this 1989 Act; and

(2) Maintain records showing the point of origin and date and place of final disposal of infectious waste collected from generators. A copy of these records shall be given to the generator or the Department of Environmental Quality upon request.

SECTION 10. The Public Utility Commission may establish rules governing the conditions for transportation of infectious waste that is not an incidental part of other solid waste. The rules may require persons transporting infectious waste for consideration to register separately with the Public Utility Commission as an infectious waste transporter and may specify the terms of that regis-

tration, including a fee for such registration. The commission may require that persons transporting infectious waste for consideration document the county and state of origin of the waste. As used in this section, "infectious waste" has the meaning given in section 3 of this 1989 Act.

SECTION 11. Section 10 of this Act is added to and made a part of ORS chapter 767.

SECTION 12. ORS 459.005 is amended to read:

459.005. As used in ORS 459.005 to 459.385, unless the context requires otherwise:

(1) "Affected person" means a person or entity involved in the solid waste collection service process including but not limited to a recycling collection service, disposal site permittee or owner, city, county and metropolitan service district.

(2) "Area of the state" means any city or county or combination or portion thereof or other geographical area of the state as may be designated by the commission.

(3) "Board of county commissioners" or "board" includes county court.

(4) "Collection franchise" means a franchise, certificate, contract or license issued by a city or county authorizing a person to provide collection service.

(5) "Collection service" means a service that provides for collection of solid waste or recyclable material or both.

(6) "Commission" means the Environmental Quality Commission.

(7) "Department" means the Department of Environmental Quality.

(8) "Disposal site" means land and facilities used for the disposal, handling or transfer of or resource recovery from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, transfer stations, resource recovery facilities, incinerators for solid waste delivered by the public or by a solid waste collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site; but the term does not include a facility subject to the permit requirements of ORS 468.740; a landfill site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar nondecomposable material, unless the site is used by the public either directly or through a solid waste collection service; or a site operated by a wrecker issued a certificate under ORS 822.110.

(9) "Land disposal site" means a disposal site in which the method of disposing of solid waste is by landfill, dump, pit, pond or lagoon.

(10) "Land reclamation" means the restoration of land to a better or more useful state.

(11) "Local government unit" means a city, county, metropolitan service district formed under ORS chapter 268, sanitary district or sanitary authority formed under ORS chapter 450, county service district formed under ORS chapter 451, regional air quality control authority formed under ORS 468.500 to 468.530 and 468.540 to 468.575 or any other local government unit responsible for solid waste management.

(12) "Metropolitan service district" means a district organized under ORS chapter 268 and exercising solid waste authority granted to such district under this chapter and ORS chapter 268.

(13) "Permit" includes, but is not limited to, a conditional permit.

(14) "Person" means the state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity.

(15) "Recyclable material" means any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.

(16) "Regional disposal site" means:

(a) A disposal site selected pursuant to chapter 679, Oregon Laws 1985; or

(b) A disposal site that receives, or a proposed disposal site that is designed to receive more than 75,000 tons of solid waste a year from commercial haulers from outside the immediate service area in which the disposal site is located. As used in this paragraph, "immediate service area" means the county boundary of all counties except a county that is within the boundary of the metropolitan service district. For a county within the metropolitan service district, "immediate service area" means the metropolitan service district boundary.

(17) "Resource recovery" means the process of obtaining useful material or energy resources from solid waste and includes:

(a) "Energy recovery," which means recovery in which all or a part of the solid waste materials are processed to utilize the heat content, or other forms of energy, of or from the material.

(b) "Material recovery," which means any process of obtaining from solid waste, by presegregation or otherwise, materials which still have useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled for the same or other purpose.

(c) "Recycling," which means any process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity.

(d) "Reuse," which means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

(18) "Solid waste collection service" or "service" means the collection, transportation or disposal of or resource recovery from solid wastes but does not include that part of a business operated under a certificate issued under ORS 822.110.

(19) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, waste paper and cardboard; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial, demolition and construction wastes; discarded or abandoned vehicles or parts thereof; discarded home and industrial appliances; manure, vegetable or animal solid and semisolid wastes, dead animals, **infectious waste as defined in section 3 of this 1989 Act** and other wastes; but the term does not include:

(a) Hazardous wastes as defined in ORS 466.005.

(b) Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals.

(20) "Solid waste management" means prevention or reduction of solid waste; management of the storage, collection, transportation, treatment, utilization, processing and final disposal of solid waste; or resource recovery from solid waste; and facilities necessary or convenient to such activities.

(21) "Source separate" means that the person who last uses recyclable material separates the recyclable material from solid waste.

(22) "Transfer station" means a fixed or mobile facility normally used, as an adjunct of a solid waste collection and disposal system or resource recovery system, between a collection route and a disposal site, including but not limited to a large hopper, railroad gondola or barge.

(23) "Waste" means useless or discarded materials.

(24) "Wasteshed" means an area of the state having a common solid waste disposal system or designated by the commission as an appropriate area of the state within which to develop a common

recycling program.

SECTION 13. ORS 459.225 is amended to read:

459.225. (1) If the commission finds that a disposal site cannot meet one or more of the requirements of ORS 459.005 to 459.105, 459.205 to 459.245 and 459.255 to 459.285 or any rule or regulation adopted pursuant thereto, it may issue a variance from such requirement either for a limited or unlimited time or it may issue a conditional permit containing a schedule of compliance specifying the time or times permitted to bring the disposal site into compliance with such requirements, or it may do both.

(2) In carrying out the provisions of subsection (1) of this section, the commission may grant specific variances from particular requirements or may grant a conditional permit to an applicant or to a class of applicants or to a specific disposal site, and specify conditions it considers necessary to protect the public health.

(3) The commission shall grant a variance or conditional permit only if:

(a) Conditions exist that are beyond the control of the applicant.

(b) Special conditions exist that render strict compliance unreasonable, burdensome or impractical.

(c) Strict compliance would result in substantial curtailment or closing of a disposal site and no alternative facility or alternative method of solid waste management is available.

(4) A variance or conditional permit may be revoked or modified by the commission after a public hearing held upon not less than 10 days' notice. Such notice shall be served upon all persons who the commission knows will be subjected to greater restrictions if such variance or conditional permit is revoked or modified, or who are likely to be affected or who have filed with the commission a written request for such notification.

(5) In addition to the authority to issue a variance or conditional permit under subsections (1) to (4) of this section, the commission may modify an existing disposal site permit to specify the conditions under which the disposal site may accept and dispose of infectious waste as defined in section 3 of this 1989 Act. The commission also may require that a resource recovery facility or solid waste incinerator accept infectious waste generated in Oregon if the infectious waste has been contained and transported in accordance with sections 5 and 10 of this 1989 Act, but only so long as the volume of infectious waste generated outside the county in which the facility or incinerator is located does not affect the ability of the facility or incinerator to process or dispose of all waste generated within the county in which the facility or incinerator is located.

[*(5)*] **(6)** The establishment, operation, maintenance, expansion, alteration, improvement or other change of a disposal site in accordance with a variance or a conditional permit is not a violation of ORS 459.005 to 459.105, 459.205 to 459.245 and 459.255 to 459.285 or any rule or regulation adopted pursuant thereto.

SECTION 14. ORS 459.995 is amended to read:

459.995. (1) In addition to any other penalty provided by law, any person who violates ORS 459.205, 459.270 or the provisions of ORS 459.180, 459.188, 459.190, 459.195, 459.710 or 459.715 **or the provisions of sections 2 to 8 of this 1989 Act** or any rule or order of the Environmental Quality Commission pertaining to the disposal, collection, storage or reuse or recycling of solid wastes, as defined by ORS 459.005, shall incur a civil penalty not to exceed $500 a day for each day of the violation.

(2) The civil penalty authorized by subsection (1) of this section shall be established, imposed, collected and appealed in the same manner as civil penalties are established, imposed and collected under ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and ORS chapter 468.

SECTION 15. ORS 459.284 is amended to read:

459.284. Each [*city or county*] **local government unit** that has a disposal site operating under the provisions of ORS 459.005 to 459.385 and for which the [*city or county*] **local government unit** collects a fee may apportion an amount of the service or user charges collected for solid waste disposal at each publicly owned, [*or*] franchised **or privately owned** solid waste disposal site within or for the [*city or county*] **local government unit** and dedicate and use the moneys obtained for rehabilitation and enhancement of the area around the disposal site from which the fees have been collected. That portion of the service and user charges set aside by the [*city or county*] **local government unit** for the purposes of this section shall be not more than $1 for each ton of solid waste. If [*a city*] **any local government unit** apportions moneys under this section, [*the county in which the city is located*] **another local government unit** may not also apportion moneys under this section **for the same disposal site.**

SECTION 16. ORS 459.290 is amended to read:

459.290. Each [*city or county*] **local government unit** that apportions money under ORS 459.284 shall establish a citizens advisory committee to select plans, programs and projects for the rehabilitation and enhancement of the area around disposal sites for which the [*city or county*] **local government unit** has apportioned moneys under ORS 459.284. If [*a city*] **any local government unit** establishes a citizens advisory committee under this section, [*a board of county commissioners*] **another local government unit** may not also establish a local citizens advisory committee under this section **for the same disposal site.**

SECTION 17. Section 9, chapter 679, Oregon Laws 1985, is amended to read:

Sec. 9. (1) The metropolitan service district shall apportion an amount of the service or user charges collected for solid waste disposal at each general purpose landfill within or for the district and dedicate and use the moneys obtained for rehabilitation and enhancement of the area in and around the landfill from which the fees have been collected. That portion of the service and user charges set aside by the district for the purposes of this subsection shall be 50 cents for each ton of solid waste. **The metropolitan service district may not apportion moneys under ORS 459.284 for a general purpose landfill for which the district sets aside service and user charges under this subsection.**

(2) The metropolitan service district, commencing on [*the effective date of this 1985 Act*] **July 13, 1985**, shall apportion an amount of the service or user charges collected for solid waste disposal and shall transfer the moneys obtained to the Department of Environmental Quality. That portion of the service and user charges set aside by the district for the purposes of this subsection shall be $1 for each ton of solid waste. Moneys transferred to the department under this section shall be paid into the Land Disposal Mitigation Account in the General Fund of the State Treasury, which is hereby established. All moneys in the account are continuously appropriated to the department and shall be used for carrying out the department's functions and duties under [*this 1985 Act*] **chapter 679, Oregon Laws 1985**. The department shall keep a record of all moneys deposited in the account. The record shall indicate by cumulative accounts the source from which the moneys are derived and the individual activity or program against which each withdrawal is charged. Apportionment of moneys

under this subsection shall cease when the department is reimbursed for all costs incurred by it under [*this 1985 Act*] **chapter 679, Oregon Laws 1985.**

(3) The metropolitan service district shall adjust the amount of the service and user charges collected by the district for solid waste disposal to reflect the loss of those duties and functions relating to solid waste disposal that are transferred to the commission and department under [*this 1985 Act*] **chapter 679, Oregon Laws 1985.** Moneys no longer necessary for such duties and functions shall be expended to implement the solid waste reduction program submitted under section 8, [*of this 1985 Act*] **chapter 679, Oregon Laws 1985.** The metropolitan service district shall submit a statement of proposed adjustments and changes in expenditures under this subsection to the department for review.

SECTION 18. Except as provided in section 19 of this Act, sections 2 to 11 of this Act and the amendments to ORS 459.005, 459.225 and 459.995 by sections 12, 13 and 14 of this Act do not become operative until July 1, 1990.

SECTION 19. The Environmental Quality Commission, the Health Division and the Public Utility Commission may take any action before the operative date of this Act that is necessary to enable the Public Utility Commission, the Environmental Quality Commission, the Health Division or the Department of Environmental Quality to exercise, on and after the operative date of this Act, all the duties, functions and powers conferred by this Act.

C-Engrossed
House Bill 3080

Ordered by the Senate July 2
Including House Amendments dated June 21 and June 29
and Senate Amendments dated July 2

Sponsored by Representatives DWYER, CLARK, DOMINY, EDMUNSON, HUGO, MANNIX, McTEAGUE, REPINE, ROBERTS, Senators CEASE, GRENSKY, KERANS

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.

[Directs Department of Environmental Quality by rule to establish grant program for partial reimbursement of up to 50 percent of costs incurred in soil assessment and tank tightness test on underground storage tanks. Provides for hardship grants up to 75 percent of total project costs not to exceed $55,000 for soil cleanup, upgrading or replacement of underground storage tanks facility used for selling motor fuel at retail to public. Directs guaranteed loan program up to 80 percent of loan principal not to exceed $64,000 for soil cleanup, upgrading or replacement of underground storage tank facility holding accumulation of motor fuel. Establishes Underground Storage Tank Management Committee, appointed by President of Senate and Speaker of House from among specified interest groups to advise and make recommendations to Environmental Quality Commission concerning rules related to underground storage tank site assessment grants, hardship grants and loans. Requires performance standards adopted to be consistent with federal standards.]

[Imposes five cents per quart tax on sale of lubricating oil and fees established by commission on underground storage tanks with proceeds deposited in Underground Storage Tank Compliance and Remedial Action Fund to provide funding of specified programs. Requires commission to adjust fee to maintain specified amount of revenue in fund.]

Authorizes program of grants, loan guarantees and interest rate subsidies to deal with underground fuel storage tank problems, administered by Department of Environmental Quality. Provides assistance to owners in meeting Environmental Protection Agency requirements and obtaining liability insurance coverage through following methods:

(1) Grants of up to $3,000 for tank inspections;

(2) Loan guarantees up to $64,000 and 80 percent of the principal for tank upgrading and cleanup;

(3) Loan interest rate subsidies equal to difference between seven and one-half percent and market rate.

Funding for program is provided by:

(1) Regulatory fee not more than $10 set by Department of Environmental Quality on import or withdrawal of petroleum products from bulk storage facility;

(2) Backup fee of five cents per quart of oil, 25 cents per lb. grease and $50 surcharge on each underground storage tank should $25 fee above be determined to be subject to limitations in Articles VIII or IX of Oregon Constitution.

Directs study by appropriate legislative interim committee of effectiveness of an underground storage tanks loan and grant programs.

[Prescribes operative dates. Sunsets funding provisions on August 31, 1993.]

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to leaking underground storage tanks; creating new provisions; amending ORS 466.705, 466.715, 466.745, 466.760, 466.785 and 466.790; appropriating money; and declaring an emergency.

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

SECTION 1. Sections 2 to 7 of this Act are added to and made a part of ORS 466.705 to 466.835.

SECTION 2. The Department of Environmental Quality by rule shall establish a grant program

NOTE: Matter in **bold face** in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.

to provide moneys for partial reimbursement of the costs incurred by a person conducting a soil assessment and tank tightness test on an underground storage tank. The program shall become operative September 1, 1989, and shall provide for reimbursement of up to 50 percent of such costs, but not to exceed $3,000, at any facility location containing underground storage tanks holding an accumulation of motor fuel. Any soil assessment and tank tightness test carried out with funds provided pursuant to this section shall conform to rules of the Environmental Quality Commission. Any person applying for reimbursement of costs shall submit the results of the assessment and test with the application for reimbursement. If a person owns or is responsible for more than one facility location, the person is eligible for a grant for each facility location.

NOTE: Section 3 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 4. (1) Beginning September 1, 1989, the Department of Environmental Quality shall conduct a program to provide to a commercial lending institution a loan guarantee of up to 80 percent of the loan principal, but not to exceed $64,000 for the purpose of upgrading an underground storage tank facility, replacing an underground storage tank facility or conducting soil remediation in conformity with applicable state and federal underground storage tank and corrective action rules at an underground storage tank facility holding an accumulation of motor fuel. If a person owns or is responsible for more than one underground storage tank facility, the person is eligible for a loan guarantee of up to 80 percent of the loan principal, not to exceed $64,000, for each facility location.

(2) Any loan guarantee provided during the period beginning September 1, 1989, and ending August 31, 1992, shall be enforceable by the lending institution at any time during the loan repayment period, even if the final payment on the loan is due after August 31, 1992.

(3) In processing a loan application to be guaranteed under the program established by the department, the commercial lending institution shall:

(a) Determine the applicant's credit worthiness and ability to repay a loan using the lending institution's normal criteria for a nonguaranteed loan made under like terms and conditions.

(b) Require the loan applicant to provide at least a 20 percent down payment of the total project costs.

(4) Before entering into an underground storage tank loan agreement for a loan guaranteed under the department's program, the commercial lending institution shall submit to the department a request for a loan guarantee. The request shall include any documentation required by the department to determine the maximum guarantee to be issued at any facility location. If the department fails to respond within 30 days after receipt of the request, the request shall be considered approved for the amount requested, except that, in no case shall it exceed 80 percent of the loan principal or $64,000, whichever is greater.

(5) The maximum term for which any loan is guaranteed shall be 10 years.

(6) In the case of a default, and upon written notification from a commercial lending institution, the department shall pay the percent guarantee authorized at the beginning of the mortgage term on the unpaid balance at the time of default.

SECTION 5. In addition to any other application requirements of a commercial lending institution, any person intending to apply for an underground storage tank upgrade, replacement or soil remediation loan guarantee under section 4 of this 1989 Act shall:

(1) Provide the commercial lending institution the results of a soil assessment and tank tightness test performed in accordance with rules of the Environmental Quality Commission.

(2) Allow only a service provider licensed by the department pursuant to rules adopted under

ORS 466.750 to perform work on the underground storage tank facility.

SECTION 6. (1) Upon completion of a corrective action funded by the loan guarantee program established pursuant to section 4 of this 1989 Act, the department shall issue a notice of compliance indicating the corrective action has been completed in accordance with commission rules.

(2) Upon completion of a soil assessment and tank tightness test funded by moneys provided by the program established pursuant to section 2 of this 1989 Act, the department shall issue a notice of compliance indicating that the assessment and testing has been conducted in accordance with rules of the commission.

SECTION 7. The Environmental Quality Commission may not establish any minimum civil penalty for the failure of any person to establish financial assurance pursuant to ORS 466.815 until after August 31, 1992.

NOTE: Section 8 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 9. Sections 10 and 10a of this Act are added to and made a part of ORS chapter 317.

SECTION 10. (1) A credit against taxes otherwise due under this chapter for the taxable year shall be allowed to a commercial lending institution in an amount equal to the difference between:

(a) The amount of finance charge charged during the taxable year including interest on the loan and interest on any loan fee financed at a rate of seven and one-half percent for a loan made on or after September 1, 1989, and before August 31, 1992, by the lending institution to a person who is upgrading or replacing an underground storage tank facility, or conducting soil remediation at the site of an underground storage tank facility; and

(b) The amount of finance charge that would have been charged during the taxable year, including interest on the loan and interest on any loan fee financed by the lending institution for the loan for underground storage tank upgrading, replacement or soil remediation measures at an annual rate that is the lesser of the following:

(A) The annual rate charged by the commercial lending institution for nonsubsidized loans made under like terms and conditions at the time the loan for underground storage tank upgrading, replacement or soil remediation measures is made; or

(B) An upper limit established by rule of the Environmental Quality Commission.

(2) In order to be eligible for the tax credit allowed under subsection (1) of this section, the loan shall:

(a) Be made before September 1, 1992; and

(b) Have a term not exceeding 10 years.

(3) The credit allowed under this section shall be allowed to a commercial lending institution for any taxable year during which a loan is outstanding.

(4) As used in this section, "commercial lending institution," "facility," "soil remediation" and "underground storage tank" have the meaning given those terms in ORS 466.705.

SECTION 10a. Once each quarter the Department of Revenue shall send the Department of Environmental Quality an invoice for an amount equal to the tax credit allowed under section 10 of this 1989 Act. The Department of Environmental Quality shall reimburse the General Fund for the amount of credit allowed each quarter from moneys in the Underground Storage Tank Compliance and Corrective Action Fund established under ORS 466.790.

SECTION 11. As used in sections 11 to 19 of this Act:

(1) "Bulk facility" means a facility, including pipeline terminals, refinery terminals, rail and barge terminals and associated underground and aboveground tanks, connected or separate, from

which petroleum products are withdrawn from bulk and delivered into a cargo tank or barge used to transport those products.

(2) "Cargo tank" means an assembly used for transporting, hauling or delivering petroleum products and consisting of a tank having one or more compartments mounted on a wagon, truck, trailer, truck-trailer combination, railcar or wheels. "Cargo tank" does not include any assembly used for transporting, hauling or delivering petroleum products that holds less than 100 gallons in individual, separable containers.

(3) "Department" means the Department of Revenue.

(4) "Person" means an individual, trust, firm, joint stock company, corporation, partnership, joint venture, consortium, association, state, municipality, commission, political subdivision of a state or any interstate body, any commercial entity and the Federal Government or any agency of the Federal Government.

(5) "Petroleum product" means a petroleum product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including motor gasoline, gasohol, other alcohol-blended fuels, aviation gasoline, kerosene, distillate fuel oil and number 1 and number 2 diesel. The term does not include naphtha-type jet fuel, kerosene-type jet fuel, or a petroleum product destined for use in chemical manufacturing or feedstock of that manufacturing or fuel sold to vessels engaged in interstate or foreign commerce.

(6) "Withdrawal from bulk" means the removal of a petroleum product from a bulk facility for delivery directly into a cargo tank or a barge to be transported to another location other than another bulk facility for use or sale in this state.

SECTION 12. (1) Beginning September 1, 1989, the seller of a petroleum product withdrawn from a bulk facility, on withdrawal from bulk of the petroleum product, shall collect from the person who orders the withdrawal an underground storage tank regulatory fee in the maximum amount of $10.

(2) Beginning September 1, 1989, any person who imports petroleum products in a cargo tank or a barge for delivery into a storage tank, other than a tank connected to a bulk facility, shall pay an underground storage tank regulatory fee in the maximum amount of $10 to the Department of Revenue for each such delivery of petroleum products into a storage tank located in the state.

(3) Subsections (1) and (2) of this section do not apply to a delivery or import of petroleum products destined for export from this state if the petroleum products are in continuous movement to a destination outside the state.

(4) The seller of petroleum products withdrawn from a bulk facility and each person importing petroleum products shall remit the first payment on October 1, 1989. Beginning January 1, 1990, payment of the fee due shall be on a quarterly basis.

(5) Each operator of a bulk facility and each person who imports petroleum products shall register with the Department of Revenue by August 1, 1989, or 30 days prior to operating a bulk facility or importing a cargo tank of petroleum products, whichever comes first.

SECTION 12a. On or before September 1, 1989, the State Fire Marshal shall report to the Emergency Board the amount of the underground storage tank regulatory fee necessary to provide funding to the Underground Storage Tank Compliance and Corrective Action Fund for the purposes set forth in ORS 466.790. Upon approval of the Emergency Board, the State Fire Marshal immediately shall adopt by rule the fee amounts.

SECTION 13. (1) The Department of Revenue shall collect the fee imposed under section 12 of

this Act.

(2) Any petroleum product which the Constitution or laws of the United States prohibit the state from taxing is exempt from the fee imposed under section 12 of this Act.

SECTION 14. The Department of Revenue for good cause may extend, for not to exceed one month, the time for payment of the fee due under sections 11 to 19 of this Act. The extension may be granted at any time if a written request is filed with the department within or prior to the period for which the extension may be granted. If the time for payment is extended at the request of a person, interest at the rate established under ORS 305.220, for each month, or fraction of a month, from the time the payment was originally due to the time payment is actually made, shall be added and paid.

SECTION 15. (1) Each operator of a bulk facility and each person who imports petroleum products into this state shall keep at the person's registered place of business complete and accurate records of any petroleum products sold, purchased by or brought in or caused to be brought in to the place of business.

(2) The Department of Revenue, upon oral or written reasonable notice, may make such examinations of the books, papers, records and equipment required to be kept under this section as it may deem necessary in carrying out the provisions of sections 11 to 19 of this Act.

SECTION 16. The department is authorized to establish those rules and procedures for the implementation and enforcement of sections 11 to 19 of this Act that are consistent with its provisions and are considered necessary and appropriate.

SECTION 17. The provisions of ORS chapters 305 and 314 as to liens, delinquencies, claims for refund, issuance of refunds, conferences, appeals to the director of the department, appeals to the Oregon Tax Court, stay of collection pending appeal, cancellation, waiver, reduction or compromise of fees, penalties or interest, subpenaing and examining witnesses and books and papers, and the issuance of warrants and the procedures relating thereto, shall apply to the collection of fees, penalties and interest by the department under sections 11 to 19 of this Act, except where the context requires otherwise.

SECTION 18. All moneys received by the Department of Revenue under sections 11 to 19 of this Act shall be deposited in the State Treasury and credited to a suspense account established under ORS 293.445. After payment of administration expenses incurred by the department in the administration of sections 11 to 19 of this Act and of refunds or credits arising from erroneous overpayments, the balance of the money shall be deposited in the Underground Storage Tank Compliance and Corrective Action Fund.

SECTION 19. The fee imposed by section 12 of this Act is in addition to all other state, county or municipal fees on a petroleum product.

SECTION 20. ORS 466.705 is amended to read:

466.705. As used in ORS 466.705 to 466.835 and 466.895:

(1) "Commercial lending institution" means any bank, mortgage banking company, trust company, stock savings bank, savings and loan association, credit union, national banking association, federal savings and loan association or federal credit union maintaining an office in this state.

(2) "Commission" means the Environmental Quality Commission.

[*(1)*] **(3)** "Corrective action" means remedial action taken to protect the present or future public health, safety, welfare or the environment from a release of a regulated substance. "Corrective

action" includes but is not limited to:

(a) The prevention, elimination, removal, abatement, control, minimization, investigation, assessment, evaluation or monitoring of a hazard or potential hazard or threat, including migration of a regulated substance; or

(b) Transportation, storage, treatment or disposal of a regulated substance or contaminated material from a site.

[*(2)*] **(4)** "Decommission" means to remove from operation an underground storage tank, including temporary or permanent removal from operation, abandonment in place or removal from the ground.

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

(6) "Facility" means any one or combination of underground storage tanks and underground pipes connected to the tanks, used to contain an accumulation of motor fuel, including gasoline or diesel oil, that are located at one contiguous geographical site.

[*(3)*] **(7)** "Fee" means a fixed charge or service charge.

[*(4)*] **(8)** "Guarantor" means any person other than the permittee who by guaranty, insurance, letter of credit or other acceptable device, provides financial responsibility for an underground storage tank as required under ORS 466.815.

[*(5)*] **(9)** "Investigation" means monitoring, surveying, testing or other information gathering.

[*(6)*] **(10)** "Local unit of government" means a city, county, special service district, metropolitan service district created under ORS chapter 268 or a political subdivision of the state.

[*(7)*] **(11)** "Oil" means gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse and any other petroleum related product or fraction thereof that is liquid at a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute.

[*(8)*] **(12)** "Owner" means the owner of an underground storage tank.

[*(9)*] **(13)** "Permittee" means the owner or a person designated by the owner who is in control of or has responsibility for the daily operation or maintenance of an underground storage tank under a permit issued pursuant to ORS 466.760.

[*(10)*] **(14)** "Person" means an individual, trust, firm, joint stock company, corporation, partnership, joint venture, consortium, association, state; municipality, commission, political subdivision of a state or any interstate body, any commercial entity and the Federal Government or any agency of the Federal Government.

[*(11)*] **(15)** "Regulated substance" means:

(a) Any substance listed by the United States Environmental Protection Agency in 40 CFR Table 302.4 pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended (P.L. 96-510 and P.L. 98-80), but not including any substance regulated as a hazardous waste under 40 CFR Part 261 and OAR 340 Division 101;

(b) Oil; or

(c) Any other substance designated by the commission under ORS 466.630.

[*(12)*] **(16)** "Release" means the discharge, deposit, injection, dumping, spilling, emitting, leaking or placing of a regulated substance from an underground storage tank into the air or into or on land or the waters of the state, other than as authorized by a permit issued under state or federal law.

(17) "Soil remediation" means those corrective actions taken to excavate, remove, treat or dispose of soil contaminated with motor fuel so as to bring a site containing underground storage tanks into compliance with the department's remedial action rules adopted pursuant

to ORS 466.553.

[*(13)*] **(18)** "Underground storage tank" means any one or combination of tanks and underground pipes connected to the tank, used to contain an accumulation of a regulated substance, and the volume of which, including the volume of the underground pipes connected to the tank, is 10 percent or more beneath the surface of the ground.

[*(14)*] **(19)** "Waters of the state" has the meaning given that term in ORS 468.700.

SECTION 21. ORS 466.715 is amended to read:

466.715. (1) The Legislative Assembly finds that:

(a) Regulated substances hazardous to the public health, safety, welfare and the environment are stored in underground tanks in this state; [*and*]

(b) Underground tanks used for the storage of regulated substances are potential sources of contamination of the environment and may pose dangers to the public health, safety, welfare and the environment; [.]

(c) Recently, the Federal Government enacted technical and financial responsibility rules for underground storage tanks containing motor fuel that impose significant compliance costs on many Oregon businesses;

(d) For many small businesses, affordable insurance currently is not available to enable these businesses to comply with the federal financial responsibility rules;

(e) To insure an adequate supply of competitively priced motor fuel throughout the state, to sustain and support economic development and to protect Oregon's growing tourism industry, it is in the public interest to provide financially assistance to Oregon's businesses to comply with the new federal underground storage tank rules; and

(f) To encourage private insurance carriers to reenter, or create, an underground storage tank insurance market, it is in the public interest to upgrade or replace existing underground storage tanks with equipment that complies with new federal technical rules.

(2) Therefore, the Legislative Assembly declares:

(a) It is the public policy of this state to protect the public health, safety, welfare and the environment from the potential harmful effects of underground tanks used to store regulated substances.

(b) It is the purpose of ORS 466.705 to 466.835 and 466.895 to enable the Environmental Quality Commission to adopt a state-wide program for the prevention and reporting of releases and for taking corrective action to protect the public and the environment from releases from underground storage tanks.

SECTION 22. ORS 466.745 is amended to read:

466.745. (1) The commission may establish by rule:

(a) Performance standards, **consistent with standards adopted by the Federal Government,** for leak detection systems, inventory control, tank testing or comparable systems or programs designed to detect or identify releases in a manner consistent with the protection of public health, safety, welfare or the environment;

(b) Requirements for maintaining records and submitting information to the department in conjunction with a leak detection or identification system or program used for each underground storage tank;

(c) Performance standards for underground storage tanks including but not limited to design, retrofitting, construction, installation, release detection and material compatibility;

(d) Requirements for the temporary or permanent decommissioning of an underground storage tank;

(e) Requirements for reporting a release from an underground storage tank;

(f) Requirements for a permit issued under ORS 466.760;

(g) Procedures that distributors of regulated substances and sellers of underground storage tanks must follow to satisfy the requirements of ORS 466.760;

(h) Acceptable methods by which an owner or permittee may demonstrate financial responsibility for responding to the liability imposed under ORS 466.815;

(i) Procedures for the disbursement of moneys collected under ORS 466.795;

(j) Requirements for reporting corrective action taken in response to a release;

(k) Requirements for taking corrective action in response to a release; [*and*]

(L) Provisions necessary to carry out the soil assessment and tank tightness testing grant program authorized by section 2 of this 1989 Act;

(m) Requirements for soil assessment and tank tightness tests which shall not be more stringent soil assessment and tank tightness testing requirements than required by the Federal Government;

(n) Provisions necessary to carry out the underground storage tank loan guarantee program authorized by section 4 of this 1989 Act;

(o) Methods for allocating moneys in the Underground Storage Tank Compliance and Corrective Action Fund that give preference:

(A) First, to soil assessment and tank tightness testing; and

(B) Second, to providing loan guarantees;

(p) Establish a system of priorities for loan guarantees that takes into consideration:

(A) The financial condition of the applicant;

(B) Availability of motor fuel to rural population centers;

(C) Small businesses; and

(D) Whether the underground tank is for a facility retailing motor fuel to the general public or for other purposes; and

[*(L)*] **(q)** Any other rule necessary to carry out the provisions of ORS 466.705 to 466.835 and 466.895.

(2) **So long as requirements are administered uniformly within each area or region of the state,** the commission may adopt different requirements for different areas or regions of the state if the commission finds either of the following:

(a) More stringent rules or standards are necessary:

(A) To protect specific waters of the state, a sole source or sensitive aquifer or any other sensitive environmental amenity; or

(B) Because conditions peculiar to that area or region require different standards to protect public health, safety, welfare or the environment.

(b) Less stringent rules or standards are:

(A) Warranted by physical conditions or economic hardship;

(B) Consistent with the protection of the public health, safety, welfare or the environment; and

(C) Not less stringent than minimum federal requirements.

(3) The rules adopted by the commission under subsection (1) of this section may distinguish between types, classes and ages of underground storage tanks. In making such distinctions, the

commission may consider the following factors:

(a) Location of the tanks;

(b) Soil and climate conditions;

(c) Uses of the tanks;

(d) History of maintenance;

(e) Age of the tanks;

(f) Current industry recommended practices;

(g) National consensus codes;

(h) Hydrogeology;

(i) Water table;

(j) Size of the tanks;

(k) Quantity of regulated substances periodically deposited in or dispensed from the tank;

(L) The technical ability of the owner or permittee; and

(m) The compatibility of the regulated substance and the materials of which the tank is fabricated.

(4) In adopting rules under subsection (1) of this section, the commission shall consider all relevant federal standards and regulations on underground storage tanks. If the commission adopts any standard or rule that is different than a federal standard or regulation on the same subject, the report submitted to the commission by the department at the time the commission adopts the standard or rule shall indicate clearly the deviation from the federal standard or regulation and the reasons for the deviation.

SECTION 23. ORS 466.760 is amended to read:

466.760. (1) No person shall install, bring into operation, operate or decommission an underground storage tank without first obtaining a permit from the department.

(2) No person shall deposit a regulated substance into an underground storage tank unless the tank is operating under a permit issued by the department.

(3) Any person who assumes ownership of an underground storage tank from a previous permittee must complete and return to the department an application for a new permit before the person begins operation of the underground storage tank under the new ownership.

(4) Any person who deposits a regulated substance into an underground storage tank or sells an underground storage tank shall notify the owner or operator of the tank of the permit requirements of this section.

(5) The following persons must sign an application for a permit submitted to the department under this section or ORS 466.750 (5):

(a) The owner of an underground storage tank storing a regulated substance;

(b) The owner of the real property in which an underground storage tank is located; and

(c) The proposed permittee, if a person other than the owner of the underground storage tank or the owner of the real property.

(6) Before September 1, 1992, the department shall not require, as a condition of issuing a permit, an applicant to provide financial assurance pursuant to ORS 466.815.

SECTION 24. ORS 466.790 is amended to read:

466.790. (1) The [*Leaking*] Underground Storage Tank [*Cleanup*] **Compliance and Corrective Action** Fund is established separate and distinct from the General Fund in the State Treasury.

(2) The following moneys, as they pertain to an underground storage tank, shall be deposited

into the State Treasury and credited to the [*Leaking*] Underground Storage Tank [*Cleanup*] **Compliance and Corrective Action** Fund:

(a) Moneys recovered or otherwise received from responsible parties for corrective action; [*and*]

(b) Moneys collected under sections 11 to 19 of this 1989 Act; and

[*(b)*] **(c)** Any penalty, fine or damages recovered under ORS 466.770.

(3) The State Treasurer may invest and reinvest moneys in the [*Leaking*] Underground Storage Tank [*Cleanup*] **Compliance and Corrective Action** Fund in the manner provided by law.

(4) The moneys in the [*Leaking*] Underground Storage Tank [*Cleanup*] **Compliance and Corrective Action** Fund are appropriated continuously to the department to be used as provided in subsection (5) of this section.

(5) Moneys in the [*Leaking*] Underground Storage Tank [*Cleanup*] **Compliance and Corrective Action** Fund may be used by the department for the following purposes:

[*(a) Payment of corrective action costs incurred by the department in responding to a release from underground storage tanks;*]

[*(b) Funding of all actions and activities authorized by ORS 466.770; and*]

[*(c) Payment of the state cost share for corrective action, as required by section 9003(h)(7)(B) of the federal Solid Waste Disposal Act, P.L. 96-482.*]

(a) Supporting the loan guarantee program established pursuant to section 4 of this 1989 Act;

(b) Funding the soil assessment and tank tightness testing grant program established pursuant to section 2 of this 1989 Act;

(c) Repaying moneys advanced under ORS 293.205 to 293.225 to allow the department to begin operating the grant and loan programs established pursuant to sections 2 and 4 of this 1989 Act, or servicing any debt incurred by the fund;

(d) Administration of the underground storage tank program; and

(e) Reimbursing the General Fund for revenue lost as a result of the credit against taxes allowed under section 10 of this 1989 Act.

SECTION 25. ORS 466.705, as amended by section 20 of this Act, is further amended to read:

466.705. As used in ORS 466.705 to 466.835 and 466.895:

[*(1) "Commercial lending institution" means any bank, mortgage banking company, trust company, stock savings bank, savings and loan association, credit union, national banking association, federal savings and loan association or federal credit union maintaining an office in this state.*]

[*(2)*] **(1)** "Commission" means the Environmental Quality Commission.

[*(3)*] **(2)** "Corrective action" means remedial action taken to protect the present or future public health, safety, welfare or the environment from a release of a regulated substance. "Corrective action" includes but is not limited to:

(a) The prevention, elimination, removal, abatement, control, minimization, investigation, assessment, evaluation or monitoring of a hazard or potential hazard or threat, including migration of a regulated substance; or

(b) Transportation, storage, treatment or disposal of a regulated substance or contaminated material from a site.

[*(4)*] **(3)** "Decommission" means to remove from operation an underground storage tank, including temporary or permanent removal from operation, abandonment in place or removal from the

ground.

[*(5)*] **(4)** "Department" means the Department of Environmental Quality.

[*(6)*] **(5)** "Facility" means any one or combination of underground storage tanks and underground pipes connected to the tanks, used to contain an accumulation of motor fuel, including gasoline or diesel oil, that are located at one contiguous geographical site.

[*(7)*] **(6)** "Fee" means a fixed charge or service charge.

[*(8)*] **(7)** "Guarantor" means any person other than the permittee who by guaranty, insurance, letter of credit or other acceptable device, provides financial responsibility for an underground storage tank as required under ORS 466.815.

[*(9)*] **(8)** "Investigation" means monitoring, surveying, testing or other information gathering.

[*(10)*] **(9)** "Local unit of government" means a city, county, special service district, metropolitan service district created under ORS chapter 268 or a political subdivision of the state.

[*(11)*] **(10)** "Oil" means gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse and any other petroleum related product or fraction thereof that is liquid at a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute.

[*(12)*] **(11)** "Owner" means the owner of an underground storage tank.

[*(13)*] **(12)** "Permittee" means the owner or a person designated by the owner who is in control of or has responsibility for the daily operation or maintenance of an underground storage tank under a permit issued pursuant to ORS 466.760.

[*(14)*] **(13)** "Person" means an individual, trust, firm, joint stock company, corporation, partnership, joint venture, consortium, association, state, municipality, commission, political subdivision of a state or any interstate body, any commercial entity and the Federal Government or any agency of the Federal Government.

[*(15)*] **(14)** "Regulated substance" means:

(a) Any substance listed by the United States Environmental Protection Agency in 40 CFR Table 302.4 pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended (P.L. 96-510 and P.L. 98-80), but not including any substance regulated as a hazardous waste under 40 CFR Part 261 and OAR 340 Division 101;

(b) Oil; or

(c) Any other substance designated by the commission under ORS 466.630.

[*(16)*] **(15)** "Release" means the discharge, deposit, injection, dumping, spilling, emitting, leaking or placing of a regulated substance from an underground storage tank into the air or into or on land or the waters of the state, other than as authorized by a permit issued under state or federal law.

[*(17) "Soil remediation" means those corrective actions taken to excavate, remove, treat or dispose of soil contaminated with motor fuel so as to bring a site containing underground storage tanks into compliance with the department's remedial action rules adopted pursuant to ORS 466.553.*]

[*(18)*] **(16)** "Underground storage tank" means any one or combination of tanks and underground pipes connected to the tank, used to contain an accumulation of a regulated substance, and the volume of which, including the volume of the underground pipes connected to the tank, is 10 percent or more beneath the surface of the ground.

[*(19)*] **(17)** "Waters of the state" has the meaning given that term in ORS 468.700.

SECTION 26. ORS 466.715, as amended by section 21 of this Act, is further amended to read:

466.715. (1) The Legislative Assembly finds that:

(a) Regulated substances hazardous to the public health, safety, welfare and the environment are

stored in underground tanks in this state; **and**

(b) Underground tanks used for the storage of regulated substances are potential sources of contamination of the environment and may pose dangers to the public health, safety, welfare and the environment. [;]

[*(c) Recently, the Federal Government enacted technical and financial responsibility rules for underground storage tanks containing motor fuel that impose significant compliance costs on many Oregon businesses;*]

[*(d) For many small businesses, affordable insurance currently is not available to enable these businesses to comply with the federal financial responsibility rules;*]

[*(e) To insure an adequate supply of competitively priced motor fuel throughout the state, to sustain and support economic development and to protect Oregon's growing tourism industry, it is in the public interest to provide financially assistance to Oregon's businesses to comply with the new federal underground storage tank rules; and*]

[*(f) To encourage private insurance carriers to reenter, or create, an underground storage tank insurance market, it is in the public interest to upgrade or replace existing underground storage tanks with equipment that complies with new federal technical rules.*]

(2) Therefore, the Legislative Assembly declares:

(a) It is the public policy of this state to protect the public health, safety, welfare and the environment from the potential harmful effects of underground tanks used to store regulated substances.

(b) It is the purpose of ORS 466.705 to 466.835 and 466.895 to enable the Environmental Quality Commission to adopt a state-wide program for the prevention and reporting of releases and for taking corrective action to protect the public and the environment from releases from underground storage tanks.

SECTION 27. ORS 466.745, as amended by section 22 of this Act, is further amended to read:

466.745. (1) The commission may establish by rule:

(a) Performance standards, consistent with standards adopted by the Federal Government, for leak detection systems, inventory control, tank testing or comparable systems or programs designed to detect or identify releases in a manner consistent with the protection of public health, safety, welfare or the environment;

(b) Requirements for maintaining records and submitting information to the department in conjunction with a leak detection or identification system or program used for each underground storage tank;

(c) Performance standards for underground storage tanks including but not limited to design, retrofitting, construction, installation, release detection and material compatibility;

(d) Requirements for the temporary or permanent decommissioning of an underground storage tank;

(e) Requirements for reporting a release from an underground storage tank;

(f) Requirements for a permit issued under ORS 466.760;

(g) Procedures that distributors of regulated substances and sellers of underground storage tanks must follow to satisfy the requirements of ORS 466.760;

(h) Acceptable methods by which an owner or permittee may demonstrate financial responsibility for responding to the liability imposed under ORS 466.815;

(i) Procedures for the disbursement of moneys collected under ORS 466.795;

(j) Requirements for reporting corrective action taken in response to a release;

(k) Requirements for taking corrective action in response to a release; **and**

[*(L) Provisions necessary to carry out the soil assessment and tank tightness testing grant program authorized by section 2 of this 1989 Act;*]

[*(m) Requirements for soil assessment and tank tightness tests which shall not be more stringent soil assessment and tank tightness testing requirements than required by the Federal Government;*]

[*(n) Provisions necessary to carry out the underground storage tank loan guarantee program authorized by section 4 of this 1989 Act;*]

[*(o) Methods for allocating moneys in the Underground Storage Tank Compliance and Corrective Action Fund that give preference:*]

[*(A) First, to soil assessment and tank tightness testing; and*]

[*(B) Second, to providing loan guarantees;*]

[*(p) Establish a system of priorities for loan guarantees that takes into consideration:*]

[*(A) The financial condition of the applicant;*]

[*(B) Availability of motor fuel to rural population centers;*]

[*(C) Small businesses; and*]

[*(D) Whether the underground tank is for a facility retailing motor fuel to the general public or for other purposes; and*]

[*(q)*] **(L)** Any other rule necessary to carry out the provisions of ORS 466.705 to 466.835 and 466.895.

(2) So long as requirements are administered uniformly within each area or region of the state, the commission may adopt different requirements for different areas or regions of the state if the commission finds either of the following:

(a) More stringent rules or standards are necessary:

(A) To protect specific waters of the state, a sole source or sensitive aquifer or any other sensitive environmental amenity; or

(B) Because conditions peculiar to that area or region require different standards to protect public health, safety, welfare or the environment.

(b) Less stringent rules or standards are:

(A) Warranted by physical conditions or economic hardship;

(B) Consistent with the protection of the public health, safety, welfare or the environment; and

(C) Not less stringent than minimum federal requirements.

(3) The rules adopted by the commission under subsection (1) of this section may distinguish between types, classes and ages of underground storage tanks. In making such distinctions, the commission may consider the following factors:

(a) Location of the tanks;

(b) Soil and climate conditions;

(c) Uses of the tanks;

(d) History of maintenance;

(e) Age of the tanks;

(f) Current industry recommended practices;

(g) National consensus codes;

(h) Hydrogeology;

(i) Water table;

(j) Size of the tanks;

(k) Quantity of regulated substances periodically deposited in or dispensed from the tank;

(L) The technical ability of the owner or permittee; and

(m) The compatibility of the regulated substance and the materials of which the tank is fabricated.

(4) In adopting rules under subsection (1) of this section, the commission shall consider all relevant federal standards and regulations on underground storage tanks. If the commission adopts any standard or rule that is different than a federal standard or regulation on the same subject, the report submitted to the commission by the department at the time the commission adopts the standard or rule shall indicate clearly the deviation from the federal standard or regulation and the reasons for the deviation.

SECTION 28. ORS 466.760, as amended by section 23 of this Act, is further amended to read:

466.760. (1) No person shall install, bring into operation, operate or decommission an underground storage tank without first obtaining a permit from the department.

(2) No person shall deposit a regulated substance into an underground storage tank unless the tank is operating under a permit issued by the department.

(3) Any person who assumes ownership of an underground storage tank from a previous permittee must complete and return to the department an application for a new permit before the person begins operation of the underground storage tank under the new ownership.

(4) Any person who deposits a regulated substance into an underground storage tank or sells an underground storage tank shall notify the owner or operator of the tank of the permit requirements of this section.

(5) The following persons must sign an application for a permit submitted to the department under this section or ORS 466.750 (5):

(a) The owner of an underground storage tank storing a regulated substance;

(b) The owner of the real property in which an underground storage tank is located; and

(c) The proposed permittee, if a person other than the owner of the underground storage tank or the owner of the real property.

[*(6) Before September 1, 1992, the department shall not require, as a condition of issuing a permit, an applicant to provide financial assurance pursuant to ORS 466.815.*]

SECTION 29. ORS 466.790, as amended by section 24 of this Act, is further amended to read:

466.790. (1) The Underground Storage Tank Compliance and Corrective Action Fund is established separate and distinct from the General Fund in the State Treasury.

(2) The following moneys, as they pertain to an underground storage tank, shall be deposited into the State Treasury and credited to the Underground Storage Tank Compliance and Corrective Action Fund:

(a) Moneys recovered or otherwise received from responsible parties for corrective action;

(b) Moneys collected under sections 11 to 19 of this 1989 Act; and

(c) Any penalty, fine or damages recovered under ORS 466.770.

(3) The State Treasurer may invest and reinvest moneys in the Underground Storage Tank Compliance and Corrective Action Fund in the manner provided by law.

(4) The moneys in the Underground Storage Tank Compliance and Corrective Action Fund are appropriated continuously to the department to be used as provided in subsection (5) of this section.

(5) Moneys in the Underground Storage Tank Compliance and Corrective Action Fund may be

used by the department for the following purposes:

[*(a) Supporting the loan guarantee program established pursuant to section 4 of this 1989 Act;*]

[*(b) Funding the soil assessment and tank tightness testing grant program established pursuant to section 2 of this 1989 Act;*]

(a) Payment of corrective action costs incurred by the department in responding to a release from underground storage tanks;

(b) Funding of all actions and activities authorized by ORS 466.770;

(c) Payment of the state cost share for corrective action, as required by section 9003(h)(7)(B) of the federal Solid Waste Disposal Act, P.L. 96-482;

[*(c)*] **(d)** Repaying moneys advanced under ORS 293.205 to 293.225 to allow the department to begin operating the grant and loan programs established pursuant to sections 2 and 4 of this 1989 Act, or servicing any debt incurred by the fund;

[*(d)*] **(e)** Administration of the underground storage tank program; and

[*(e)*] **(f)** Reimbursing the General Fund for revenue lost as a result of the credit against taxes allowed under section 10 of this 1989 Act.

SECTION 29a. ORS 466.745 as amended by section 27 of this Act, is further amended to read:

466.745. (1) The commission may establish by rule:

(a) Performance standards, consistent with standards adopted by the Federal Government, for leak detection systems, inventory control, tank testing or comparable systems or programs designed to detect or identify releases in a manner consistent with the protection of public health, safety, welfare or the environment;

(b) Requirements for maintaining records and submitting information to the department in conjunction with a leak detection or identification system or program used for each underground storage tank;

(c) Performance standards for underground storage tanks including but not limited to design, retrofitting, construction, installation, release detection and material compatibility;

(d) Requirements for the temporary or permanent decommissioning of an underground storage tank;

(e) Requirements for reporting a release from an underground storage tank;

(f) Requirements for a permit issued under ORS 466.760;

(g) Procedures that distributors of regulated substances and sellers of underground storage tanks must follow to satisfy the requirements of ORS 466.760;

(h) Acceptable methods by which an owner or permittee may demonstrate financial responsibility for responding to the liability imposed under ORS 466.815;

(i) Procedures for the disbursement of moneys collected under ORS 466.795;

(j) Requirements for reporting corrective action taken in response to a release;

(k) Requirements for taking corrective action in response to a release; and

(L) Any other rule necessary to carry out the provisions of ORS 466.705 to 466.835 and 466.895.

(2) So long as requirements are administered uniformly within each area or region of the state, the commission may adopt different requirements for different areas or regions of the state if the commission finds either of the following:

(a) More stringent rules or standards are necessary:

(A) To protect specific waters of the state, a sole source or sensitive aquifer or any other sensitive environmental amenity; or

(B) Because conditions peculiar to that area or region require different standards to protect public health, safety, welfare or the environment.

(b) Less stringent rules or standards are:

(A) Warranted by physical conditions or economic hardship;

(B) Consistent with the protection of the public health, safety, welfare or the environment; and

(C) Not less stringent than minimum federal requirements.

(3) The rules adopted by the commission under subsection (1) of this section may distinguish between types, classes and ages of underground storage tanks. In making such distinctions, the commission may consider the following factors:

(a) Location of the tanks;

(b) Soil and climate conditions;

(c) Uses of the tanks;

(d) History of maintenance;

(e) Age of the tanks;

(f) Current industry recommended practices;

(g) National consensus codes;

(h) Hydrogeology;

(i) Water table;

(j) Size of the tanks;

(k) Quantity of regulated substances periodically deposited in or dispensed from the tank;

(L) The technical ability of the owner or permittee; and

(m) The compatibility of the regulated substance and the materials of which the tank is fabricated.

(4) In adopting rules under subsection (1) of this section, the commission shall consider all relevant federal standards and regulations on underground storage tanks. If the commission adopts any standard or rule that is different than a federal standard or regulation on the same subject, the report submitted to the commission by the department at the time the commission adopts the standard or rule shall indicate clearly the deviation from the federal standard or regulation and the reasons for the deviation.

SECTION 30. ORS 466.790, as amended by section 29 of this Act, is further amended to read:

466.790. (1) The Underground Storage Tank Compliance and Corrective Action Fund is established separate and distinct from the General Fund in the State Treasury.

(2) The following moneys, as they pertain to an underground storage tank, shall be deposited into the State Treasury and credited to the Underground Storage Tank Compliance and Corrective Action Fund:

(a) Moneys recovered or otherwise received from responsible parties for corrective action; **and**

[*(b) Moneys collected under sections 11 to 19 of this 1989 Act; and*]

[*(c)*] **(b)** Any penalty, fine or damages recovered under ORS 466.770.

(3) The State Treasurer may invest and reinvest moneys in the Underground Storage Tank Compliance and Corrective Action Fund in the manner provided by law.

(4) The moneys in the Underground Storage Tank Compliance and Corrective Action Fund are appropriated continuously to the department to be used as provided in subsection (5) of this section.

(5) Moneys in the Underground Storage Tank Compliance and Corrective Action Fund may be used by the department for the following purposes:

(a) Payment of corrective action costs incurred by the department in responding to a release from underground storage tanks;

(b) Funding of all actions and activities authorized by ORS 466.770;

(c) Payment of the state cost share for corrective action, as required by section 9003(h)(7)(B) of the federal Solid Waste Disposal Act, P.L. 96-482;

(d) Repaying moneys advanced under ORS 293.205 to 293.225 to allow the department to begin operating the grant and loan programs established pursuant to sections 2 and 4 of this 1989 Act, or servicing any debt incurred by the fund;

(e) Administration of the underground storage tank program; and

(f) Reimbursing the General Fund for revenue lost as a result of the credit against taxes allowed under section 10 of this 1989 Act.

SECTION 31. (1) It is the intent of the Legislative Assembly that funds assessed pursuant to sections 11 to 19 of this Act are not subject to the provisions of section 2, Article VIII or section 3a, Article IX of the Oregon Constitution.

(2)(a) Jurisdiction to determine whether sections 11 to 19 of this Act impose a tax or excise levied on, with respect to or measured by the extraction, production, storage, use, sale, distribution or receipt of oil or natural gas or levied on the ownership of oil or natural gas that is subject to the provisions of section 2, Article VIII or section 3a, Article IX of the Oregon Constitution is conferred upon the Supreme Court. A petition for review shall be filed within 60 days only after September 1, 1989. Any person interested in or affected or aggrieved by sections 11 to 19 of this Act may petition for judicial review. The petition shall state the facts showing how the petitioner is interested, affected or aggrieved, and the ground upon which the petition is based. The Supreme Court shall give priority on its docket to a petition for review filed under this subsection. Filing of a petition shall stay the operation of sections 11 to 19 of this Act.

(b) Judicial review under paragraph (a) of this subsection shall be limited to:

(A) The provisions of this Act authorizing the imposition of the fee; and

(B) The legislative history and any supporting documents related to section 2, Article VIII or section 3a, Article IX of the Oregon Constitution.

(c) The court may declare the provisions of sections 11 to 19 of this Act invalid if it finds that the provisions violate constitutional provisions.

SECTION 32. If sections 11 to 19 of this Act or any part thereof are judicially declared to impose a tax or excise levied on, with respect to or measured by the extraction, production, storage, use, sale, distribution or receipt of oil or natural gas or levied on the ownership of oil or natural gas, that is subject to the provisions of section 2, Article VIII or section 3a, Article IX of the Oregon Constitution, sections 11, 12, 12a, 13, 14, 15, 16, 17, 18 and 19 of this Act are repealed.

SECTION 33. Sections 34 to 43 of this Act become operative on the date the Supreme Court declares that sections 11 to 19 of this Act impose a tax or excise levied on, with respect to or measured by the extraction, production, storage, use, sale, distribution or receipt of oil or natural gas or levied on the ownership of oil or natural gas, that is subject to the provisions of section 2, Article VIII or section 3a, Article IX of the Oregon Constitution.

SECTION 34. As used in sections 34 to 43 of this Act:

(1) "Department" means the Department of Revenue.

(2) "Lubricating oil" means automotive and aviation engine oil, automatic transmission fluid, industrial engine oil, metal-working fluids, process oil, general industrial oil and grease.

(3) "Person" means an individual, trust, firm, joint stock company, corporation, partnership, joint venture, consortium, association, state, municipality, commission, political subdivision of a state or any interstate body, any commercial entity and the Federal Government or any agency of the Federal Government.

SECTION 35. It is the intent of sections 34 to 43 of this Act to impose a tax on the sale of lubricating oil or grease in this state. These provisions are not intended to relieve any person from any other duty or responsibility imposed by law.

SECTION 36. (1) A tax is imposed on the sale at wholesale of each quart of lubricating oil or pound of grease in this state in the amount of five cents per quart of lubricating oil and 2.5 cents per pound of grease. The tax shall be imposed annually in accordance with section 37 of this Act.

(2) If any person fails to pay the tax imposed under subsection (1) of this section within 60 days, there shall be added to the tax a penalty of five percent of the amount of the tax. Any payment made after 60 days shall bear interest at the rate prescribed under ORS 305.220.

SECTION 37. (1) The Department of Revenue shall collect the tax established under section 36 of this Act.

(2) The following are exempt from the fee imposed under this section:

(a) Any lubricating oil or grease shipped into the state from points of origin outside this state until the interstate transportation of the substance has ended.

(b) Any lubricating oil or grease which the Constitution or laws of the United States prohibit the state from taxing.

SECTION 38. The Department of Revenue for good cause may extend, for not to exceed one month, the time for making any return due under sections 34 to 43 of this Act. The extension may be granted at any time if a written request is filed with the department within or prior to the period for which the extension may be granted. When the time for filing a return is extended at the request of a person, interest at the rate established under ORS 305.220, for each month, or fraction of a month, from the time the return was originally required to be filed to the time of payment, shall be added and paid.

SECTION 39. (1) Every person who sells lubricating oil or grease at wholesale shall keep at the person's registered place of business complete and accurate records of any lubricating oil or grease sold, purchased by or brought in or caused to be brought in to the place of business.

(2) The Department of Revenue, upon oral or written reasonable notice, may make such examinations of the books, papers, records and equipment required to be kept under this section as it may deem necessary in carrying out the provisions of sections 34 to 43 of this Act.

SECTION 40. The department is authorized to establish those rules and procedures for the implementation and enforcement of sections 34 to 43 of this Act that are consistent with its provisions and are considered necessary and appropriate.

SECTION 41. The provisions of ORS chapters 305 and 314 as to liens, delinquencies, claims for refund, issuance of refunds, conferences, appeals to the director of the department, appeals to the Oregon Tax Court, stay of collection pending appeal, cancellation, waiver, reduction or compromise of fees, penalties or interest, subpenaing and examining witnesses and books and papers, and the issuance of warrants and the procedures relating thereto, shall apply to the collection of taxes, penalties and interest by the department under sections 34 to 43 of this Act, except where the context requires otherwise.

SECTION 42. All moneys received by the Department of Revenue under sections 34 to 43 of this

Act shall be deposited in the State Treasury and credited to a suspense account established under ORS 293.445. After payment of administration expenses incurred by the department in the administration of sections 34 to 43 of this Act and of refunds or credits arising from erroneous overpayments, the balance of the money shall be deposited in the Underground Storage Tank Compliance and Remedial Action Fund.

SECTION 43. The tax imposed by section 36 of this Act is in addition to all other state, county or municipal fees on lubricating oil or grease.

SECTION 43a. If the Supreme Court declares that sections 11 to 19 of this Act impose a tax or excise levied on, with respect to or measured by the extraction, production, storage, use, sale, distribution or receipt of oil or natural gas or levied on the ownership of oil or natural gas, that is subject to the provisions of section 2, Article VIII or section 3a, Article IX of the Oregon Constitution, ORS 466.745, as amended by section 22 of this Act, is further amended to read:

466.745. (1) The commission may establish by rule:

(a) Performance standards, consistent with standards adopted by the Federal Government, for leak detection systems, inventory control, tank testing or comparable systems or programs designed to detect or identify releases in a manner consistent with the protection of public health, safety, welfare or the environment;

(b) Requirements for maintaining records and submitting information to the department in conjunction with a leak detection or identification system or program used for each underground storage tank;

(c) Performance standards for underground storage tanks including but not limited to design, retrofitting, construction, installation, release detection and material compatibility;

(d) Requirements for the temporary or permanent decommissioning of an underground storage tank;

(e) Requirements for reporting a release from an underground storage tank;

(f) Requirements for a permit issued under ORS 466.760;

(g) Procedures that distributors of regulated substances and sellers of underground storage tanks must follow to satisfy the requirements of ORS 466.760;

(h) Acceptable methods by which an owner or permittee may demonstrate financial responsibility for responding to the liability imposed under ORS 466.815;

(i) Procedures for the disbursement of moneys collected under ORS 466.795;

(j) Requirements for reporting corrective action taken in response to a release;

(k) Requirements for taking corrective action in response to a release;

(L) Provisions necessary to carry out the soil assessment and tank tightness testing grant program authorized by section 2 of this 1989 Act;

(m) Requirements for soil assessment and tank tightness tests which shall not be more stringent soil assessment and tank tightness testing requirements than required by the Federal Government;

(n) Provisions necessary to carry out the underground storage tank loan guarantee program authorized by section 4 of this 1989 Act;

(o) Methods for allocating moneys in the Underground Storage Tank Compliance and Corrective Action Fund that give preference:

(A) First, to soil assessment and tank tightness testing; and

(B) Second, to providing loan guarantees;

(p) Establish a system of priorities for loan guarantees that takes into consideration:

(A) The financial condition of the applicant;

(B) Availability of motor fuel to rural population centers;

(C) Small businesses; and

(D) Whether the underground tank is for a facility retailing motor fuel to the general public or for other purposes; and

(q) Any other rule necessary to carry out the provisions of ORS 466.705 to 466.835 and 466.895.

(2) So long as requirements are administered uniformly within each area or region of the state, the commission may adopt different requirements for different areas or regions of the state if the commission finds either of the following:

(a) More stringent rules or standards are necessary:

(A) To protect specific waters of the state, a sole source or sensitive aquifer or any other sensitive environmental amenity; or

(B) Because conditions peculiar to that area or region require different standards to protect public health, safety, welfare or the environment.

(b) Less stringent rules or standards are:

(A) Warranted by physical conditions or economic hardship;

(B) Consistent with the protection of the public health, safety, welfare or the environment; and

(C) Not less stringent than minimum federal requirements.

(3) The rules adopted by the commission under subsection (1) of this section may distinguish between types, classes and ages of underground storage tanks. In making such distinctions, the commission may consider the following factors:

(a) Location of the tanks;

(b) Soil and climate conditions;

(c) Uses of the tanks;

(d) History of maintenance;

(e) Age of the tanks;

(f) Current industry recommended practices;

(g) National consensus codes;

(h) Hydrogeology;

(i) Water table;

(j) Size of the tanks;

(k) Quantity of regulated substances periodically deposited in or dispensed from the tank;

(L) The technical ability of the owner or permittee; and

(m) The compatibility of the regulated substance and the materials of which the tank is fabricated.

(4) In adopting rules under subsection (1) of this section, the commission shall consider all relevant federal standards and regulations on underground storage tanks. If the commission adopts any standard or rule that is different than a federal standard or regulation on the same subject, the report submitted to the commission by the department at the time the commission adopts the standard or rule shall indicate clearly the deviation from the federal standard or regulation and the reasons for the deviation.

SECTION 43b. If the Supreme Court declares that sections 11 to 19 of this Act impose a tax or excise levied on, with respect to or measured by the extraction, production, storage, use, sale, distribution or receipt of oil or natural gas or levied on the ownership of oil or natural gas, that is

subject to the provisions of section 2, Article VIII or section 3a, Article IX of the Oregon Constitution, ORS 466.745, as amended by section 43a of this Act, is further amended to read:

466.745. (1) The commission may establish by rule:

(a) Performance standards, consistent with standards adopted by the Federal Government, for leak detection systems, inventory control, tank testing or comparable systems or programs designed to detect or identify releases in a manner consistent with the protection of public health, safety, welfare or the environment;

(b) Requirements for maintaining records and submitting information to the department in conjunction with a leak detection or identification system or program used for each underground storage tank;

(c) Performance standards for underground storage tanks including but not limited to design, retrofitting, construction, installation, release detection and material compatibility;

(d) Requirements for the temporary or permanent decommissioning of an underground storage tank;

(e) Requirements for reporting a release from an underground storage tank;

(f) Requirements for a permit issued under ORS 466.760;

(g) Procedures that distributors of regulated substances and sellers of underground storage tanks must follow to satisfy the requirements of ORS 466.760;

(h) Acceptable methods by which an owner or permittee may demonstrate financial responsibility for responding to the liability imposed under ORS 466.815;

(i) Procedures for the disbursement of moneys collected under ORS 466.795;

(j) Requirements for reporting corrective action taken in response to a release;

(k) Requirements for taking corrective action in response to a release; **and**

[*(L) Provisions necessary to carry out the soil assessment and tank tightness testing grant program authorized by section 2 of this 1989 Act;*]

[*(m) Requirements for soil assessment and tank tightness tests which shall not be more stringent soil assessment and tank tightness testing requirements than required by the Federal Government;*]

[*(n) Provisions necessary to carry out the underground storage tank loan guarantee program authorized by section 4 of this 1989 Act;*]

[*(o) Methods for allocating moneys in the Underground Storage Tank Compliance and Corrective Action Fund that give preference:*]

[*(A) First, to soil assessment and tank tightness testing; and*]

[*(B) Second, to providing loan guarantees;*]

[*(p) Establish a system of priorities for loan guarantees that takes into consideration:*]

[*(A) The financial condition of the applicant;*]

[*(B) Availability of motor fuel to rural population centers;*]

[*(C) Small businesses; and*]

[*(D) Whether the underground tank is for a facility retailing motor fuel to the general public or for other purposes; and*]

[*(q)*] **(L)** Any other rule necessary to carry out the provisions of ORS 466.705 to 466.835 and 466.895.

(2) So long as requirements are administered uniformly within each area or region of the state, the commission may adopt different requirements for different areas or regions of the state if the commission finds either of the following:

(a) More stringent rules or standards are necessary:

(A) To protect specific waters of the state, a sole source or sensitive aquifer or any other sensitive environmental amenity; or

(B) Because conditions peculiar to that area or region require different standards to protect public health, safety, welfare or the environment.

(b) Less stringent rules or standards are:

(A) Warranted by physical conditions or economic hardship;

(B) Consistent with the protection of the public health, safety, welfare or the environment; and

(C) Not less stringent than minimum federal requirements.

(3) The rules adopted by the commission under subsection (1) of this section may distinguish between types, classes and ages of underground storage tanks. In making such distinctions, the commission may consider the following factors:

(a) Location of the tanks;

(b) Soil and climate conditions;

(c) Uses of the tanks;

(d) History of maintenance;

(e) Age of the tanks;

(f) Current industry recommended practices;

(g) National consensus codes;

(h) Hydrogeology;

(i) Water table;

(j) Size of the tanks;

(k) Quantity of regulated substances periodically deposited in or dispensed from the tank;

(L) The technical ability of the owner or permittee; and

(m) The compatibility of the regulated substance and the materials of which the tank is fabricated.

(4) In adopting rules under subsection (1) of this section, the commission shall consider all relevant federal standards and regulations on underground storage tanks. If the commission adopts any standard or rule that is different than a federal standard or regulation on the same subject, the report submitted to the commission by the department at the time the commission adopts the standard or rule shall indicate clearly the deviation from the federal standard or regulation and the reasons for the deviation.

SECTION 44. If the Supreme Court declares that sections 11 to 19 of this Act impose a tax or excise levied on, with respect to or measured by the extraction, production, storage, use, sale, distribution or receipt of oil or natural gas or levied on the ownership of oil or natural gas, that is subject to the provisions of section 2, Article VIII or section 3a, Article IX of the Oregon Constitution, ORS 466.785 is amended to read:

466.785. (1) Fees may be required of every permittee of an underground storage tank. Fees shall be in an amount determined by the commission to be adequate to carry on the duties of the department or the duties of a state agency or local unit of government that has contracted with the department under ORS 466.730. Such fees shall not exceed $20 per tank per year.

(2) Fees collected by the department under this section shall be deposited in the State Treasury to the credit of an account of the department. All fees paid to the department shall be continuously appropriated to the department to carry out the provisions of ORS 466.705 to 466.835 and 466.895.

(3) In addition to any other fee imposed on underground storage tanks, beginning July 1, 1989, and ending December 31, 1992, the department shall collect an annual surcharge of $50 per tank to be deposited in the Underground Storage Tank Compliance and Remedial Action Fund.

SECTION 45. If the Supreme Court declares that sections 11 to 19 of this Act impose a tax or excise levied on, with respect to or measured by the extraction, production, storage, use, sale, distribution or receipt of oil or natural gas or levied on the ownership of oil or natural gas, that is subject to the provisions of section 2, Article VIII or section 3a, Article IX of the Oregon Constitution, ORS 466.785, as amended by section 44 of this Act, is further amended to read:

466.785. (1) Fees may be required of every permittee of an underground storage tank. Fees shall be in an amount determined by the commission to be adequate to carry on the duties of the department or the duties of a state agency or local unit of government that has contracted with the department under ORS 466.730. Such fees shall not exceed $20 per tank per year.

(2) Fees collected by the department under this section shall be deposited in the State Treasury to the credit of an account of the department. All fees paid to the department shall be continuously appropriated to the department to carry out the provisions of ORS 466.705 to 466.835 and 466.895.

[*(3) In addition to any other fee imposed on underground storage tanks, beginning July 1, 1989, and ending December 31, 1992, the department shall collect an annual surcharge of $50 per tank to be deposited in the Underground Storage Tank Compliance and Remedial Action Fund.*]

SECTION 46. If the Supreme Court declares that sections 11 to 19 of this Act impose a tax or excise levied on, with respect to or measured by the extraction, production, storage, use, sale, distribution or receipt of oil or natural gas or levied on the ownership of oil or natural gas, that is subject to the provisions of section 2, Article VIII or section 3a, Article IX of the Oregon Constitution, ORS 466.790, as amended by section 24 of this Act is further amended to read:

466.790. (1) The Underground Storage Tank Compliance and Corrective Action Fund is established separate and distinct from the General Fund in the State Treasury.

(2) The following moneys, as they pertain to an underground storage tank, shall be deposited into the State Treasury and credited to the Underground Storage Tank Compliance and Corrective Action Fund:

(a) Moneys recovered or otherwise received from responsible parties for corrective action;

(b) Moneys collected under sections [*11 to 19*] **34 to 43** of this 1989 Act; and

(c) Any penalty, fine or damages recovered under ORS 466.770.

(3) The State Treasurer may invest and reinvest moneys in the Underground Storage Tank Compliance and Corrective Action Fund in the manner provided by law.

(4) The moneys in the Underground Storage Tank Compliance and Corrective Action Fund are appropriated continuously to the department to be used as provided in subsection (5) of this section.

(5) Moneys in the Underground Storage Tank Compliance and Corrective Action Fund may be used by the department for the following purposes:

(a) Supporting the loan guarantee program established pursuant to section 4 of this 1989 Act;

(b) Funding the soil assessment and tank tightness testing grant program established pursuant to section 2 of this 1989 Act;

(c) Repaying moneys advanced under ORS 293.205 to 293.225 to allow the department to begin operating the grant and loan programs established pursuant to sections 2 and 4 of this 1989 Act, or servicing any debt incurred by the fund;

(d) Administration of the underground storage tank program; and

(e) Reimbursing the General Fund for revenue lost as a result of the credit against taxes allowed under section 10 of this 1989 Act.

SECTION 47. If the Supreme Court declares that sections 11 to 19 of this Act impose a tax or excise levied on, with respect to or measured by the extraction, production, storage, use, sale, distribution or receipt of oil or natural gas or levied on the ownership of oil or natural gas, that is subject to the provisions of section 2, Article VIII or section 3a, Article IX of the Oregon Constitution, ORS 466.790, as amended by section 46 of this Act, is further amended to read:

466.790. (1) The Underground Storage Tank Compliance and Corrective Action Fund is established separate and distinct from the General Fund in the State Treasury.

(2) The following moneys, as they pertain to an underground storage tank, shall be deposited into the State Treasury and credited to the Underground Storage Tank Compliance and Corrective Action Fund:

(a) Moneys recovered or otherwise received from responsible parties for corrective action;

(b) Moneys collected under sections 34 to 43 of this 1989 Act; and

(c) Any penalty, fine or damages recovered under ORS 466.770.

(3) The State Treasurer may invest and reinvest moneys in the Underground Storage Tank Compliance and Corrective Action Fund in the manner provided by law.

(4) The moneys in the Underground Storage Tank Compliance and Corrective Action Fund are appropriated continuously to the department to be used as provided in subsection (5) of this section.

(5) Moneys in the Underground Storage Tank Compliance and Corrective Action Fund may be used by the department for the following purposes:

[*(a) Supporting the loan guarantee program established pursuant to section 4 of this 1989 Act;*]

[*(b) Funding the soil assessment and tank tightness testing grant program established pursuant to section 2 of this 1989 Act;*]

(a) Payment of corrective action costs incurred by the department in responding to a release from underground storage tanks;

(b) Funding of all actions and activities authorized by ORS 466.770;

(c) Payment of the state cost share for corrective action, as required by section 9003(h)(7)(B) of the federal Solid Waste Disposal Act, P.L. 96-482;

[*(c)*] **(d)** Repaying moneys advanced under ORS 293.205 to 293.225 to allow the department to begin operating the grant and loan programs established pursuant to sections 2 and 4 of this 1989 Act, or servicing any debt incurred by the fund;

[*(d)*] **(e)** Administration of the underground storage tank program; and

[*(e)*] **(f)** Reimbursing the General Fund for revenue lost as a result of the credit against taxes allowed under section 10 of this 1989 Act.

SECTION 48. If the Supreme Court declares that sections 11 to 19 of this Act impose a tax or excise levied on, with respect to or measured by the extraction, production, storage, use, sale, distribution or receipt of oil or natural gas or levied on the ownership of oil or natural gas, that is subject to the provisions of section 2, Article VIII or section 3a, Article IX of the Oregon Constitution, ORS 466.790, as amended by section 47 of this Act, is further amended to read:

466.790. (1) The Underground Storage Tank Compliance and Corrective Action Fund is established separate and distinct from the General Fund in the State Treasury.

(2) The following moneys, as they pertain to an underground storage tank, shall be deposited

into the State Treasury and credited to the Underground Storage Tank Compliance and Corrective Action Fund:

(a) Moneys recovered or otherwise received from responsible parties for corrective action; **and**

[*(b) Moneys collected under sections 34 to 43 of this 1989 Act; and*]

[*(c)*] **(b)** Any penalty, fine or damages recovered under ORS 466.770.

(3) The State Treasurer may invest and reinvest moneys in the Underground Storage Tank Compliance and Corrective Action Fund in the manner provided by law.

(4) The moneys in the Underground Storage Tank Compliance and Corrective Action Fund are appropriated continuously to the department to be used as provided in subsection (5) of this section.

(5) Moneys in the Underground Storage Tank Compliance and Corrective Action Fund may be used by the department for the following purposes:

(a) Payment of corrective action costs incurred by the department in responding to a release from underground storage tanks;

(b) Funding of all actions and activities authorized by ORS 466.770;

(c) Payment of the state cost share for corrective action, as required by section 9003(h)(7)(B) of the federal Solid Waste Disposal Act, P.L. 96-482;

(d) Repaying moneys advanced under ORS 293.205 to 293.225 to allow the department to begin operating the grant and loan programs established pursuant to sections 2 and 4 of this 1989 Act, or servicing any debt incurred by the fund;

(e) Administration of the underground storage tank program; and

(f) Reimbursing the General Fund for revenue lost as a result of the credit against taxes allowed under section 10 of this 1989 Act.

SECTION 49. During the 1989-1991 biennium, the appropriate legislative interim committee, as determined by the President of the Senate and the Speaker of the House of Representatives, shall study the effectiveness of the loan and grant programs established by this Act and the availability of financial assurance for underground storage tank owners and permittees.

SECTION 50. Sections 2, 4, 5, 6 and 7 of this Act are repealed August 31, 1992.

SECTION 51. Sections 11, 12, 12a, 13, 14, 15, 16, 17, 18, 19, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42 and 43 of this Act are repealed August 31, 1993.

SECTION 52. The amendments to ORS 466.705, 466.715, 466.745, 466.760 and 466.790 by sections 25, 26, 27, 28 and 29 of this Act become operative August 31, 1992.

SECTION 53. The amendments to ORS 466.745 and 466.790 by sections 29a and 30 of this Act become operative August 31, 1993.

SECTION 54. If the Supreme Court declares that sections 11 to 19 of this Act impose a tax or excise levied on, with respect to or measured by the extraction, production, storage, use, sale, distribution or receipt of oil or natural gas or levied on the ownership of oil or natural gas, that is subject to the provisions of section 2, Article VIII or section 3a, Article IX of the Oregon Constitution, the amendments to ORS 466.745 and 466.790 by sections 43b and 47 of this Act become operative August 31, 1992.

SECTION 55. If the Supreme Court declares that sections 11 to 19 of this Act impose a tax or excise levied on, with respect to or measured by the extraction, production, storage, use, sale distribution or receipt of oil or natural gas or levied on the ownership of oil or natural gas, that is subject to the provisions of section 2, Article VIII or section 3a, Article IX of the Oregon Constitution, the amendments to ORS 466.785 and 466.790 by sections 45 and 48 of this Act become oper-

ative August 31, 1993.

SECTION 56. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect on its passage.

B-Engrossed
House Bill 3235

Ordered by the Senate June 9
Including House Amendments dated March 29 and Senate Amendments dated June 9

Sponsored by COMMITTEE ON ENVIRONMENT AND ENERGY

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.

Requires Department of Environmental Quality to create list of facilities with confirmed release of hazardous substance that additional investigation, removal, remedial action, long-term environmental controls or institutional controls may be needed to assure protection of present and future public health, safety, welfare or environment. Provides for removal of facility from list if cleanup and control assures protection. Provides time schedule for adoption of rules by Environmental Quality Commission. Requires department to inform public of cleanup program. Provides additional time for notice to owners and operators of such facility before inclusion on list and for owners' comments. Specifies that decision to add facility to list is not appealable to commission or courts. Specifies requirements of department's annual reports. **Subjects all waste to monthly management fee for disposal and treatment facilities regulated under provisions regarding hazardous waste.** Requires department to report to Governor, Legislative Assembly and commission on or before January 15, 1990.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to hazardous substances; creating new provisions; amending ORS 466.557, 466.560, 466.563 and 466.587; and declaring an emergency.

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

SECTION 1. ORS 466.557 is amended to read:

466.557. (1) For the purposes of providing public information, the director shall develop and maintain [*an inventory*] **a list** of all facilities [*where a release is confirmed by the department*] **with a confirmed release as defined by the Environmental Quality Commission under section 7 of this 1989 Act.**

(2) The director shall make the [*inventory*] **list** available for the public at the department's offices.

(3) The [*inventory*] **list** shall include but need not be limited to the following items, if known:

(a) A general description of the facility;

(b) Address or location;

(c) Time period during which a release occurred;

(d) Name of the current owner and operator and names of any past owners and operators during the time period of a release of a hazardous substance;

(e) Type and quantity of a hazardous substance released at the facility;

(f) Manner of release of the hazardous substance;

(g) Levels of a hazardous substance, if any, in ground water, surface water, air and soils at the facility;

(h) Status of removal or remedial actions at the facility; and

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

(i) Other items the director determines necessary.

(4) [*Thirty*] **At least 60** days before a facility is added to the [*inventory*] **list** the director shall notify by certified mail **or personal service** the owner **and operator, if known,** of all or any part of the facility that is to be included in the [*inventory*] **list. The notice shall inform the owner and operator that the owner and operator may comment on the decision of the director to add the facility to the list within 45 days of receiving the notice.** The decision of the director to add a facility [*may be appealed in writing to the commission within 15 days after the owner receives notice. The appeal shall be conducted in accordance with provisions of ORS 183.310 to 183.550 governing contested cases*] **to the list is not appealable to the Environmental Quality Commission or subject to judicial review under ORS 183.310 to 183.550.**

[*(5) The department shall, on or before January 15, 1989, and annually thereafter, submit the inventory and a report to the Governor, the Legislative Assembly and the Environmental Quality Commission.*]

[*(6) Nothing in this section, including listing of a facility in the inventory or commission review of the listing shall be construed to be a prerequisite to or otherwise affect the authority of the director to undertake, order or authorize a removal or remedial action under ORS 466.540 to 466.590 and 466.900.*]

SECTION 2. Sections 3 to 8 of this Act are added to and made a part of ORS 466.540 to 466.590.

SECTION 3. (1) For the purpose of providing public information, the director shall develop and maintain an inventory of all facilities for which:

(a) A confirmed release is documented by the department; and

(b) The director determines that additional investigation, removal, remedial action, long-term environmental controls or institutional controls are needed to assure protection of present and future public health, safety, welfare or the environment.

(2) The determination that additional investigation, removal, remedial action, long-term environmental controls or institutional controls are needed under subsection (1) of this section shall be based upon a preliminary assessment approved or conducted by the department.

(3) Before the department conducts a preliminary assessment, the director shall notify the owner and operator, if known, that the department is proceeding with a preliminary assessment and that the owner or operator may submit information to the department that would assist the department in conducting a complete and accurate preliminary assessment.

(4) At least 60 days before the director adds a facility to the inventory, the director shall notify by certified mail or personal service the owner and operator, if known, of all or any part of the facility that is to be included in the inventory. The decision of the director to add a facility to the inventory is not appealable to the Environmental Quality Commission or subject to judicial review under ORS 183.310 to 183.550.

(5) The notice provided under subsection (4) of this section shall include the preliminary assessment and shall inform the owner or operator that the owner or operator may comment on the information contained in the preliminary assessment within 45 days after receiving the notice. For good cause shown, the department may grant an extension of time to comment. The extension shall not exceed 45 additional days.

(6) The director shall consider relevant and appropriate information submitted by the owner or operator in making the final decision about whether to add a facility to the inventory.

(7) The director shall review the information submitted and add the facility to inventory if the

director determines that a confirmed release has occurred and that additional investigation, removal, remedial action, long-term environmental controls or institutional controls are needed to assure protection of present and future public health, safety, welfare or the environment.

SECTION 4. (1) According to rules adopted by the Environmental Quality Commission, the director shall remove a facility from the list or inventory, or both, if the director determines:

(a) Actions taken at the facility have attained a degree of clean up and control of further release that assures protection of present and future public health, safety, welfare and the environment;

(b) No further action is needed to assure protection of present and future public health, safety, welfare and the environment; or

(c) The facility satisfies other appropriate criteria for assuring protection of present and future public health, safety, welfare and the environment.

(2) The director shall not remove a facility if continuing environmental controls or institutional controls are needed to assure protection of present and future public health, safety, welfare and the environment, so long as such controls are related to removal or remedial action.

SECTION 5. (1) The director shall make the inventory available to the public at the office of the Department of Environmental Quality.

(2) The inventory shall include but need not be limited to:

(a) The following information, if known:

(A) A general description of the facility;

(B) Address or location;

(C) Time period during which a release occurred;

(D) Name of current owner and operator and names of any past owners and operators during the time period of a release of a hazardous substance;

(E) Type and quantity of a hazardous substance released at the facility;

(F) Manner of release of the hazardous substance;

(G) Levels of a hazardous substance, if any, in ground water, surface water, air and soils at the facility;

(H) Hazard ranking and narrative information regarding threats to the environment and public health;

(I) Status of removal or remedial actions at the facility; and

(J) Other items the director determines necessary; and

(b) Information that indicates whether the remedial action at the facility will be funded primarily by:

(A) The department through the use of moneys in the Hazardous Substance Remedial Action Fund;

(B) An owner or operator or other person under an agreement, order or consent decree under ORS 466.540 to 466.590; or

(C) An owner or operator or other person under other state or federal authority.

(3) The department may organize the inventory into categories of facilities, including but not limited to the types of facilities listed in subsection (2) of this section.

(4) On or before January 15 of each year, the department shall submit the inventory and a report to the Governor, the Legislative Assembly and the Environmental Quality Commission. The annual report shall include a quantitative and narrative summary of the department's accomplishments during the previous fiscal year and the department's goals for the current fiscal year, in-

cluding but not limited to each of the following areas:

(a) Facilities with a suspected release added to the department's data base;

(b) Facilities with a confirmed release added to the department's list;

(c) Facilities added to and removed from the inventory;

(d) Removals initiated and completed;

(e) Preliminary assessments initiated and completed;

(f) Remedial investigations initiated and completed;

(g) Feasibility studies initiated and completed; and

(h) Remedial actions, including long-term environmental controls and institutional controls, initiated and completed.

(5) Beginning in 1991, and every fourth year thereafter, the report required under subsection (4) of this section shall include a four-year plan of action for those items under paragraphs (e) to (h) of subsection (4) of this section. The four-year plan shall include projections of funding and staffing levels necessary to implement the four-year plan.

SECTION 6. Nothing in sections 3 to 8 of this 1989 Act or placement of a facility on the list under ORS 466.557 shall be construed to be a prerequisite to or otherwise affect the authority of the director to undertake, order or authorize a removal or remedial action under ORS 466.540 to 466.590 and 466.900.

SECTION 7. (1) The Environmental Quality Commission shall adopt by rule:

(a) A definition of "confirmed release" and "preliminary assessment"; and

(b) Criteria to be applied by the director in determining whether to remove a facility from the list and inventory under section 4 of this 1989 Act.

(2) In adopting rules under this section, the commission shall exclude from the list and inventory the following categories of releases to the extent the commission determines the release poses no significant threat to present or future public health, safety, welfare or the environment:

(a) De minimis releases;

(b) Releases that by their nature rapidly dissipate to undetectable or insignificant levels;

(c) Releases specifically authorized by and in compliance with a current and legally enforceable permit issued by the department or the United States Environmental Protection Agency; or

(d) Other releases that the commission finds pose no significant threat to present and future public health, safety, welfare or the environment.

(3) The director shall exclude from the list and inventory releases the director determines have been cleaned up to a level that:

(a) Is consistent with rules adopted by the commission under ORS 466.553; or

(b) Poses no significant threat to present or future public health, safety, welfare or the environment.

SECTION 8. In addition to the rules adopted under section 7 of this 1989 Act, the Environmental Quality Commission shall adopt by rule a procedure for ranking facilities on the inventory based on the short-term and long-term risks they pose to present and future public health, safety, welfare or the environment.

SECTION 9. ORS 466.560 is amended to read:

466.560. (1) The department shall develop and implement a comprehensive state-wide program to identify any release or threat of release from a facility that may require remedial action.

(2) The department shall notify all daily and weekly newspapers of general circulation in the

state and all broadcast media of the program developed under subsection (1) of this section. The notice shall include information about how the public may provide information on a release or threat of release from a facility.

(3) In developing the program under subsection (1) of this section, the department shall examine, at a minimum, any industrial or commercial activity that historically has been a major source in this state of releases of hazardous substances.

(4) The department shall include information about the implementation and progress of the program developed under subsection (1) of this section in the report required under [*ORS 466.557 (5)*] **section 5 of this 1989 Act.**

SECTION 10. ORS 466.563 is amended to read:

466.563. [*(1) If*] **When** the department receives information about a release or a threat of release from a potential facility, the department shall [*conduct a preliminary assessment of the potential facility*] **evaluate the information and document its conclusions and may approve or conduct a preliminary assessment. However, if the department determines there is a significant threat to present or future public health, safety, welfare or the environment, the department shall approve or conduct a preliminary assessment according to rules of the commission.** The preliminary assessment shall be conducted as expeditiously as possible within the budgetary constraints of the department.

[*(2) A preliminary assessment conducted under subsection (1) of this section shall include a review of existing data, a good faith effort to discover additional data and a site inspection to determine whether there is a need for further investigation.*]

SECTION 11. ORS 466.587 is amended to read:

466.587. [*Beginning on July 1, 1987,*] Every person who operates a facility for the purpose of disposing of hazardous waste or PCB that is subject to interim status or a [*license*] **permit** issued under ORS 466.005 to 466.385 and 466.890 shall pay a monthly hazardous waste management fee by the 45th day after the last day of each month in the amount of $20 per ton of [*hazardous*] **all** waste [*or PCB*] brought into the facility for treatment by incinerator or for disposal by landfill at the facility.

SECTION 12. The Environmental Quality Commission shall adopt the rules under sections 7 and 8 of this Act within nine months after the effective date of this Act.

SECTION 13. The Department of Environmental Quality shall submit the first report and the inventory, as completed to date, to the Governor, the Legislative Assembly and the Environmental Quality Commission on or before January 15, 1990.

SECTION 14. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect on its passage.

A-Engrossed
House Bill 3244

Ordered by the House June 16
Including House Amendments dated June 16

Sponsored by COMMITTEE ON ENVIRONMENT AND ENERGY

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.

[*Requires*] **Authorizes** Health Division [*and Department of Environmental Quality*], **subject to available funds,** to establish indoor air pollution programs **and conduct field investigations and studies regarding indoor air pollutents.** [*Defines terms.*] **Allows division to establish indoor air quality standards to take effect after July 1, 1991. Requires division to recommend to Sixty-sixth Legislative Assembly penalties for violation of air quality standards.**

Establishes Indoor Air Pollution [*Advisory Board*] **Task Force.** Prescribes membership, duties and powers. **Requires, by September 1, 1990, completion of comprehensive assessment of indoor air quality problems and submission of report to Sixty-sixth Legislative Assembly.**

[*Requires Environmental Quality Commission to establish and implement inspection program.*]

[*Increases state cigarette tax by one cent per pack and distributes proceeds from increase to Department of Environmental Quality, Health Division and Building Codes Agency to implement indoor clean air programs. Imposes floor and indicia adjustment tax.*]

[*Applies tax increase to distributions of cigarettes that occur on or after first day of month following effective date of Act.*]

[*Appropriates moneys from Hazardous Substance and Groundwater Protection Fund to division, department and agency for biennial expenses of Act.*]

Requires Administrator of Building Codes to adopt ventilation standards.

Allows establishment of programs for voluntary accreditation and contractor certification. Requires Environmental Quality Commission to set fees to pay for programs.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to indoor air pollution; appropriating money; and declaring an emergency.

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

SECTION 1. As used in sections 1 to 12 of this Act:

(1) "Office workplace" means any inclosed nonmanufacturing indoor area, located in a building of more than 4,000 square feet, and in which 50 or more employes, as defined in ORS 654.005 spend any part of their working hours.

(2) "Public area" means any inclosed indoor area open to and frequented by the public and where, during a representative 24-hour period the number of public occupants exceeds the number of employes, except private residences. "Public area" includes a health care facility as defined in ORS 442.015.

(3) "Remodeling" means any change, addition or modification in the ventilation system for which a building permit is or was required.

(4) "Significant indoor air pollutant" means any solid, liquid, semisolid, dissolved solid, biological organism, aerosol or gaseous material, including combinations or mixtures of substances, which has an adverse effect on human health and has been designated by the state for regulation under sections 1 to 12 of this Act.

SECTION 2. The Legislative Assembly finds and declares:

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

(1) Scientific studies reveal that indoor concentrations of some pollutants are frequently higher than outdoor concentrations of those pollutants and that indoor pollutant concentrations can exceed health-based standards.

(2) On the average, people spend at least 90 percent of their time indoors, and, as a result, the population has a significant potential for exposure to indoor air pollutants.

(3) Indoor air pollution poses one of the most serious environmental threats to public health, including cancer, respiratory illness, multiple chemical sensitivities, skin and eye irritation and related effects, and is estimated to cause significant increases in medical costs and claims, and declines in work productivity. Indoor air pollution also has been linked significantly to improperly maintained ventilation systems that increase consumption of energy.

(4) Existing state environmental and occupational health programs do not adequately protect the public from exposure to indoor air pollution that may occur in public areas or office workplaces.

(5) It is in the public interest to reduce exposure to indoor air pollution by developing a comprehensive program to investigate and remedy indoor air pollution and to educate the public.

SECTION 3. Subject to available funds, the Health Division may establish a broad public information program to educate the public on indoor air pollutants, their identities, causes and effects, and on effective practical methods for preventing, detecting and correcting the causes of indoor air pollution.

SECTION 4. Subject to available funds, the Health Division may conduct field investigations and epidemiological studies to quantify the extent of indoor air pollution levels and public exposure in Oregon. Field investigations shall be conducted in a manner that does not compete with the business of private contractors. Epidemiological studies may be conducted to look for the causes of illness and collect and analyze data to identify trends and health impacts, especially where national information on significant potential problems is lacking.

SECTION 5. (1) Based upon the recommendations of the Indoor Air Pollution Task Force, the Health Division may establish indoor air quality standards for significant indoor air pollutants. If established, the standards:

(a) Shall include an adequate margin of safety;

(b) Shall be adequate to protect the population, including sensitive groups; and

(c) May be revised as appropriate.

(2) If established, indoor air quality standards shall be at least for the following significant indoor air pollutants:

(a) Particulate matter;

(b) Aldehydes;

(c) Radon;

(d) Carbon monoxide;

(e) Carbon dioxide;

(f) Ozone; and

(g) Water vapor.

(3) In developing the indoor air quality standards, the Health Division shall consult with the Department of Environmental Quality, the Accident Prevention Division of the Department of Insurance and Finance and the Indoor Air Pollution Task Force.

(4) The standards established by the Health Division shall not take effect before July 1, 1991. The Health Division shall seek voluntary compliance with the standards.

SECTION 6. (1) There is established an Indoor Air Pollution Task Force consisting of at least the following members:

(a) The Director of the Department of Environmental Quality, or designee;

(b) The Assistant Director for Health of the Department of Human Resources, or designee;

(c) The Administrator of the Accident Prevention Division of the Department of Insurance and Finance, or designee;

(d) The Director of the Department of Energy, or designee;

(e) The Administrator of the Building Codes Agency, or designee;

(f) A representative of the State Accident Insurance Fund Corporation;

(g) Two representatives of business or industry affected by sections 1 to 12 of this Act, jointly appointed by the Department of Environmental Quality and the Health Division, one of whom is a representative of small business as defined in ORS 183.310;

(h) One representative of organized labor, jointly appointed by the Department of Environmental Quality and the Health Division;

(i) Two members of the public, jointly appointed by the Department of Environmental Quality and the Health Division;

(j) An individual who is licensed as a mechanical engineer with ventilation specialization jointly appointed by the Department of Environmental Quality and the Health Division; and

(k) A home builder who represents the construction industry jointly appointed by the Department of Environmental Quality and the Health Division.

(2) Each appointed member of the task force shall serve a two-year term, beginning July 1 of the year of appointment, and until a successor is appointed.

(3) The task force shall elect its own presiding officer, adopt rules for its procedure and meet on call of the presiding officer or a majority of the members. A majority of the members shall constitute a quorum to do business.

(4) The Health Division and the Department of Environmental Quality shall provide administrative facilities and services for the task force.

(5) Appointed members of the Indoor Air Pollution Task Force shall be entitled to expenses as provided in ORS 292.495.

SECTION 7. (1) Before September 1, 1990, the Indoor Air Pollution Task Force shall complete a comprehensive assessment of the extent of indoor air quality problems in Oregon, emphasizing the following:

(a) Public areas, especially those located in schools, health care facilities, auditoriums and government-owned buildings.

(b) Buildings constructed according to energy conservation standards enacted after 1979.

(c) Office workplaces.

(2) Based on the assessment conducted under subsection (1) of this section, the task force shall:

(a) Advise the Health Division on the need for indoor air quality standards and on matters relating to the public education, investigation and inspection programs under sections 3, 4 and 8 of this Act.

(b) Advise the Building Codes Agency on the establishment of minimum ventilation standards, building code requirements and building product standards for residences under section 10 of this Act.

(c) Advise the Environmental Quality Commission on proposed rules and policies relating to the

voluntary product labeling program established pursuant to section 11 of this Act.

(3) If appropriate, the task force may recommend rules for an inspection program for public areas to determine whether a public area complies with indoor air quality standards and minimum ventilation standards.

(4) If appropriate, the task force may recommend rules for an inspection program for office workplaces to determine whether an office workplace complies with minimum ventilation standards.

(5) If the task force recommends rules for an inspection program, either for public places or for office workplaces, the rules shall specify:

(a) The type of office workplaces and public areas subject to inspections, taking into consideration building location and occupancy and the financial impact of compliance on the building owner or responsible party but limiting the inspection program for office workplaces to buildings of 4,000 square feet or more in which 50 or more employes regularly work.

(b) Inspection frequency, sampling protocol and procedures for building owners or responsible parties, inspecting contractors and laboratories to report the result of the inspections to the appropriate agency. The rules shall not require a regular inspection more than once a year.

(c) Procedures for notifying building owners or responsible parties of noncompliance with this Act.

(6) The Health Division shall submit a report of the assessment completed under this section to the Sixty-sixth Legislative Assembly.

SECTION 8. (1) The Health Division may establish by rule a public recognition program for office workplaces, buildings and public areas that consistently meet the indoor air quality requirements of sections 1 to 12 of this Act. Any workplace, building or public area that qualifies for such recognition may display a notice indicating that the building exceeds the requirements of Oregon's indoor clean air statutes.

(2) To qualify for recognition under this section, an office workplace, building or public areas shall:

(a) Comply with all applicable provisions of ORS 433.835 to 433.875;

(b) Demonstrate a consistent pattern of compliance in meeting all indoor air quality standards and other requirements of sections 1 to 12 of this Act; and

(c) Demonstrate to the satisfaction of the Health Division that all technically and economically practicable steps have been taken to minimize significant sources of indoor air pollution.

(3) The Health Division by rule may establish a fee to be submitted by the owner or responsible party of a building, workplace or public area who requests certification under this section. The fee shall be an amount sufficient to pay the division's costs in carrying out the provisions of this section.

SECTION 9. (1) The Environmental Quality Commission shall establish a voluntary accreditation program for those providing indoor air quality sampling services or ventilation system evaluations for public areas, office workplaces or private residences. Provisions shall be made to accept accreditation of other state programs if they are comparable with the accreditation program established under this section.

(2) The Environmental Quality Commission shall establish a voluntary contractor certification program for contractors providing remedial action for residential indoor air pollution. Provisions shall be made to accept accreditation of other state programs if they are comparable with the accreditation program established under this section.

SECTION 10. (1) After considering the recommendations of the Indoor Air Pollution Task Force, and as expeditiously as possible, the Administrator of the Building Codes Agency shall adopt ventilation standards for public areas and office workplaces that are at least equivalent to the most recent, nationally recognized ventilation standards generally accepted and in use throughout the United States.

(2) The Administrator of the Building Codes Agency shall adopt building codes and building product standards to protect the indoor air quality of private residences but only as necessary to address serious or unique indoor air quality problems in Oregon when federal statutes, regulations and national codes fail to address building product and building code related indoor air quality problems.

(3) As expeditiously as possible, the Administrator of the Building Codes Agency shall consider for adoption the ventilation standards recommended by the Indoor Air Pollution Task Force.

SECTION 11. (1) Upon the advice of the Indoor Air Pollution Task Force, the Environmental Quality Commission may establish a pilot program for any product designed for household or office use that is not adequately regulated by federal law that may be a threat to human health by contaminating indoor air.

(2) The Environmental Quality Commission may establish a voluntary product-labeling pilot program to identify products with a low potential for causing indoor air pollution.

SECTION 12. The Environmental Quality Commission shall establish by rule a schedule of annual fees, not to exceed $500 per participating contractor, to pay the Department of Environmental Quality's costs in operating the:

(1) Voluntary accreditation program under subsection (1) of section 9 of this Act; and

(2) Voluntary contractor certification program under subsection (2) of section 9 of this Act.

SECTION 13. The Health Division shall recommend to the Sixty-sixth Legislative Assembly a schedule of penalties to be imposed for any public area that violates the standards established under section 5 of this Act.

SECTION 14. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect on its passage.

B-Engrossed
House Bill 3305

Ordered by the Senate May 15
Including House Amendments dated April 12 and Senate Amendments dated May 15

Sponsored by Representatives KEISLING, BURTON, DIX, McTEAGUE, PARKINSON, Senators FAWBUSH, KERANS, SHOEMAKER, Representative CEASE

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.

Prohibits disposal of lead-acid batteries except by delivery to dealer, authorized collection or recycling facility or permitted lead smelter. Requires person who sells new lead-acid battery to accept used lead-acid battery **of same type** for trade-in. Provides civil penalties for violation. Requires Department of Environmental Quality to study recycling of such batteries and report to Sixty-sixth Legislative Assembly.

Becomes operative January 1, 1990.

A BILL FOR AN ACT

Relating to lead-acid batteries; creating new provisions; and amending ORS 459.995.

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

SECTION 1. Sections 2 to 6 of this Act are added to and made a part of ORS 459.005 to 459.385.

SECTION 2. (1) No person may place a used lead-acid battery in mixed municipal solid waste, discard or otherwise dispose of a lead-acid battery in this state except by delivery to a lead-acid battery retailer or wholesaler, to a collection or recycling facility authorized under ORS 459.005 to 459.385 or to a secondary lead smelter permitted by a state or the United States Environmental Protection Agency.

(2) No lead-acid battery retailer shall dispose of a used lead-acid battery in this state except by delivery to the agent of a battery wholesaler, to a battery manufacturer for delivery to a secondary lead smelter permitted by a state or the United States Environmental Protection Agency, to a collection or recycling facility authorized under ORS 459.005 to 459.385 or to a secondary lead smelter permitted by a state or the United States Environmental Protection Agency.

SECTION 3. A person selling lead-acid batteries at retail or offering lead-acid batteries for retail sale in the State of Oregon shall accept after December 31, 1993, used lead-acid batteries of the same type purchased from a customer at the point of transfer in a quantity at least equal to the number of new batteries purchased, if offered by the customer.

SECTION 4. (1) Any person selling new lead-acid batteries at wholesale shall accept used lead-acid batteries of the same type from any customer at the point of transfer in a quantity at least equal to the number of new batteries purchased, if offered by a customer.

(2) A person accepting batteries in transfer from an automotive battery retailer shall be allowed up to 90 days to remove batteries from the retail point of collection.

SECTION 5. (1) Any person selling new lead-acid batteries shall post in each area where lead-acid batteries are sold a clearly visible and legible sign stating that:

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

(a) Lead-acid batteries cannot be disposed of in household solid waste or mixed municipal waste, but must be recycled; and

(b) The dealer will accept used lead-acid batteries of the same type sold by the dealer.

(2) If a person selling new lead-acid batteries requires a customer to pay a fee for a new lead-acid battery if the customer does not provide a used lead-acid battery for trade-in, the dealer shall also include on or near the sign required under subsection (1) of this section a statement advising potential customers that the dealer charges a fee if the customer does not provide a used lead-acid battery for trade-in.

SECTION 6. Notwithstanding section 3 of this 1989 Act, any person selling new lead-acid batteries shall accept at least one used lead-acid battery from any person, if offered.

SECTION 7. ORS 459.995 is amended to read:

459.995. (1) In addition to any other penalty provided by law: [,]

(a) Any person who violates ORS 459.205, 459.270 or the provisions of ORS 459.180, 459.188, 459.190, 459.195, 459.710 or 459.715 or any rule or order of the Environmental Quality Commission pertaining to the disposal, collection, storage or reuse or recycling of solid wastes, as defined by ORS 459.005, shall incur a civil penalty not to exceed $500 a day for each day of the violation.

(b) Any person who violates the provisions of sections 2 to 6 of this 1989 Act shall incur a civil penalty not to exceed $500 for each violation. Each battery that is disposed of improperly shall be a separate violation. Each day an establishment fails to post the notice required under section 5 of this 1989 Act shall be a separate violation.

(2) The civil penalty authorized by subsection (1) of this section shall be established, imposed, collected and appealed in the same manner as civil penalties are established, imposed and collected under ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and ORS chapter 468.

SECTION 8. The Department of Environmental Quality shall study the recycling of lead-acid batteries in Oregon. The study shall determine the rate of recycling of lead-acid batteries and methods to facilitate recycling of lead-acid batteries in Oregon. The department shall report its findings and recommendations to the Sixty-sixth Legislative Assembly.

SECTION 9. Sections 1 to 6 of this Act and the amendments to ORS 459.995 by section 7 of this Act first become operative January 1, 1990.

SECTION 10. Section 6 of this Act is repealed December 31, 1993.

A-Engrossed
House Bill 3445

Ordered by the House June 21
Including House Amendments dated June 21

Sponsored by Representative GILMOUR

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.

Declares state policy to prevent animal wastes from discharging into waters of state. Defines "confined animal feeding operation." **Provides for establishment of fee by Department of Agriculture, not to exceed $25, for operating confined animal feeding operation. Directs assessment of $500 civil penalty in addition to other penalties director may assess for operation without permit.** [*Directs Environmental Quality Commission to confer with State Department of Agriculture and revise permit fees for such feeding operations. Prohibits construction, installation or operation of such operations without permit.*]

Prescribes operative date of January 1, 1990.

A BILL FOR AN ACT

Relating to pollution control; creating new provisions; and amending ORS 468.740.

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

SECTION 1. Sections 2 to 6 of this Act are added to and made a part of ORS chapter 468.

SECTION 2. The Legislative Assembly declares that it is the policy of the State of Oregon to protect the quality of the waters of this state by preventing animal wastes from discharging into the waters of the state.

SECTION 3. As used in sections 2 to 6 of this 1989 Act, "confined animal feeding operation" means the concentrated confined feeding or holding of animals or poultry, including, but not limited to horse, cattle, sheep or swine feeding areas, dairy confinement areas, slaughterhouse or shipping terminal holding pens, poultry and egg production facilities and fur farms, in buildings or in pens or lots where the surface has been prepared with concrete, rock or fibrous material to support animals in wet weather or which have waste water treatment works.

SECTION 4. (1) All permits for confined animal feeding operations issued under ORS 468.740 shall specify the maximum number of animals that may be housed at the facility.

(2) The maximum number of animals specified in a permit shall be determined for each facility on the basis of the capacity of the particular confined animal feeding operation to contain, treat, hold and dispose of wastes as necessary to comply with all conditions of the permit.

(3) Any confined animal feeding operation that exceeds by more than 10 percent or 25 animals, whichever is greater, the maximum number of animals specified in its permit shall be considered in violation of the permit and the owner or operator shall be subject to enforcement action under ORS 468.140 or 468.992.

SECTION 5. (1) Any person operating a confined animal feeding operation shall pay a fee established under section 9 of this 1989 Act.

(2) A fee shall not be assessed to nor a permit required of confined animal feeding operations

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

of four months or less duration or that do not have waste water control facilities. A confined animal feeding operation in this category shall be subject to all requirements of ORS chapter 468 if found to be discharging wastes into the waters of the state without a permit or in violation of a permit.

(3) In order to recover costs associated with increased monitoring and inspection, for the three years after a confined animal feeding operation owner or operator is assessed a civil penalty for violation of any provisions of ORS chapter 468, any rule adopted under ORS chapter 468 or any permit condition, the owner or operator shall pay an annual inspection fee of $1,000 rather than the fee established under section 9 of this 1989 Act and shall have an annual inspection for each of the three years. An owner or operator shall be considered to have been assessed a civil penalty only if the penalty has been adjudicated pursuant to ORS 468.135.

(4) The department may impose on the permit required for a confined animal feeding operation only those conditions necessary to assure that wastes are disposed of in a manner that does not cause pollution of the surface and ground waters of the state.

(5) A permit for a confined animal feeding operation shall not expire, but may be revoked or modified by the director or may be terminated upon request by the permit holder. Each confined animal feeding operation under permit may be inspected by the State Department of Agriculture.

SECTION 6. Any owner or operator of a confined animal feeding operation who has not applied for or does not have a permit required by ORS 468.740 shall be assessed a civil penalty of $500 in addition to other penalties that the director may assess.

SECTION 7. ORS 468.740 is amended to read:

468.740. **(1) Except as provided in section 5 of this 1989 Act,** without first obtaining a permit from the director, which permit shall specify applicable effluent limitations and shall not exceed five years in duration, no person shall:

[*(1)*] **(a)** Discharge any wastes into the waters of the state from any industrial or commercial establishment or activity or any disposal system.

[*(2)*] **(b)** Construct, install, modify or operate any disposal system or part thereof or any extension or addition thereto.

[*(3)*] **(c)** Increase in volume or strength any wastes in excess of the permissive discharges specified under an existing permit.

[*(4)*] **(d)** Construct, install, operate or conduct any industrial, commercial, **confined animal feeding operation** or other establishment or activity or any extension or modification thereof or addition thereto, the operation or conduct of which would cause an increase in the discharge of wastes into the waters of the state or which would otherwise alter the physical, chemical or biological properties of any waters of the state in any manner not already lawfully authorized.

[*(5)*] **(e)** Construct or use any new outlet for the discharge of any wastes into the waters of the state.

(2) As used in this section, "confined animal feeding operation" has the meaning given in section 3 of this 1989 Act.

SECTION 8. Section 9 of this Act is added to and made a part of ORS chapter 561.

SECTION 9. (1) The State Department of Agriculture by rule shall establish a schedule of annual fees, not to exceed $25, to be paid under section 5 of this 1989 Act by any persons operating a confined animal feeding operation.

(2) As used in this section, "confined animal feeding operation" has the meaning given in section 3 of this 1989 Act.

SECTION 10. Except as provided in section 11 of this Act, this Act does not become operative until January 1, 1990.

SECTION 11. The State Department of Agriculture and the Department of Environmental Quality may take any action before the operative date of this Act that is necessary to enable either department to exercise, on and after the operative date of this Act, all of the duties, functions and powers conferred on the State Department of Agriculture and the Department of Environmental Quality by this Act.

B-Engrossed
House Bill 3456

Ordered by the House June 30
Including House Amendments dated April 21 and June 30

Sponsored by Representatives RIJKEN, AGRONS, BUNN, CAMPBELL, CEASE, CLARK, DIX, GERSHON, GILMOUR, HANLON, HANNEMAN, HOSTICKA, HUGO, JOHNSON, D. JONES, D.E. JONES, KEISLING, MANNIX, MARKHAM, MILLER, NELSON, PARKINSON, PETERSON, PICKARD, REPINE, ROBERTS, SAYLER, SHIPRACK, SOWA, WEHAGE, YOUNG, Senators BRENNEMAN, CEASE, DUKES, HAMBY, HANNON, HOUCK, JOLIN, PHILLIPS, ROBERTS, SPRINGER, THORNE, TIMMS, Senator BRADBURY (at the request of Oregon Petroleum Marketers Association, Oil Heat Institute of Oregon)

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.

Creates Oil Heat Commission. Prescribes membership, duties and authority of commission. Allows commission to assess oil marketers for expenses of commission. Establishes Heating Oil Education and Conservation Account to fund energy conservation programs including subsidies to low income oil heat users. Requires oil marketers to report monthly to commission. Prescribes penalties. Establishes Heating Oil Remedial Action Account to fund environmental cleanup related to heating oil releases. Allows payment of remedial action costs from remedial action account. Provides procedures for remedial action and for appeals. Appropriates moneys in accounts to commission for purposes of Act. **Establishes expenditure limitations for accounts.** Allows commission to regulate persons who provide remedial action on heating oil tanks.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to Oil Heat Commission; creating new provisions; amending ORS 466.705, 466.750 and 466.760; appropriating money; limiting expenditures; and declaring an emergency.

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

SECTION 1. As used in sections 1 to 40 of this Act, unless the context requires otherwise:

(1) "Administrator" means the administrator of the Oil Heat Commission.

(2) "Building" means any oil space heated building with human habitation, except a building owned by a government agency.

(3) "Commission" means the Oil Heat Commission.

(4) "Heating oil" means Number 1 or 2 heating oil that is delivered to a tank and used to create heat. It does not include any petroleum products that are subject to the requirements of section 3, Article IX of the Oregon Constitution, ORS 319.020 or 319.530.

(5) "Heating oil tank" means any one or combination of above ground or underground tanks and above ground or underground pipes connected to the tank, which is used to contain heating oil used for space heating a building with human habitation or water heating not used for commercial processing.

(6) "Oil marketer" means a person who supplies heating oil at retail in this state.

(7) "Person" has the meaning given that term in ORS 174.100.

(8) "Release" means any spilling, leaking, emitting, escaping or leaching into the environment.

(9)(a) "Remedial action" means those actions consistent with a permanent remedial action taken instead of or in addition to removal actions, in the event of the release of heating oil from a heating

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

oil tank into the environment, to prevent or minimize the release of heating oil from a heating oil tank so that it does not migrate to cause substantial danger to present or future public health, safety, welfare or the environment. "Remedial action" includes, but is not limited to:

(A) Such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches or ditches, clay cover, neutralization, cleanup of released heating oil from a heating oil tank and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, collection of leachate and runoff, onsite treatment or incineration, provision of alternative drinking and household water supplies, and any monitoring reasonably required to assure that such actions protect the public health, safety, welfare and the environment.

(B) Offsite transport and offsite storage, treatment, destruction or secure disposition of heating oil released from a heating oil tank and associated contaminated materials.

(C) Such actions as may be necessary to monitor, assess, evaluate or investigate a release of heating oil from a heating oil tank.

(b) "Remedial action" does not include replacement or installation of a new heating oil tank.

(10) "Remedial action costs" means reasonable costs which are attributable to or associated with a removal or remedial action in accordance with the standards set forth in ORS 466.573 and rules adopted pursuant to ORS 466.553 (2), including, but not limited to, the costs of administration, investigation, legal or enforcement activities, contracts and health studies.

(11)(a) "Removal" means:

(A) The cleanup or removal from the environment of heating oil released from a heating oil tank;

(B) Such actions as may be necessary in the event of a release of heating oil from a heating oil tank into the environment;

(C) Such actions as may be necessary to monitor, assess and evaluate the release of heating oil from a heating oil tank;

(D) The disposal of removed material; or

(E) The taking of such other actions as may be necessary to prevent, minimize or mitigate damage to the public health, safety, welfare or to the environment, which may otherwise result from a release of heating oil from a heating oil tank.

(b) "Removal" also includes, but is not limited to, security fencing or other measures to limit access, provisions of alternative drinking and household water supplies, temporary evacuation and housing of threatened individuals and action taken under ORS 466.570 relating to a release of heating oil from a heating oil tank.

SECTION 2. Sections 1 to 40 of this Act may be cited as the Oil Heat Commission Act.

SECTION 3. The purpose of the Oil Heat Commission is to provide for economic development of this state, to promote the health, safety and welfare of the people of this state and to stabilize and protect the oil heat industry of this state. To carry out these purposes, the commission may provide:

(1) For research to develop and discover technologically advanced and more efficient oil heat equipment and to disseminate reliable information founded upon that and otherwise available research.

(2) For programs to encourage energy conservation among oil heat users through home weatherization and through developing and disseminating educational materials regarding energy conservation. The development of such programs shall be coordinated with the Department of Energy.

(3) For programs to encourage energy conservation among oil heat users through the use of energy efficient oil heat equipment.

(4) For programs to offer financial assistance to low income oil heat users to help defray the cost of fuel, modern equipment installation and weatherization expenses.

(5) Programs for qualified educational training of oil heat industry employes with regard to the maintenance of oil heating equipment to insure proper installation for safe and efficient operation, and disseminate information regarding the safe and efficient operation and maintenance of oil heat equipment.

(6) Programs for training oil marketers' drivers, delivery personnel and inventory staff, for the safe, efficient transfer of heating oil from a point of wholesale to the end user to avoid waste and contamination and, in the event of a release, to properly contain and clean up the affected environment.

(7) For the establishment and administration of a Heating Oil Remedial Action Account, as established in section 27 of this Act, to pay certain costs associated with remedial action.

SECTION 4. (1) There is established an Oil Heat Commission consisting of seven members appointed by the Governor. Five members shall be from industry and two members shall be from the public. At least one public member shall be 60 years of age or older.

(2) The term of office of each member is three years, but a member serves at the pleasure of the Governor. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(3) One industry member of the commission shall be appointed from each of the congressional districts referred to in ORS 188.130. In making appointments of industry members to the commission, the Governor may take into consideration any nominations or recommendations made by oil marketers or oil marketers' organizations. Each member shall continue in office until a successor is appointed.

(4) All appointments of members to the commission by the Governor are subject to confirmation by the Senate pursuant to section 4, Article III, Oregon Constitution.

SECTION 5. (1) Members of the commission shall have the following qualifications which shall continue during the term of office:

(a) Each shall be a citizen of the United States.

(b) Each shall be a bona fide resident of this state.

(2) The industry members of the commission shall have the following qualifications which shall continue during the term of office:

(a) An active interest in the development of the oil heat industry in Oregon, demonstrated through membership in an oil marketers' organization, public service or otherwise.

(b) Currently and for at least five years previously, operate as an oil marketer or be employed by an oil marketer in this state.

(3) The public members of the commission shall not be oil marketers or employed by an oil marketer.

SECTION 6. The Director of the Department of Energy and the Director of the Department of Environmental Quality, or the directors' representatives, shall be ex officio members of the commission, without right to vote. Sections 4 and 5 of this Act do not apply to ex officio members.

SECTION 7. The Director of the Department of Environmental Quality shall provide advice and consultation to the commission to clarify or carry out the purposes of sections 1 to 40 of this Act

related to remedial action.

SECTION 8. The Director of the Department of Energy shall provide advice and consultation to the commission to clarify or carry out the purposes of sections 1 to 40 of this Act related to energy conservation and education.

SECTION 9. The administrator shall immediately declare the office of any appointed member of the commission vacant whenever the administrator finds that the member has ceased to meet the qualifications of section 5 of this Act or is unable to perform the duties of office.

SECTION 10. Members, officers and employes of the commission shall receive their actual and necessary travel and other expenses incurred in the performance of their official duties according to ORS 292.495.

SECTION 11. The commission shall establish a meeting place anywhere within this state, but the selection of the location shall be guided by consideration for the convenience of the majority of those most likely to have business with the commission or be affected by its acts.

SECTION 12. The commission shall meet as soon as practicable for the purpose of organizing. The commission shall elect a chairperson from among its members. It shall transact such other business as is necessary to start the work of the commission. Thereafter, the commission shall meet regularly once each six months and at other times as called by the chairperson. The chairperson may call special meetings at any time and shall call a special meeting when requested by two or more members of the commission.

SECTION 13. The commission may:

(1) Provide funds or grants for scientific research to discover and develop the commercial value of heating oil.

(2) Disseminate reliable information founded upon the research undertaken under this Act showing the value of heating oil for any purpose for which heating oil may be found useful and profitable.

(3) Study state and federal legislation, with respect to matters concerning the effect on the oil heat industry, and represent and protect the interests of the oil heat industry with respect to any legislation or proposed legislation or executive action which may affect that industry.

(4) Sue and be sued as a commission, without individual liability for acts of the commission within the scope of the powers conferred upon it by sections 1 to 40 of this Act.

(5) Enter into contracts which it considers appropriate to the carrying out of the purposes of the commission as authorized by sections 1 to 40 of this Act.

(6) Make grants to research agencies for financing special or emergency studies or for the purchase or acquisition of facilities necessary to carry out the purposes of the commission as authorized by sections 1 to 40 of this Act.

(7) Cooperate with any local, state or national organization or agency engaged in work or activities similar to that of the commission and enter into contracts with such organizations or agencies for carrying on joint programs.

(8) Act jointly and in cooperation with the Federal Government or any agency thereof in the administration of any program of the government or a governmental agency considered by the commission to be beneficial to the heating oil industry of this state and expend funds in connection therewith, provided that such program is compatible with the powers conferred by sections 1 to 40 of this Act.

(9) Prosecute, in the name of the State of Oregon, any suit or action for the collection of the

assessment provided for in section 19 of this Act.

(10) Enter into contracts for advertising oil heat and for developing new markets through such advertising.

SECTION 14. Upon requisition by the commission, any state agency or officer may furnish services, facilities and materials to the commission under ORS 283.110.

SECTION 15. (1) Upon request by the commission, the Department of General Services may:

(a) Purchase or otherwise provide for the acquisition or furnishing of supplies, materials, equipment and services other than personal required by the commission and for the furnishing of professional services rendered by independent contractors with this state to the commission under ORS 279.710 to 279.748.

(b) Provide for the furnishing of printing and multiple duplication work to the commission under ORS 282.010 to 282.050, except that printing and binding which advertises or promotes products, agricultural or manufactured, shall not be considered state printing.

(c) Provide for the furnishing of services relating to the disposition of surplus, obsolete or unused supplies, materials and equipment to the commission under ORS 283.230.

(d) Provide for the furnishing of central telephone service and central mail or messenger services to the commission under ORS 283.140.

(e) Provide for the furnishing of central repair and maintenance services to the commission under ORS 283.150.

(f) Provide for the furnishing of clerical and stenographic pool services to the commission under ORS 283.160.

(g) Provide for the furnishing of motor vehicles for use by members, officers and employes of the commission under ORS 283.305 to 283.350.

(2) The commission shall pay to the Department of General Services such amount for services performed by the department under subsection (1) of this section as the department determines is adequate to reimburse it for the costs necessary to perform such services.

(3) Upon request by the commission, the Executive Department may design and supervise the installation of an accounting system for the commission. The commission shall pay to the Executive Department such amount for services performed by the department under this subsection as the department determines is adequate to reimburse it for the costs necessary to perform such services.

SECTION 16. (1) The Executive Department, upon request of the commission, shall provide an administrator and other staff for project oversight and the day-to-day operation of the Oil Heat Commission, including scheduling meetings, providing public notice of meetings and other commission activities and keeping records of commission activities.

(2) The commission shall pay to the Executive Department such amount for staff provided under subsection (1) of this section as the Executive Department determines is adequate to pay for the staff provided.

SECTION 17. Except as otherwise provided in sections 1 to 40 of this Act, ORS 291.026, 291.202 to 291.222, 291.232 to 291.260, 291.322 to 291.336, 292.210 to 292.250, 293.260 to 293.280, 293.295 to 293.346 and 293.590 to 293.640 do not apply to the commission or to the administration and enforcement of sections 1 to 40 of this Act.

SECTION 18. The commission may accept grants, donations or gifts, from any source for expenditures for any purposes consistent with the powers conferred on the commission.

SECTION 19. (1) The commission may collect an assessment, the amount of which the commis-

sion shall determine, from each oil marketer based upon the gross revenue derived from the business of being an oil marketer. No assessment shall apply to any gross revenues derived prior to the date the commission order assessing such assessment was made.

(2) The amount of the assessment provided for in subsection (1) of this section shall not exceed one and one-quarter percent of the gross revenue derived from the business of being an oil marketer, excluding gross revenue derived from equipment sales or service or other unrelated products or services.

(3) The amount of the assessment provided for in subsection (1) of this section shall be determined so that the amount of revenues collected will not substantially exceed the amount of the estimated expenditures stated in the final budget prepared by the commission.

(4) Moneys collected under this section shall be deposited in the Heating Oil Education and Conservation Account established under section 26 of this Act.

SECTION 20. (1) Each oil marketer shall make reports each month to the commission on forms prescribed by the commission.

(2) No oil marketer shall fail to make the report or shall make the report falsely.

(3) The commission shall fix dates upon which reports shall be made each month by all oil marketers. Upon such dates, all assessment moneys shall be turned over to the commission which shall issue receipts therefor and make suitable records thereof.

SECTION 21. (1) Each person required to pay an assessment under sections 1 to 40 of this Act shall keep accurate records sufficient to enable the commission to determine by inspection and audit the accuracy of assessments paid or due to the commission and of reports made or due to the commission.

(2) The commission may adopt rules establishing what records oil marketers shall keep to comply with subsection (1) of this section.

(3) The commission, or any person authorized by the commission, may inspect and audit the records referred to in subsection (1) of this section for the purpose referred to in subsection (1) of this section.

(4) No person shall refuse to permit an inspection and audit under subsection (3) of this section during business hours.

SECTION 22. In addition to the penalties prescribed in section 40 of this Act, any person who delays transmittal of funds beyond the time set by the commission shall pay five percent of the amount due for the first month of delay and one percent of the amount due for each month of delay thereafter.

SECTION 23. If any oil marketer, or other person responsible for transmittal of the assessment moneys required by section 19 of this Act to the commission, wilfully refuses to turn over assessment moneys collected, the oil marketer shall pay an additional fine equal to twice the amount of the assessment moneys so withheld.

SECTION 24. (1) The commission, by order, may cancel an assessment which has been delinquent for five years or more, if it determines that:

(a) The amount of the assessment is less than $1 and that further collection effort or expense does not justify the collection thereof; or

(b) The assessment is wholly uncollectible.

(2) The order shall contain adequate information as to why the assessment cannot be collected.

SECTION 25. The commission shall keep accurate books, records and accounts of all its

dealings, which shall be open to inspection and audit by the Secretary of State.

SECTION 26. (1) The Heating Oil Education and Conservation Account is established separate and distinct from the General Fund in the State Treasury.

(2) All moneys collected under section 19 of this Act shall be deposited in the State Treasury and credited to the Heating Oil Education and Conservation Account.

(3) The State Treasurer may invest and reinvest moneys in the account in the manner provided by law.

(4) The moneys in the account are continuously appropriated to the commission to be used for the following purposes:

(a) To pay the expenses of the commission; and

(b) For funding programs related to oil heating and energy conservation as set forth in subsections (1) to (6) of section 3 of this Act.

(5) The commission by rule shall establish a maximum dollar limit for the account for which assessments may be collected taking into consideration the purposes of the account under subsection (4) of this section.

SECTION 27. (1) The Heating Oil Remedial Action Account is established separate and distinct from the General Fund in the State Treasury.

(2) The assessments collected under section 29 of this Act shall be deposited into the State Treasury and credited to the Heating Oil Remedial Action Account.

(3) The State Treasurer may invest and reinvest moneys in the account in the manner provided by law.

(4) The moneys in the account are appropriated continuously to the commission to be used as provided in subsection (5) of this section.

(5) Moneys in the account may be used by the commission for the following purposes:

(a) Payment of remedial action costs; and

(b) Payment of the costs of administering the account.

(6) The commission by rule shall establish a maximum dollar limit for the fund for which assessments may be collected taking into account the purposes of the account under subsection (5) of this section.

SECTION 28. In administering the Heating Oil Remedial Action Account or the Heating Oil Education and Conservation Account, the commission may:

(1) Determine, pay and reject claims for remedial action costs.

(2) Disseminate reliable information about avoiding and responding to releases of heating oil from heating oil tanks.

(3) Enter into contracts which it considers appropriate to administer the accounts, including entering into contracts with adjusters to adjust claims for remedial action costs.

(4) Appoint subordinate officers and employes of the commission and prescribe their duties and fix their compensation.

(5) Cooperate with any local, state or national organization or agencies, whether created by law or voluntary, engaged in work or activities similar to that of the commission and enter into contracts with such organizations or agencies for carrying on joint programs.

(6) Act jointly and in cooperation with the Federal Government or any agency thereof in the administration of any program of the government or a governmental agency considered by the commission to relate to administration of the fund and expend funds in connection therewith, pro-

vided that such program is compatible with the powers conferred by sections 1 to 40 of this Act.

(7) Prosecute, in the name of the State of Oregon, any suit or action for the collection of the assessment provided for in section 29 of this Act.

SECTION 29. (1) In addition to any other assessment collected by the commission, the commission may collect an assessment of which the commission shall determine the amount assessed each oil marketer based upon the gross revenue derived from the business of being an oil marketer, excluding gross revenue derived from equipment sales or service or other unrelated products or services. No assessment shall apply to any gross revenues derived prior to the date the commission order assessing such assessment was made.

(2) The amount of the assessment provided for in subsection (1) of this section shall not exceed one and one-quarter percent of the gross revenue derived from the business of being an oil marketer.

(3) Moneys collected under this section shall be deposited in the Heating Oil Remedial Action Account established under section 27 of this Act.

SECTION 30. Notwithstanding any provision of section 29 of this Act, for the first year the commission collects the assessment under section 29 of this Act, the assessment shall be one and one-quarter percent of the gross revenue derived from the business of being an oil marketer.

SECTION 31. (1) Any person or the Department of Environmental Quality who incurs any remedial action costs may give written notice of claim to the commission within 20 days after the remedial action costs are incurred or as soon thereafter as is reasonably possible.

(2) A person who is responsible for remedial action but who is unable to pay in advance the remedial action costs may apply to the commission for certification that the remedial action costs incurred qualify for reimbursement under section 34 of this Act. The commission shall pay for such costs upon completion of the remedial action and compliance with the requirements of section 33 of this Act.

SECTION 32. The commission, upon receipt of a notice of claim, will furnish to the claimant a form for filing a proof of the remedial action costs incurred.

SECTION 33. (1) Written proof of the remedial action costs must be filed with the commission within 90 days after the date the remedial action costs are incurred. Failure to furnish proof within the time required shall not invalidate or reduce any claim if it was not reasonably possible to give proof within such time, provided proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required.

(2) No person shall wilfully conceal or misrepresent any material fact or circumstances concerning a claim for or proof of remedial action costs.

(3) A violation of subsection (2) of this section shall be a basis for a rejection of a claim for remedial action costs.

SECTION 34. (1) Subject to section 38 of this Act, claims for remedial action costs payable from the Heating Oil Remedial Action Account shall be determined and shall be paid, in full or in part, or rejected within 60 days of receipt of due written proof of remedial action costs.

(2) The commission may extend by up to 30 days the time provided in subsection (1) for determining, paying or rejecting claims by giving notice of the extension to the person seeking the remedial action costs.

SECTION 35. Any person who has complied with section 33 of this Act, but has received less than the full amount of the claim for reasons other than provided in section 38 of this Act, may seek

up to the full amount of the claim by filing a demand for a hearing with the commission. The demand shall identify the name and address of the claimant, the date proof of the remedial action costs was filed and the date of the determination paying the claim, in full or in part, or rejecting the claim. The demand for a hearing must be filed within 30 days of the determination paying the claim, in full or in part, or rejecting the claim.

SECTION 36. (1) If timely demand for a hearing is filed, the commission shall hold a hearing on the order as provided by ORS 183.310 to 183.550. In the absence of a timely demand for a hearing, no person shall be entitled to judicial review of the determination.

(2) After the hearing, the commission shall enter a final order vacating, modifying or affirming the determination.

SECTION 37. A person aggrieved by an order of the commission which has been the subject of a timely application for hearing before the commission shall be entitled to judicial review of the order under ORS 183.310 to 183.550.

SECTION 38. Notwithstanding any other provision of sections 1 to 40 of this Act, the commission has no obligation to pay any claims for remedial action costs if the moneys in the account are insufficient to pay all of the claims for remedial action costs for which forms of written proof have been filed, but which have not yet been determined, paid or rejected. The commission may adopt rules providing for the partial payment of claims for remedial action costs whenever the moneys within the account are insufficient.

SECTION 39. The Oil Heat Commission shall adopt rules to carry out the provisions of sections 1 to 40 of this Act. The rules shall include but need not be limited to:

(1) Procedures for processing remedial action claims that assure speedy processing and payment of claims by the commission.

(2) Procedures for determining the commission's level of involvement in responding to a release in coordination with the Department of Environmental Quality and in compliance with applicable department rules.

SECTION 40. (1) Violation of any provision of sections 1 to 40 of this Act is punishable, upon conviction, by a fine of not more than $500 or by imprisonment in the county jail for not more than 90 days, or both.

(2) District and justice courts shall have concurrent jurisdiction with circuit courts in all prosecutions under sections 1 to 40 of this Act.

SECTION 41. ORS 466.705 is amended to read:

466.705. As used in ORS 466.705 to 466.835 and 466.895:

(1) "Corrective action" means remedial action taken to protect the present or future public health, safety, welfare or the environment from a release of a regulated substance. "Corrective action" includes but is not limited to:

(a) The prevention, elimination, removal, abatement, control, minimization, investigation, assessment, evaluation or monitoring of a hazard or potential hazard or threat, including migration of a regulated substance; or

(b) Transportation, storage, treatment or disposal of a regulated substance or contaminated material from a site.

(2) "Decommission" means to remove from operation an underground storage tank, including temporary or permanent removal from operation, abandonment in place or removal from the ground.

(3) "Fee" means a fixed charge or service charge.

(4) "Guarantor" means any person other than the permittee who by guaranty, insurance, letter of credit or other acceptable device, provides financial responsibility for an underground storage tank as required under ORS 466.815.

(5) "Heating oil tank" has the meaning given that term in section 1 of this 1989 Act.

[*(5)*] **(6)** "Investigation" means monitoring, surveying, testing or other information gathering.

[*(6)*] **(7)** "Local unit of government" means a city, county, special service district, metropolitan service district created under ORS chapter 268 or a political subdivision of the state.

[*(7)*] **(8)** "Oil" means gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse and any other petroleum related product or fraction thereof that is liquid at a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute.

[*(8)*] **(9)** "Owner" means the owner of an underground storage tank.

[*(9)*] **(10)** "Permittee" means the owner or a person designated by the owner who is in control of or has responsibility for the daily operation or maintenance of an underground storage tank under a permit issued pursuant to ORS 466.760.

[*(10)*] **(11)** "Person" means an individual, trust, firm, joint stock company, corporation, partnership, joint venture, consortium, association, state, municipality, commission, political subdivision of a state or any interstate body, any commercial entity and the Federal Government or any agency of the Federal Government.

[*(11)*] **(12)** "Regulated substance" means:

(a) Any substance listed by the United States Environmental Protection Agency in 40 CFR Table 302.4 pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended (P.L. 96-510 and P.L. 98-80), but not including any substance regulated as a hazardous waste under 40 CFR Part 261 and OAR 340 Division 101;

(b) Oil; or

(c) Any other substance designated by the commission under ORS 466.630.

[*(12)*] **(13)** "Release" means the discharge, deposit, injection, dumping, spilling, emitting, leaking or placing of a regulated substance from an underground storage tank into the air or into or on land or the waters of the state, other than as authorized by a permit issued under state or federal law.

[*(13)*] **(14)** "Underground storage tank" means any one or combination of tanks and underground pipes connected to the tank, used to contain an accumulation of a regulated substance, and the volume of which, including the volume of the underground pipes connected to the tank, is 10 percent or more beneath the surface of the ground.

[*(14)*] **(15)** "Waters of the state" has the meaning given that term in ORS 468.700.

SECTION 42. ORS 466.750 is amended to read:

466.750. (1) In order to safeguard the public health, safety and welfare, to protect the state's natural and biological systems, to protect the public from unlawful underground tank installation and retrofit procedures, [*and*] to assure the highest degree of leak prevention from underground storage tanks **and to insure the appropriate cleanup of oil spills and releases**, the commission may adopt a program to regulate persons providing underground storage tank installation and removal, retrofit, testing, [*and*] inspection **and remedial action** services.

(2) As part of the program established under subsection (1) of this section, the commission also may regulate persons who provide remedial action on heating oil tanks covered under sections 1 to 40 of this 1989 Act. As used in this section, "remedial action" has the meaning given that term in section 1 of this 1989 Act.

[*(2)*] **(3)** The program established under subsection (1) of this section may include a procedure to license persons who demonstrate, to the satisfaction of the department, the ability to service underground storage tanks **and heating oil tanks**. This demonstration of ability may consist of written or field examinations. The commission may establish different types of licenses for different types of demonstrations, including but not limited to:

(a) Installation, removal, retrofit and inspection of underground storage tanks;

(b) Tank integrity testing; [*and*]

(c) Installation of leak detection systems; [.]

(d) Cleanup of soil contamination resulting from spills or releases of oil from underground storage tanks; and

(e) Cleanup of soil contamination resulting from the release of heating oil from heating oil tanks under sections 1 to 40 of this 1989 Act.

[*(3)*] **(4)** The program adopted under subsection (1) of this section may allow the department after opportunity for hearing under the provisions of ORS 183.310 to 183.550, to revoke a license of any person offering underground **storage** tank **or heating oil tank** services who commits fraud or deceit in obtaining a license or who demonstrates negligence or incompetence in performing underground tank services.

[*(4)*] **(5)** The program adopted under subsection (1) of this section shall:

(a) Provide that no person may offer to perform or perform services for which a license is required under the program without such license.

(b) Establish a schedule of fees for licensing under the program. The fees shall be in an amount sufficient to cover the costs of the department in administering the program.

[*(5)*] **(6)** The following persons shall apply for an underground storage tank permit from the department:

(a) An owner of an underground storage tank currently in operation;

(b) An owner of an underground storage tank taken out of operation between January 1, 1974, and the operative date of this section; and

(c) An owner of an underground storage tank that was taken out of operation before January 1, 1974, but that still contains a regulated substance.

SECTION 43. ORS 466.760 is amended to read:

466.760. (1) No person shall install, bring into operation, operate or decommission an underground storage tank without first obtaining a permit from the department.

(2) No person shall deposit a regulated substance into an underground storage tank unless the tank is operating under a permit issued by the department.

(3) Any person who assumes ownership of an underground storage tank from a previous permittee must complete and return to the department an application for a new permit before the person begins operation of the underground storage tank under the new ownership.

(4) Any person who deposits a regulated substance into an underground storage tank or sells an underground storage tank shall notify the owner or operator of the tank of the permit requirements of this section.

(5) The following persons must sign an application for a permit submitted to the department under this section or ORS 466.750 [*(5)*] **(6)**:

(a) The owner of an underground storage tank storing a regulated substance;

(b) The owner of the real property in which an underground storage tank is located; and

(c) The proposed permittee, if a person other than the owner of the underground storage tank or the owner of the real property.

SECTION 44. Members of the commission shall be appointed within 120 days of the effective date of this Act. Notwithstanding the term of office specified by section 4 of this Act, of the members first appointed to the commission:

(1) Two shall serve for terms ending June 30, 1990.

(2) Two shall serve for terms ending June 30, 1991.

(3) Three shall serve for terms ending June 30, 1992.

SECTION 45. Notwithstanding any other law limiting expenditures of the Department of Environmental Quality, the amount of $32,504 is established for the biennium beginning July 1, 1989, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, excluding federal funds, collected or received by the Department of Environmental Quality.

SECTION 46. Notwithstanding any other law limiting expenditures of the Oil Heat Commission, the amount of $1,250,000 is established in the Heating Oil Remedial Action Account for the biennium beginning July 1, 1989, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, excluding federal funds, collected or received by the Oil Heat Commission.

SECTION 47. Notwithstanding any other law limiting expenditures of the Oil Heat Commission, the amount of $1 million is established in the Heating Oil Education and Conservation Account for the biennium beginning July 1, 1989, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, excluding federal funds, collected or received by the Oil Heat Commission.

SECTION 48. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect on its passage.

A-Engrossed
House Bill 3475

Ordered by the House June 27
Including House Amendments dated June 27

Sponsored by COMMITTEE ON ENVIRONMENT AND ENERGY (at the request of Oregon Forest Industries Council)

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.

Requires State Forester to adopt and implement programs to maintain air quality and enhance utilization of prescribed burning as forest management and protection practice. Directs [*State Board of Forestry*] **State Forester** to create advisory committee to assist State Forester. Prescribes membership and duties. **Requires report to appropriate interim committee of Legislative Assembly by January 1, 1991.**

Establishes Oregon Forest Smoke Management Account separate from General Fund. Requires State Forestry Department to collect registration fees for forest land to be burned before permit is issued. Appropriates moneys in account for smoke management program. Provides for sunset of Act on December 31, 1991.

A BILL FOR AN ACT

Relating to fire prevention; and appropriating money.

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

SECTION 1. Sections 2 to 8 of this Act are added to and made a part of ORS 477.505 to 477.550.

SECTION 2. It is the policy of the State of Oregon:

(1) To improve the management of prescribed burning as a forest management and protection practice; and

(2) To minimize emissions from prescribed burning consistent with the air quality objectives of the Federal Clean Air Act and the State of Oregon Clean Air Act Implementation Plan developed by the Department of Environmental Quality under ORS 468.305.

SECTION 3. (1) With the advice and assistance of the advisory committee established under section 4 of this 1989 Act, and subject to the review of the State Board of Forestry, the State Forester shall adopt and implement programs for meeting the objectives set forth in this 1989 Act and in ORS 477.515 (3). The programs shall include:

(a) Collection, analysis and distribution of information regarding prescribed burning and other alternative slash management techniques;

(b) Assistance to landowners wanting to evaluate alternative burning and nonburning slash management strategies and the collection of data regarding fuel conditions existing before and after slash treatment;

(c) Aerial monitoring of prescribed burning activity;

(d) Distribution of information to the Department of Environmental Quality on progress toward meeting federal and state air quality standards; and

(e) Establishment of a system to track forest burning on a geographically specific basis.

(2) The programs shall be administered by the State Forestry Department.

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

SECTION 4. (1) An advisory committee shall be created by the State Forester to advise and assist the State Forester in carrying out the programs required by ORS 477.515 and this 1989 Act. The advisory committee shall consist of five members as set forth in subsections (2) and (3) of this section.

(2) The following three members shall be appointed by the State Forester:

(a) One member representing a nonindustrial forest landowner;

(b) One member representing an industrial forest landowner; and

(c) One member representing the public.

(3) In addition to the members designated in subsection (2) of this section, representatives of the following federal agencies shall be invited to serve as members of the advisory committee:

(a) A representative of the United States Forest Service.

(b) A representative of the United States Bureau of Land Management.

(4) Each member of the advisory committee shall serve for a term of two years.

(5) Members of the advisory committee are entitled to compensation as provided in ORS 292.495.

(6) A vacancy for any cause occurring before the expiration of a term shall be filled for the unexpired term by a person appointed by the board.

(7) A staff member of the State Forestry Department shall be designated by the State Forester to serve as secretary for the committee.

SECTION 5. The advisory committee created under section 4 of this 1989 Act shall:

(1) Advise the State Forestry Department in collecting information about prescribed burning operations;

(2) Advise the State Forestry Department on the collection, analysis and distribution of information required under section 3 of this 1989 Act; and

(3) Review and comment on the report required under section 6 of this 1989 Act.

SECTION 6. On or before January 1, 1991, the State Forestry Department shall submit a report to the appropriate interim committee of the Legislative Assembly. The report shall include:

(1) An analysis of information collected under section 3 of this 1989 Act;

(2) Any recommendations that the State Forestry Department made to the Environmental Quality Commission and the State Board of Forestry relating to modifications to the smoke management plan adopted under ORS 477.515 (3); and

(3) An analysis of appropriate short-term and long-term strategies for reducing emissions from prescribed burning and for implementing alternative techniques for managing slash and woody material, if the techniques are economically feasible and environmentally sound.

SECTION 7. (1) The Oregon Forest Smoke Management Account is established separate and distinct from the General Fund in the State Treasury.

(2) The following moneys shall be credited to the Oregon Forest Smoke Management Account:

(a) Nonrefundable registration fees received by the department for Class 1 forest land under ORS 526.324 to be burned lying within the restricted area described under ORS 477.515 (3).

(b) Fees received by the State Forester for Class 1 forest land under ORS 526.324 treated by a prescription burn method under ORS 477.515 (1).

(c) Fees for federal forest land included within the restricted area under ORS 477.515 (3) to be treated by any prescription burn method subject to the provisions of the State of Oregon Clean Air Act Implementation Plan and the Federal Clean Air Act received by the State Forester.

(3) The moneys in the Oregon Forest Smoke Management Account are appropriated contin-

uously for and shall be used by the State Forester exclusively for the administration of the smoke management program approved under ORS 477.515 (3) and section 3 of this 1989 Act.

SECTION 8. (1) The department shall collect a nonrefundable registration fee for forest land to be burned lying within the restricted area described under ORS 477.515 (3).

(2) Any owner of Class 1 forest land under ORS 526.324 and any agency managing Class 1 forest land under ORS 526.324 lying within the restricted area as described in the plan required under ORS 477.515 (3) shall register with the State Forester, in accordance with rules adopted by the State Forester, the number of acres to be burned prior to December 31 of the same year.

(3) The State Forester shall establish by rule the amount of fees to be collected under this section. The fees shall not exceed:

(a) Fifty cents per acre for registration.

(b) $1.50 per acre for forest land classified as Class 1 under ORS 526.324 that has been treated by any prescription burn method authorized by the issuance of a permit under ORS 477.515 (1).

(4) Federal lands included within the restricted area under the provision of the smoke management plan approved under ORS 477.515 (3)(a) shall also be subject to the fees authorized under subsection (3) of this section for forest land to be treated by any prescription burn method subject to the provisions of the State of Oregon Clean Air Act Implementation Plan and the Federal Clean Air Act.

(5) Notwithstanding ORS 291.238, moneys collected under this section shall be deposited in the Oregon Forest Smoke Management Account established under section 7 of this 1989 Act.

SECTION 9. This Act is repealed on December 31, 1991.

A-Engrossed
House Bill 3482

Ordered by the House June 28
Including House Amendments dated June 28

Sponsored by Representatives HUGO, BAUMAN, BRIAN, BURTON, CALHOON, CARTER, CEASE, CLARK, DIX, EDMUNSON, FORD, GERSHON, HANLON, HOSTICKA, KEISLING, KOTULSKI, MANNIX, MASON, McTEAGUE, MILLER, NELSON, PETERSON, REPINE, RIJKEN, ROBERTS, SCHOON, SHIPRACK, SOWA, STEIN, WHITTY, Senators BRADBURY, BRENNEMAN, CEASE, COHEN, FAWBUSH, HAMBY, HANNON, J. HILL, L. HILL, KENNEMER, KERANS, KINTIGH, McCOY, PHILLIPS, ROBERTS, SHOEMAKER, TROW, Representative CALOURI

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.

[Establishes Resource Conservation Trust Fund, separate from General Fund. Specifies uses of interest and investment earnings from trust fund. Creates Resource Conservation Trust Fund Board. Prescribes membership, duties and powers of board. Requires Environmental Quality Commission to maintain Resource Conservation Sinking Fund. Appropriates moneys in sinking fund for purposes of Act. Requires commission to sell bonds to establish principal of Resource Conservation Trust Fund. Requires Department of Environmental Quality to develop long-range plan to determine eligible projects for funding. Imposes surcharge on disposable goods and lead-acid batteries to repay revenue bonds. Specifies exceptions. Defines "disposable goods." Prohibits use of degrading plastic flotation system in waters of state. Provides penalties.]

Creates Research Conservation Trust Fund to be credited with moneys appropriated by Legislative Assembly, grants or gifts. Creates separate subaccounts for habitat conservation and waste reduction. Establishes Habitat Conservation Trust Fund Board and Waste Reduction Trust Fund Board appointed by Governor, President of Senate and Speaker of House of Representatives to develop proposed long-range plans, review proposed funding and allocate moneys for habitat conservation and resource recycling projects. Directs State Department of Fish and Wildlife to monitor and report on financing of habitat conservation projects to appropriate legislative committee on October 1 of each year beginning 1991. Directs Department of Environmental Quality and State Department of Fish and Wildlife to provide staff to oversee, respectively, resource recycling and habitat conservation projects.

A BILL FOR AN ACT

Relating to resource conservation; and appropriating money.

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

SECTION 1. (1) The Legislative Assembly finds that by use of the powers and procedures described in this Act for the financing of land acquisition and wildlife conservation, interpretation of wildlife, related resource conservation and resource recycling issues and environmental education, the state may promote Oregon's natural values, encourage tourism related to wildlife and wild land appreciation, provide an economic incentive to effective recycling and reduce contamination of the waters of this state caused by plastic and other debris.

(2) It is the purpose of this Act to establish a Resource Conservation Trust Fund to be used to mitigate adverse environmental impacts resulting from resource extractions or improper disposal of solid waste.

SECTION 2. As used in this Act:

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

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

(3) "Eligible project" means a habitat conservation project or resource recycling project found

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

by either the Habitat Conservation Trust Fund Board or the Waste Reduction Trust Fund Board to comply with long-range plans adopted by the board.

(4) "Person" has the meaning given that term in ORS 459.005.

(5) "Habitat conservation project" includes a program that encourages the conservation of land or wildlife, wildlife interpretation or environmental education.

(6) "Resource recycling project" means a program that provides an economic incentive to effective recycling and reduces contamination of the waters of this state caused by debris.

SECTION 3. (1) There is created within the State Treasury a trust fund known as the Resource Conservation Trust Fund, separate and distinct from the General Fund. The principal of the trust fund shall be perpetual and inviolate. The fund shall be divided into two subaccounts to be managed separately:

(a) A habitat conservation subaccount; and

(b) A waste reduction subaccount.

(2) The following moneys shall be credited to the Resource Conservation Trust Fund:

(a) Such moneys as may be appropriated to the fund and separate subaccounts by the Legislative Assembly.

(b) Any grant made to the fund by any federal agency, which may be directed to a subaccount.

(c) Any other moneys acquired by gift or donation to the fund or any subaccount thereof.

(3) The State Treasurer may invest and reinvest the moneys in the fund as provided in ORS 293.701 to 293.776. Interest from the moneys deposited in the fund and earnings from investment of the moneys in the fund shall be credited to the Resource Conservation Sinking Fund created under section 4 of this Act.

SECTION 4. (1) The commission shall maintain, with the State Treasurer, a Resource Conservation Sinking Fund, separate and distinct from the General Fund. The sinking fund shall be divided into two separate subaccounts to be managed separately, one for habitat conservation purposes and one for waste reduction purposes. Moneys in the Resource Conservation Sinking Fund are continuously appropriated for the following purposes:

(a) To provide funding for projects approved by the Habitat Conservation Trust Fund Board or the Waste Reduction Trust Fund Board.

(b) To provide state matching funds for projects related to habitat conservation or resource recycling that receive funds under a federal program, including but not limited to matching funds for projects receiving funds from the federal Land and Water Conservation Fund Act of 1965, as amended, 16 U.S.C. 4601; and

(c) To provide funding for acquiring land in full fee or a less than full fee interest in property.

(2) With the approval of the commission, the moneys in the Resource Conservation Sinking Fund may be invested as provided by ORS 293.701 to 293.776. Earnings from such investment shall be credited to the Resource Conservation Sinking Fund.

(3) The Resource Conservation Sinking Fund shall consist of:

(a) Interest and investment earnings from the Resource Conservation Trust Fund created under section 3 of this Act;

(b) All moneys that the Legislative Assembly may appropriate to the fund;

(c) All interest and investment earnings on the Resource Conservation Sinking Fund; and

(d) Any moneys received from the Federal Government.

(4) The Resource Conservation Sinking Fund shall not be used for any purpose other than that

for which the fund was created. Separate subaccounts for habitat conservation and waste reduction are managed for their respective purposes as set forth in subsection (1) of this section. If a balance remains in the sinking fund after the purposes for which the fund was created have been fulfilled or after a reserve sufficient to meet all existing obligations and liabilities of the fund has been set aside, the surplus remaining may be transferred to the principal of the Resource Conservation Trust Fund at the direction of the commission.

SECTION 5. There is established the Habitat Conservation Trust Board consisting of seven members. The board shall elect one of its members as chairperson, with such duties and powers as are provided by rules of the board, and shall be comprised as follows:

(1) The Governor shall appoint five members, to include:

(a) One representative from the State Fish and Wildlife Commission;

(b) One representative from the State Parks and Recreation Advisory Council;

(c) One representative from the Oregon Tourism Council;

(d) One representative from the Natural Heritage Advisory Council; and

(e) One representative from a nonprofit conservation or environmental organization.

(2) The President of the Senate shall appoint one member who has expertise in habitat conservation.

(3) The Speaker of the House of Representatives shall appoint one member who has expertise in resource education.

(4) The term of each member shall be four years. Vacancies in office shall be filled by the appointing authority.

(5) The board shall use state agency employes with relevant expertise to provide staff support necessary for the board to carry out its duties and responsibilities under this Act.

SECTION 6. There is established the Waste Reduction Trust Fund Board consisting of seven members. The board shall elect one of its members as chairperson, with such powers and duties as are provided by rules of the board, and shall be comprised as follows:

(1) The Governor shall appoint three members, to include:

(a) One representative from local or regional government;

(b) One representative from the packaging industry; and

(c) One representative with waste hauling and recycling experience.

(2) The President of the Senate shall appoint two members, to include:

(a) One representative with recycling experience who is not a member of the waste hauling industry; and

(b) One representative with expertise in natural resource education.

(3) The Speaker of the House of Representatives shall appoint two members, to include:

(a) One representative from retail industry; and

(b) One representative from a nonprofit conservation or environmental organization.

(4) The term of each member shall be four years. Vacancies in office shall be filled by the appointing authority.

(5) The board shall use state agency employes with relevant expertise to provide staff support necessary for the board to carry out its duties and responsibilities under this Act.

SECTION 7. To aid and advise the Waste Reduction Trust Fund Board established in section 6 of this Act in the performance of its functions, the board may establish such advisory and technical committees as the board considers necessary. These committees may be continuing or tempo-

rary. The boards shall determine the representation, membership, terms and organization of the committees and shall appoint their members. The chairperson of the board is ex officio a member of each committee established by the board.

SECTION 8. To aid and advise the Habitat Conservation Trust Fund Board established in section 5 of this Act in the performance of its functions, the board may establish such advisory and technical committees as the board considers necessary. These committees may be continuing or temporary. The boards shall determine the representation, membership, terms and organization of the committees and shall appoint their members. The chairperson of the board is ex officio a member of each committee established by the board.

SECTION 9. (1) The State Department of Fish and Wildlife, jointly with the Parks and Recreation Division of the Department of Transportation, the Division of State Lands, the Tourism Division of the Economic Development Department and the three individuals selected under subsection (2) of this section, shall develop a proposed long-range plan to be adopted by the Habitat Conservation Trust Fund Board and to be used to determine the eligibility of habitat conservation projects for funding under section 16 of this Act. The plan shall include:

(a) Criteria for approving projects that reflect the resource conservation benefits to this state. Such criteria shall include, but need not be limited to, the following:

(A) Supporting projects that will increase the amount of land available for wildlife habitat and natural areas conservation.

(B) Promoting environmental education.

(C) Enhancing tourist economy while protecting the state's natural values.

(b) Requirements for applying for moneys from the habitat conservation subaccount of the Resource Conservation Sinking Fund and for obtaining necessary permits or authorizations for a proposed project.

(2) The State Fish and Wildlife Director shall select three individuals with expertise and interest in habitat conservation to assist in the development of the plan under subsection (1) of this section. One individual shall be a representative from a local or regional government.

(3) Upon completion of the proposed plan, the State Department of Fish and Wildlife shall submit the plan to the Habitat Conservation Trust Fund Board for approval.

(4) The State Department of Fish and Wildlife shall periodically monitor and annually report on the habitat conservation projects receiving financing under this Act. Such reports shall be submitted to the appropriate legislative committee on October 1 of each year, beginning in 1991.

SECTION 10. (1) The Department of Environmental Quality shall develop a proposed long-range plan to be adopted by the Waste Reduction Trust Fund Board and to be used to determine the eligibility of resource recycling projects for funding under section 17 of this Act. In developing the plan, the department shall consider all relevant data. The plan shall include:

(a) Criteria for approving projects that reflect the resource recycling benefits to the state. Such criteria shall include, but need not be limited to, the following:

(A) Promoting environmental and resource recycling education.

(B) Establishing effective recycling systems in the state.

(C) Using the educational resources available at Oregon institutions of higher education.

(b) Requirements for applying for moneys from the waste reduction subaccount of the Resource Conservation Sinking Fund and for obtaining necessary permits or authorizations for a proposed project.

(2) In developing the proposed waste reduction plan, the department shall consult with interested organizations and local and regional governments. Upon completion of the proposed plan, the Department of Environmental Quality shall submit the plan to the Waste Reduction Trust Fund Board for approval.

SECTION 11. The Habitat Conservation Trust Fund Board shall review the proposed plan submitted under section 9 of this Act and approve the plan or return the plan to the department for changes in accordance with the board's suggestions or approve the plan with changes adopted by the board. The plan shall provide the greatest possible opportunity to achieve the goals of the program.

SECTION 12. The Waste Reduction Trust Fund Board shall review the proposed plan submitted under section 10 of this Act and approve the plan or return it to the department for changes in accordance with the board's suggestions or approve the plan with changes adopted by the board. The plan shall provide the greatest possible opportunity to achieve the goals of the program.

SECTION 13. (1) Beginning on January 1, 1992, the Habitat Conservation Trust Fund Board shall allocate moneys according to the plan approved under section 11 of this Act.

(2) The Habitat Conservation Trust Fund Board shall allocate up to 50 percent of the moneys available under section 15 of this Act for habitat conservation projects and purposes, in accordance with the plan approved under section 11 of this Act.

SECTION 14. (1) Beginning on January 1, 1992, the Waste Reduction Trust Fund Board shall allocate moneys according to the plan approved under section 12 of this Act.

(2) The Waste Reduction Trust Fund Board shall allocate up to 50 percent of the moneys available under section 15 of this Act for resource recycling projects and purposes, in accordance with the plan approved under section 10 of this Act.

SECTION 15. The Environmental Quality Commission shall determine annually the amount of moneys that will be available in the coming year, based on interest and other earnings, gifts and grants and after administrative expenses are deducted, for funding habitat and waste reduction programs. The commission shall inform the Habitat Conservation Trust Fund Board and the Waste Reduction Trust Fund Board of the amount of moneys available for conservation projects.

SECTION 16. In allocating moneys from the Resource Conservation Sinking Fund, the Habitat Conservation Trust Fund Board shall allocate the moneys deposited to the sinking fund habitat conservation subaccount, for one-year or multiyear programs to:

(1) Identify and acquire native ecosystems, natural communities, migration corridors, fish and wildlife habitats, wetland and riparian systems and natural heritage conservation areas under ORS 273.563 to 273.591 and habitat for nongame, threatened and endangered species identified by state agencies.

(2) Match funding at a ratio of two dollars of trust fund moneys for each dollar contributed by a qualifying entity for regional and local governments and nonprofit organizations of tax-exempt status under section 501(c)3 of the Internal Revenue Code, for land acquisition and capital expenditures in the conservation of parks, nature preserves, wildlife habitats, open space, conservation easements, hiking trails and public access easements.

(3) Provide funding for interpretive facilities and promotional material relating to the appreciation and conservation of land, water, wildlife, native plants and natural communities to:

(a) Public agencies on a direct grant basis; and

(b) Private interests on the basis of one dollar of trust fund moneys for every two dollars con-

tributed by a private interest.

SECTION 17. In allocating moneys from the Resource Conservation Sinking Fund, the Waste Reduction Trust Fund Board shall allocate the moneys deposited to the sinking fund waste reduction subaccount, for one-year or multiyear programs to:

(1) Finance projects to develop secondary markets for recycled products in Oregon.

(2) Fund grants at a ratio of a two dollars of trust fund moneys for each dollar contributed by an educational institution to Oregon educational institutions for research development and initiation of resource conservation programs to facilitate the reduction or reuse of solid waste for productive purposes.

(3) Facilitate and stabilize recycling efforts for depots and processing centers and the collection of recyclables through annual waste diversion credits, administered by the Environmental Quality Commission.

(4) Diversion credits for litter cleanup activities if the waste is recycled and participants are educated about resource recycling and recovery.

(5) Help finance resource recycling projects determined eligible for funding by the needs assessment provided by the Environmental Quality Commission.

(6) Education and promotion activities related to recycling.

SECTION 18. (1) Any person may nominate a habitat conservation project for approval by the Habitat Conservation Trust Fund Board under section 13 of this Act.

(2) A nomination submitted under subsection (1) of this section shall be filed in the manner, be in the form and contain the information required by the board.

(3) Based upon criteria included in the long-range plan adopted under section 11 of this Act, within 90 days after the board receives a nomination under subsection (1) of this section, the board shall either:

(a) Approve the proposal and provide the requested funding for the project; or

(b) Deny the proposal.

(4) The Habitat Conservation Trust Fund Board shall approve for implementation only those habitat conservation projects that meet the criteria established in the long-range plan approved by the board under section 11 of this Act.

(5) If the Habitat Conservation Trust Fund Board approves a project under this section that requires the applicant to obtain a permit or license from a local, state or federal agency or governing body, the board shall not disburse any funds to the applicant until the applicant presents evidence that the agency has granted the permit or license.

SECTION 19. (1) Any person may nominate a resource recycling project for approval by the Waste Reduction Trust Fund Board under section 12 of this Act.

(2) A nomination submitted under subsection (1) of this section shall be filed in the manner, be in the form and contain the information required by the board.

(3) Based upon criteria included in the long-range plan adopted under section 12 of this Act, within 90 days after the board receives a nomination under subsection (1) of this section, the board shall either:

(a) Approve the proposal and provide the requested funding for the project; or

(b) Deny the proposal.

(4) The Waste Reduction Trust Fund Board shall approve for implementation only the resource recycling projects that meet the criteria established in the long-range plan approved by the board

under section 12 of this Act.

SECTION 20. (1) In accordance with the provisions of this Act, the Parks and Recreation Division of the Department of Transportation, the State Department of Fish and Wildlife and the Division of State Lands, acting for and on behalf of the state as its duly authorized agency, may acquire, construct and hold, in whole or in part, any lands, buildings, easements, water and air rights, improvements to lands and buildings and capital equipment to be located permanently or used exclusively on such lands or in such buildings, which are considered necessary in connection with an eligible project, and construct, reconstruct, improve, better and extend such projects, and enter into contracts therefor.

(2) Use of trust fund moneys pursuant to subsection (1) of this section to purchase land and buildings shall be limited to acquisitions from persons willing to sell.

SECTION 21. (1) In accordance with the applicable provisions of ORS 183.310 to 183.550, the Habitat Conservation Trust Fund Board shall adopt rules and standards to carry out the board's duties under the Resource Conservation Trust Fund program.

(2) The rules and standards adopted under subsection (1) of this section shall include, but need not be limited to, conditions for approval by the board for implementation of a project including but not limited to:

(a) Provisions satisfactory to the board for inspection and evaluation of the implementation of a project, including all necessary agreements to allow the board and employes of any cooperating agency providing staff services for the board's access to the project area; and

(b) Provisions satisfactory to the board for controlling the expenditure of and accounting for any funds granted by the board for implementation of the project.

SECTION 22. (1) In accordance with the applicable provisions of ORS 183.310 to 183.550, the Waste Reduction Trust Fund Board shall adopt rules and standards to carry out the board's duties under the Resource Conservation Trust Fund program.

(2) The rules and standards adopted under subsection (1) of this section shall include, but need not be limited to, conditions for approval by the board for implementation of a project including but not limited to:

(a) Provisions satisfactory to the board for inspection and evaluation of the implementation of a project, including all necessary agreements to allow the board and employes of any cooperating agency providing staff services for the board's access to the project area; and

(b) Provisions satisfactory to the board for controlling the expenditure of and accounting for any funds granted by the board for implementation of the project.

SECTION 23. The Department of Environmental Quality shall provide staff for overseeing the resource recycling projects described in section 17 of this Act and for the day-to-day operation of the Waste Reduction Trust Fund Board, including scheduling meetings, providing public notice of meetings and other board activities and keeping records of board activities.

SECTION 24. The State Department of Fish and Wildlife shall provide staff for overseeing the habitat conservation projects described in section 16 of this Act and for the day-to-day operation of the Habitat Conservation Trust Fund Board, including scheduling meetings, providing public notice of meetings and other board activities and keeping records of board activities.

SECTION 25. (1) The Resource Conservation Trust Fund shall not be used as a substitute for traditional sources of funding environmental and natural resources activities, but the trust fund shall supplement the traditional sources, including those sources used to support the uses set forth

in sections 16 and 17 of this Act. The trust fund shall be used primarily to support activities whose benefits become available only over an extended period of time.

(2) The State Fish and Wildlife Department shall determine the amount of the state budget spent from traditional sources to fund environmental and natural resources activities before and after the trust fund is established and include a comparison of the amount in the reports required under section 9 of this Act.

SECTION 26. (1) The Environmental Quality Commission shall determine materials that qualify for waste diversion credits and set the amount of such credit based on tonnage.

(2) In determining the amount of waste diversion credit, the Environmental Quality Commission shall consider the potential economic benefits, environmental benefits and adverse effects.

(3) As used in this section, "waste diversion credit" means payment offered to waste haulers, processors, recycling depots or others as determined by the Environmental Quality Commission.

A-Engrossed
House Bill 3493

Ordered by the House June 15
Including House Amendments dated June 15

Sponsored by Representatives DWYER, CEASE, AGRONS, CALHOON, CARTER, COURTNEY, DIX, DOMINY, EDMUNSON, GERSHON, HANLON, HANNEMAN, HOSTICKA, HUGO, KOTULSKI, MANNIX, MARKHAM, McTEAGUE, PICKARD, RIJKEN, ROBERTS, SCHOON, SHIPRACK, SOWA, WHITTY, Senators BRADBURY, BUNN, COHEN, McCOY

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.

Punishes persons intentionally or negligently discharging oil unlawfully into Oregon waters by making violation Class [*B felony*] **A misdemeanor** punishable by maximum fine of [*$100,000*] **$2,500**, maximum imprisonment for [*10 years*] **one year**, or both. **Imposes civil penalty in addition to any other penalty provided by law, commensurate with amount of damage.**

Establishes Oil Spillage Control Fund in General to receive penalties. Appropriates moneys from spillage fund to Department of Environmental Quality for cleanup and rehabilitation of affected fish and wildlife.

Declares emergency, effective July 1, 1989.

A BILL FOR AN ACT

Relating to water pollution; creating new provisions; amending ORS 468.990; appropriating money; and declaring an emergency.

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

SECTION 1. Sections 2 to 5 of this Act are added to and made a part of ORS 468.780 to 468.815.

SECTION 2. The commission shall adopt rules necessary to carry out the provisions of sections 3 to 5 of this 1989 Act.

SECTION 3. Any person who wilfully or negligently causes or permits the discharge of oil into the waters of the state shall incur, in addition to any other penalty provided by law, a civil penalty commensurate with the amount of damage incurred. The amount of the penalty shall be determined by the Director of the Department of Environmental Quality with the advice of the State Fish and Wildlife Director after taking into consideration the gravity of the violation, the previous record of the violator in complying, or failing to comply, with the provisions of sections 2 to 5 of this 1989 Act, and such other considerations as the director considers appropriate. The penalty provided for in this section shall be imposed and enforced in accordance with ORS 468.135.

SECTION 4. (1) There is established an Oil Spillage Control Fund within the General Fund. This account shall be a revolving fund, the interest of which accrues to the Oil Spillage Control Fund.

(2) All penalties recovered under section 3 of this 1989 Act shall be paid into the Oil Spillage Control Fund. Such moneys are continuously appropriated to the Department of Environmental Quality for the advancement of costs incurred in carrying out cleanup activities and for the rehabilitation of affected fish and wildlife as provided under ORS 468.745.

(3) With the approval of the commission, the moneys in the Oil Spillage Control Fund may be invested as provided by ORS 293.701 to 293.776, and earnings from such investment shall be credited

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

to the fund.

(4) The Oil Spillage Control Fund shall not be used for any purpose other than that for which the fund was created.

SECTION 5. The director may, upon written application therefor received within 15 days after receipt of notice under ORS 468.135, and when considered in the best interest of this state in carrying out the purposes of this chapter, remit or mitigate any penalty provided for in section 3 of this 1989 Act or discontinue any prosecution to recover the same upon such terms as the director in the director's discretion considers proper.

SECTION 6. ORS 468.990 is amended to read:

468.990. (1) Wilful or negligent violation of ORS 468.720 or 468.740 is a misdemeanor and a person convicted thereof shall be punishable by a fine of not more than $25,000 or by imprisonment in the county jail for not more than one year, or by both. Each day of violation constitutes a separate offense.

(2) Violation of ORS 468.775 is a Class A misdemeanor. Each day of violation constitutes a separate offense.

(3) Violation of ORS 468.760 (1) or (2) is a Class A misdemeanor.

(4) Violation of ORS 454.425 or 468.742 is a Class A misdemeanor.

(5) Violation of ORS 468.770 is a Class A misdemeanor.

(6) Intentional or negligent violation of ORS 468.785 (1) is a Class A misdemeanor.

SECTION 7. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect July 1, 1989.

(To Resolve Conflicts)

B-Engrossed
House Bill 3515

Ordered by the Senate July 2
Including House Amendments dated June 30
and Senate Amendments dated July 2
to resolve conflicts

Sponsored by JOINT COMMITTEE ON WAYS AND MEANS

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.

Establishes programs for protection of environment from contamination from toxic substances, hazardous materials and waste, other contaminants and solid waste disposal sites. Establishes funding mechanisms for cleanup and response to contamination and to protect ground water quality. Appropriates moneys. Limits expenditures.

A BILL FOR AN ACT

Relating to environment; creating new provisions; amending ORS 275.275, 284.310, 366.155, 448.123, 448.150, 459.005, 459.235, 466.010, 466.020, 466.055, 466.060, 466.590, 466.620, 466.670, 466.675, 466.785, 466.795, 468.065, 468.220, 468.230, 536.120, 536.220, 536.340, 536.410, 537.525, 537.545, 537.665, 537.775, 537.780, 540.610, 561.020, 568.225, 633.440, 633.460 and 634.016; repealing ORS 466.653, 466.660 and 466.665; limiting expenditures; appropriating money; and declaring an emergency.

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

SECTION 1. Sections 2 to 16 of this Act shall be known as the Toxics Use Reduction and Hazardous Waste Reduction Act.

SECTION 2. As used in sections 2 to 16 of this Act:

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

(2) "Conditionally exempt generator" means a generator who generates less than 2.2 pounds of acute hazardous waste as defined by 40 C.F.R. 261, or who generates less than 220 pounds of hazardous waste in one calendar month.

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

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

(5) "Facility" means all buildings, equipment, structures and other stationary items located on a single site or on contiguous or adjacent sites and owned or operated by the same person or by any person who controls, is controlled by or under common control with any person.

(6) "Fully regulated generator" means a generator who generates 2.2 pounds or more of acute hazardous waste as defined by 40 C.F.R. 261, or 2,200 pounds or more of hazardous waste in one calendar month.

(7) "Generator" means a person who, by virtue of ownership, management or control, is responsible for causing or allowing to be caused the creation of hazardous waste.

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

(8) "Hazardous waste" has the meaning given that term in ORS 466.005.

(9) "Large user" means a facility required to report under section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (P.L. 99-499).

(10) "Person" means individual, the United States, the state or a public or private corporation, local government unit, public agency, partnership, association, firm, trust, estate or any other legal entity.

(11) "Small-quantity generator" means a generator who generates between 220 and 2,200 pounds of hazardous waste in one calendar month.

(12) "Toxic substance" or "toxics" means any substance in a gaseous, liquid or solid state listed pursuant to Title III, Section 313 of the Superfund Amendments and Reauthorization Act of 1986, or any substance added by the commission under section 4 of this Act. "Toxic substance" does not include a substance used as a pesticide or herbicide in routine commercial agricultural applications.

(13)(a) "Toxics use reduction" means in-plant changes in production or other processes or operations, products or raw materials that reduce, avoid or eliminate the use or production of toxic substances without creating substantial new risks to public health, safety and the environment, through the application of any of the following techniques:

(A) Input substitution, which refers to replacing a toxic substance or raw material used in a production or other process or operation with a nontoxic or less toxic substance;

(B) Product reformulation, which refers to substituting for an existing end product, an end product which is nontoxic or less toxic upon use, release or disposal;

(C) Production or other process or operation redesign or modifications;

(D) Production or other process or operation modernization, which refers to upgrading or replacing existing equipment and methods with other equipment and methods;

(E) Improved operation and maintenance controls of production or other process or operation equipment and methods, which refers to modifying or adding to existing equipment or methods including, but not limited to, techniques such as improved housekeeping practices, system adjustments, product and process inspections or production or other process or operation control equipment or methods; or

(F) Recycling, reuse or extended use of toxics by using equipment or methods that become an integral part of the production or other process or operation of concern, including but not limited to filtration and other methods.

(b) "Toxics use reduction" includes proportionate changes in the usage of a particular toxic substance by any of the methods set forth in paragraph (a) of this subsection as the usage of that toxic substance changes as a result of production changes or other business changes.

(14) "Toxics use" means use or production of a toxic substance.

(15) "Toxics user" means a large user, a fully regulated generator or a small-quantity generator.

(16)(a) "Waste reduction" means any recycling or other activity applied after hazardous waste is generated that is consistent with the general goal of reducing present and future threats to public health, safety and the environment and that results in:

(A) The reduction of total volume or quantity of hazardous waste generated that would otherwise be treated, stored or disposed of;

(B) The reduction of toxicity of hazardous waste that would otherwise be treated, stored or disposed of; or

(C) Both the reduction of total volume or quantity and the reduction of toxicity of hazardous

waste.

(b) "Waste reduction" includes proportionate changes in the total volume, quantity or toxicity of a particular hazardous waste in accordance with paragraph (a) of this subsection as the generation of that waste changes as a result of production changes or other business changes.

(c) "Waste reduction" may include either onsite or offsite treatment where such treatment can be shown to confer a higher degree of protection of the public health, safety and the environment than other technically and economically practicable waste reduction alternatives.

SECTION 3. (1) In the interest of protecting the public health, safety and the environment, the Legislative Assembly declares that it is the policy of the State of Oregon to encourage reduction in the use of toxic substances and to reduce the generation of hazardous waste whenever technically and economically practicable, without shifting risks from one part of a process, environmental media or product to another. Priority shall be given to methods that reduce the amount of toxics used and, where that is not technically and economically practicable, methods that reduce the generation of hazardous waste.

(2) The Legislative Assembly finds that the best means to achieve the policy set forth in subsection (1) of this section is by:

(a) Providing toxics users and generators with technical assistance;

(b) Requiring toxics users to engage in comprehensive planning and develop measurable performance goals; and

(c) Monitoring the use of toxic substances and the generation of hazardous waste.

SECTION 4. The Environmental Quality Commission by rule may add or remove any toxic substance or hazardous waste from the provisions of sections 2 to 16 of this Act.

SECTION 5. (1) The Department of Environmental Quality shall provide technical assistance to toxics users and conditionally exempt generators. In identifying the users and generators to which the department shall give priority in providing technical assistance, the department shall consider at least the following:

(a) Amounts and toxicity of toxics used and amounts of hazardous waste disposed of, discharged and released;

(b) Potential for current and future toxics use reduction and hazardous waste reduction; and

(c) The toxics related exposures and risks posed to public health, safety and the environment.

(2) In providing technical assistance, the department shall give priority to assisting toxics users and conditionally exempt generators in developing and implementing an adequate toxics use reduction and hazardous waste reduction plan as established under section 7 of this Act. The assistance may include but need not be limited to:

(a) Information clearinghouse activities;

(b) Telephone hotline assistance;

(c) Toxics use reduction and hazardous waste reduction training workshops;

(d) Establishing a technical publications library;

(e) The development of a system to evaluate the effectiveness of toxics use reduction and hazardous waste reduction measures;

(f) The development of a recognition program to publicly acknowledge toxics users and conditionally exempt generators who develop and implement successful toxics use reduction and hazardous waste reduction plans; and

(g) Direct onsite assistance to toxics users and conditionally exempt generators in developing

ardous waste reduction specific to the individual facility.

(3) The department shall consider information provided under subsection (2) of this section in any review of a facility plan under section 9 of this Act.

(4) Except as provided in section 9 of this Act, a toxics use reduction and hazardous waste reduction plan developed under this section shall be retained at the facility and is not a public record under ORS 192.410.

(5) For the purposes of this section and sections 5 and 9 of this Act, a toxics user shall permit the director or any designated employe of the director to inspect the toxics use reduction and hazardous waste reduction plan.

(6) A facility shall determine whether it is required to complete a plan under subsection (1) of this section based on whether its toxics use or waste generation results in the facility meeting the definition of toxics user as defined in section 2 of this Act for the calendar year ending December 31 of the year immediately preceding the September 1 reporting deadline.

SECTION 9. (1) The Department of Environmental Quality may review a plan or an annual progress report to determine whether the plan or progress report is adequate according to the guidelines established under section 7 of this Act. If a toxics user fails to complete an adequate plan or annual progress report as required under sections 7 and 8 of this Act, the department may notify the user of the inadequacy, identifying the specific deficiencies. The department also may specify a reasonable time frame, of not less than 90 days, within which the user shall submit a modified plan or progress report addressing the specified deficiencies. The department also may make technical assistance available to aid the user in modifying its plan or progress report.

(2) If the department determines that a modified plan or progress report submitted pursuant to subsection (1) of this section is inadequate, the department may, within its discretion, either require further modification or issue an administrative order pursuant to subsection (3) of this section.

(3) If after having received a list of specified deficiencies from the department, a toxics user fails to develop an adequate plan or progress report within a time frame specified pursuant to subsection (1) or (2) of this section, the department may order such toxics user to submit an adequate plan or progress report within a reasonable time frame of not less than 90 days. If the toxics user fails to develop an adequate plan or progress report within the time frame specified, the department shall conduct a public hearing on the plan or progress report. Except as provided under section 14 of this Act, in any hearing under this section the relevant plan or progress report shall be considered a public record as defined in ORS 192.410.

(4) In reviewing the adequacy of any plan or progress report, the department shall base its determination solely on whether the plan or progress report is complete and prepared in accordance with section 7 of this Act.

(5) The department shall maintain a log of each plan or progress report it reviews, a list of all plans or progress reports that have been found inadequate under subsection (3) of this section and descriptions of corrective actions taken. This information shall be available to the public at the department's office.

SECTION 10. (1) From each annual progress report, the toxics user shall report to the Department of Environmental Quality the quantities of toxics used that are within the categories set forth in subsection (2) of section 7 of this Act.

(2) From each annual progress report, the toxics user shall report to the department the quantities of hazardous wastes generated that are within the categories set forth in subsection (2) of

section 7 of this Act.

(3) The report shall include a narrative summary explaining the data. The narrative summary may include:

(a) A description of goals and progress made in reducing the use of the toxic substance or generation of hazardous waste; and

(b) A description of any impediments to reducing the use of the toxic substance or generation of hazardous waste.

(4) The Environmental Quality Commission, by rule, shall develop uniform reporting requirements for the data required under subsections (1) and (2) of this section.

(5) Except for the information reported to the department under this section, the annual progress report shall be retained at the facility and shall not be considered a public record under ORS 192.410. However, the user shall permit any officer, employe or representative of the department at all reasonable times to have access to the annual progress report.

SECTION 11. Large users and fully regulated generators shall complete the first annual progress report required under section 7 of this Act on or before September 1, 1992. Small-quantity generators shall complete the first annual progress report required under section 7 of this Act on or before September 1, 1993.

SECTION 12. Subject to available funding, the Department of Environmental Quality shall contract with an established institution of higher education to assist the department in carrying out the provisions of sections 2 to 16 of this Act. The assistance shall emphasize strategies to encourage toxics use reduction and hazardous waste reduction and shall provide assistance to facilities under sections 2 to 16 of this Act. The assistance may include but need not be limited to:

(1) Engineering internships;

(2) Engineering curriculum development;

(3) Applied toxics use reduction and hazardous waste reduction research; and

(4) Engineering assistance to users and generators.

SECTION 13. (1) In order to assist in establishing rules related to toxics use reduction and hazardous waste reduction, the Department of Environmental Quality shall establish an advisory committee. The advisory committee shall consist of representatives of the public and affected industries.

(2) The advisory committee shall act in an advisory capacity to the department in any matter related to toxics use reduction and hazardous waste reduction. The advisory committee may provide comments regarding data collection, plan format and content. In addition, the committee shall identify any additional data necessary to improve the technical assistance process, to develop plans and to aid in enforcement of plans.

(3) The committee also may identify specific chemicals that present the greatest hazard to the public health, safety and the environment in order that the department may focus technical assistance, research and development efforts to facilitate accelerated reduction in the use of such chemicals.

(4) The committee shall make recommendations to the department to increase the coordination of requirements of all state and federal toxics use and hazardous waste programs, including but not limited to the Clean Air Act, the Federal Water Pollution Control Act, the Toxic Substances Control Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and any amendments thereto, Title III of the Superfund Amend-

ments and Reauthorization Act of 1986 and amendments thereto, the Community Right to Know and Protection Act.

(5) The committee shall make recommendations under this section on or before January 1, 1991.

SECTION 14. (1) Upon a showing satisfactory to the director by any person that a plan or annual progress report developed under section 7 or 8 of this Act, or any portion thereof, if made public, would divulge methods, processes or other information entitled to protection as trade secrets, as defined under ORS 192.501, of such person, the director shall classify as confidential such plan or annual progress report, or portion thereof.

(2) To the extent that any plan or annual progress report under subsection (1) of this section, or any portion thereof, would otherwise qualify as a trade secret under ORS 192.501, no action taken by the director or any authorized employe of the department in inspecting or reviewing such information shall effect its status as a trade secret.

(3) Any information classified by the director as confidential under subsection (1) of this section shall not be made a part of any public record, used in any public hearing or disclosed to any party outside of the department unless a circuit court determines that evidence is necessary to the determination of an issue or issues being decided at the public hearing.

SECTION 15. On or before January 1, 1991, and January 1, 1993, the Environmental Quality Commission shall report to the Legislative Assembly on the status of implementing sections 2 to 16 of this Act. This report shall include information regarding:

(1) The status of the technical assistance program;

(2) Progress toward reducing the quantities of toxic substances used and hazardous wastes generated in Oregon; and

(3) An analysis and recommendations for changes to the program including but not limited to the need for any additional enforcement provisions.

SECTION 16. Notwithstanding any other provision of sections 2 to 15 of this Act, nothing in this Act shall be considered to apply to any hazardous wastes that become subject to regulation solely as a result of remedial activities taken in response to environmental contamination.

SECTION 17. As used in sections 17 to 44 of this Act:

(1) "Area of ground water concern" means an area of the state subject to a declaration by the Department of Environmental Quality under section 31 of this Act or the Health Division under section 32 of this Act.

(2) "Contaminant" means any chemical, ion, radionuclide, synthetic organic compound, microorganism, waste or other substance that does not occur naturally in ground water or that occurs naturally but at a lower concentration.

(3) "Ground water management area" means an area in which contaminants in the ground water have exceeded the levels established under section 25 of this Act, and the affected area is subject to a declaration under section 36 of this Act.

(4) "Fertilizer" has the meaning given that term in ORS 633.310.

(5) "Group" means the Strategic Water Management Group.

(6) "Pesticide" has the meaning given that term in ORS 634.006.

SECTION 18. The Legislative Assembly declares that it is the goal of the people of the State of Oregon to prevent contamination of Oregon's ground water resource while striving to conserve and restore this resource and to maintain the high quality of Oregon's ground water resource for present and future uses.

SECTION 19. In order to achieve the goal set forth in section 18 of this Act, the Legislative Assembly establishes the following policies to control the management and use of the ground water resource of this state and to guide any activity that may affect the ground water resource of Oregon:

(1) Public education programs and research and demonstration projects shall be established in order to increase the awareness of the citizens of this state of the vulnerability of ground water to contamination and ways to protect this important resource.

(2) All state agencies' rules and programs affecting ground water shall be consistent with the overall intent of the goal set forth in section 2 of this Act.

(3) State-wide programs to identify and characterize ground water quality shall be conducted.

(4) Programs to prevent ground water quality degradation through the use of the best practicable management practices shall be established.

(5) Ground water contamination levels shall be used to trigger specific governmental actions designed to prevent those levels from being exceeded or to restore ground water quality to at least those levels.

(6) All ground water of the state shall be protected for both existing and future beneficial uses so that the state may continue to provide for whatever beneficial uses the natural water quality allows.

SECTION 20. (1) The Strategic Water Management Group shall implement the following ground water resource protection strategy:

(a) Coordinate projects approved by the group with activities of other agencies.

(b) Develop programs designed to reduce impacts on ground water from:

(A) Commercial and industrial activities;

(B) Commercial and residential use of fertilizers and pesticides;

(C) Residential and sewage treatment activities; and

(D) Any other activity that may result in contaminants entering the ground water.

(c) Provide educational and informational materials to promote public awareness and involvement in the protection, conservation and restoration of Oregon's ground water resource. Public information materials shall be designed to inform the general public about the nature and extent of ground water contamination, alternatives to practices that contaminate ground water and the effects of human activities on ground water quality. In addition, educational programs shall be designed for specific segments of the population that may have specific impacts on the ground water resource.

(d) Coordinate the development of local ground water protection programs, including but not limited to local well head protection programs.

(e) Award grants for the implementation of projects approved under the criteria established under section 22 of this 1989 Act.

(f) Develop and maintain a centralized repository for information about ground water, including but not limited to:

(A) Hydrogeologic characterizations;

(B) Results of local and state-wide monitoring or testing of ground water;

(C) Data obtained from ground water quality protection research or development projects; and

(D) Alternative residential, industrial and agricultural practices that are considered best practicable management practices for ground water quality protection.

(g) Identify research or information about ground water that needs to be conducted or made

available.

(h) Cooperate with appropriate federal entities to identify the needs and interests of the State of Oregon so that federal plans and project schedules relating to the protection the ground water resource incorporate the state's intent to the fullest extent practicable.

(i) Aid in the development of voluntary programs to reduce the quantity of hazardous or toxic waste generated in order to reduce the risk of ground water contamination from hazardous or toxic waste.

(2) To aid and advise the Strategic Water Management Group in the performance of its functions, the group may establish such advisory and technical committees as the group considers necessary. These committees may be continuing or temporary. The Strategic Water Management Group shall determine the representation, membership, terms and organization of the committees and shall appoint their members. The chairperson of the Strategic Water Management Group shall be an ex officio member of each committee.

SECTION 21. (1) Any person, state agency, political subdivision of this state or ground water management committee organized under section 35 or 40 of this 1989 Act may submit to the Strategic Water Management Group a request for funding, advice or assistance for a research or development project related to ground water quality as it relates to Oregon's ground water resource.

(2) The request under subsection (1) of this section shall be filed in the manner, be in the form and contain the information required by the Strategic Water Management Group. The requester may submit the request either to the group or to a ground water management committee organized under section 35 or 40 of this 1989 Act.

(3) The Strategic Water Management Group shall approve only those requests that meet the criteria established by the group under section 22 of this 1989 Act.

SECTION 22. (1) Of the moneys available to the Strategic Water Management Group to award as grants under section 21 of this 1989 Act, not more than one-third shall be awarded for funding of projects directly related to issues pertaining to a ground water management area.

(2) The Strategic Water Management Group may award grants for the following purposes:

(a) Research in areas related to ground water including but not limited to hydrogeology, ground water quality, alternative residential, industrial and agricultural practices;

(b) Demonstration projects related to ground water including but not limited to hydrogeology, ground water quality, alternative residential, industrial and agricultural practices;

(c) Educational programs that help attain the goal set forth in section 18 of this 1989 Act; and

(d) Incentives to persons who implement innovative alternative practices that demonstrate increased protection of the ground water resource of Oregon.

(3) Funding priority shall be given to proposals that show promise of preventing or reducing ground water contamination caused by nonpoint source activities.

(4) In awarding grants for research under subsection (2) of this section, the Strategic Water Management Group shall specify that not more than 10 percent of the grant may be used to pay indirect costs. The exact amount of a grant that may be used by an institution for such costs may be determined by the group.

(5) In accordance with the applicable provisions of ORS 183.310 to 183.550, the Strategic Water Management Group shall adopt by rule guidelines and criteria for awarding grants under this section.

SECTION 23. Sections 20, 21, 22 and 24 of this Act are added to and made a part of ORS

536.100 to 536.150.

SECTION 24. (1) Not later than 60 days after the effective date of this 1989 Act, the Strategic Water Management Group shall appoint a nine-member technical advisory committee to develop criteria and a method for the Environmental Quality Commission to apply in adopting by rule maximum measurable levels of contaminants in ground water. The technical advisory committee shall recommend criteria and a method for the development of standards that are protective of public health and the environment. If a federal standard exists, the method shall provide that the commission shall first consider the federal standard, and if the commission does not adopt the federal standard, the method shall require the commission to give a scientifically valid reason for not concurring with the federal standard. As used in this subsection, "federal standard" means a maximum contaminant level, a national primary drinking water regulation or an interim drinking water regulation adopted by the Administrator of the U.S. Environmental Protection Agency pursuant to the federal Safe Drinking Water Act, as amended, 42 U.S.C. 300g-1.

(2) The technical advisory committee appointed under subsection (1) of this section shall be comprised of:

(a) A toxicologist;

(b) A health professional;

(c) A water purveyor;

(d) A biologist; and

(e) Technically capable members of the public representing the following groups:

(A) Citizens;

(B) Local governments;

(C) Environmental organizations;

(D) Industrial organizations; and

(E) Agricultural organizations.

(3) The technical advisory committee may appoint individuals or committees to assist in development of the criteria and maximum measurable levels of contaminants in ground water. An individual or committee appointed by the committee under this subsection shall serve in an advisory capacity only.

(4) The technical advisory committee shall complete its initial development of criteria and methods within one year after the effective date of this 1989 Act.

SECTION 25. (1) Within 90 days after receiving the recommendations of the technical advisory committee under section 24 of this Act, the Environmental Quality Commission shall begin rulemaking to first adopt final rules establishing maximum measurable levels for contaminants in ground water. The commission shall adopt the final rules not later than 180 days after the commission provides notice under ORS 183.335.

(2) The adoption or failure to adopt a rule establishing a maximum measurable level for a contaminant under subsection (1) of this section shall not alone be construed to require the imposition of restrictions on the use of fertilizers under ORS 633.310 to 633.495 or the use of pesticides under ORS chapter 634.

SECTION 26. (1) Within 90 days after the effective date of this Act, the Environmental Quality Commission shall establish by rule interim numerical standards for maximum measurable levels of contaminants in ground water. The interim numerical standards shall be applied in lieu of maximum measurable levels for contaminants in ground water under section 25 of this Act until the commis-

sion by rule adopts such levels under section 25 of this Act. The process for establishing interim numerical standards shall be as follows:

(a) If a federal standard for a substance has been adopted by federal regulation, the commission shall adopt the federal standard.

(b) If a federal standard for a substance has not been adopted by federal regulation, but one or more federal standards have been established by methods other than by adoption of a federal regulation, the commission shall adopt the most recently established federal standard as the numerical standard.

(c) If a federal regulation has not been established either by adoption of a federal regulation or by any other method, the commission shall request the U. S. Environmental Protection Agency to establish a federal standard for the substance, either by adoption of a federal regulation, or by other method.

(2) As used in this section "federal standard" means a maximum contaminant level, a national primary drinking water regulation or an interim drinking water regulation adopted by the Administrator of the U.S. Environmental Protection Agency pursuant to the federal Safe Drinking Water Act, as amended, 42 U.S.C. 300g-1.

SECTION 27. The Department of Environmental Quality shall provide staff for project oversight and the day-to-day operation of the Strategic Water Management Group for those activities authorized under sections 20 to 25, 34, 35 and 39 to 44 of this Act, including scheduling meetings, providing public notice of meetings and other group activities and keeping records of group activities.

SECTION 28. Section 29 of this Act is added to and made a part of ORS 468.700 to 468.777.

SECTION 29. (1) In cooperation with the Water Resources Department, the Department of Environmental Quality and the Oregon State University Agricultural Experiment Station shall conduct an ongoing state-wide monitoring and assessment program of the quality of the ground water resource of this state. The program shall be designed to identify:

(a) Areas of the state that are especially vulnerable to ground water contamination;

(b) Long-term trends in ground water quality;

(c) Ambient quality of the ground water resource of Oregon; and

(d) Any emerging ground water quality problems.

(2) The department and Oregon State University Agricultural Experiment Station shall forward copies of all information acquired from the state-wide monitoring and assessment program conducted under this section to the Strategic Water Management Group for inclusion in the central repository of information about Oregon's ground water resource established pursuant to section 20 of this 1989 Act.

SECTION 30. (1) In any transaction for the sale or exchange of real estate that includes a well that supplies ground water for domestic purposes, the seller of the real estate shall, upon accepting an offer to purchase that real estate, have the well tested for nitrates and total coliform bacteria. The Health Division also may require additional tests for specific contaminants in an area of ground water concern or ground water management area. The seller shall submit the results of the test required under this section to the Health Division.

(2) The failure of a seller to comply with the provisions of this section does not invalidate an instrument of conveyance executed in the transaction.

SECTION 31. If, as a result of its state-wide monitoring and assessment activities under section 29 of this Act, the Department of Environmental Quality confirms the presence in ground water of

contaminants suspected to be the result, at least in part, of nonpoint source activities, the department shall declare an area of ground water concern. The declaration shall identify the substances confirmed to be in the ground water and all ground water aquifers that may be affected.

SECTION 32. If, as a result of its activities under ORS 448.150, the Health Division confirms the presence in ground water drinking water supplies of contaminants resulting at least in part from suspected nonpoint source activities, the division shall declare an area of ground water concern. The declaration shall identify the substances confirmed in the ground water and all ground water aquifers that may be affected.

SECTION 33. Before declaring an area of ground water concern, the agency making the declaration shall have a laboratory confirm the results that would cause the agency to make the declaration.

SECTION 34. After a declaration of an area of ground water concern, the Strategic Water Management Group shall:

(1) Within 90 days, appoint a ground water management committee in the geographic area overlying the ground water aquifer;

(2) Focus research and public education activities on the area of ground water concern;

(3) Provide for necessary monitoring in the area of ground water concern;

(4) Assist the ground water management committee in developing, in a timely manner, a draft and final local action plan for addressing the issues raised by the declaration of an area of ground water concern; and

(5) If not developed by the ground water management committee, develop a draft and final local action plan.

SECTION 35. (1) Upon the request of a local government, or as required under section 34 or 40 of this Act, the Strategic Water Management Group shall appoint a ground water management committee. The ground water management committee shall be composed of at least seven members representing a balance of interests in the area affected by the declaration.

(2) After a declaration of an area of ground water concern, the ground water management committee shall develop and promote a local action plan for the area of ground water concern. The local action plan shall include but need not be limited to:

(a) Identification of local residential, industrial and agricultural practices that may be contributing to a deterioration of ground water quality in the area;

(b) An evaluation of the threat to ground water from the potential nonpoint sources identified;

(c) Evaluation and recommendations of alternative practices;

(d) Recommendations regarding demonstration projects needed in the area;

(e) Recommendations of public education and research specific to that area that would assist in addressing the issues related to the area of ground water concern; and

(f) Methods of implementing best practicable management practices to improve ground water quality in the area.

(3) The availability of the draft local action plan and announcement of a 30-day public comment period shall be publicized in a newspaper of general circulation in the area designated as an area of ground water concern. Suggestions provided to the ground water management committee during the public comment period shall be considered by the ground water management committee in determining the final action plan.

(4) The ground water management committee may request the Strategic Water Management

Group to arrange for technical advice and assistance from appropriate state agencies and higher education institutions.

(5) A ground water management committee preparing or carrying out an action plan in an area of ground water concern or in a ground water management area may apply for a grant under section 21 of this Act for limited funding for staff or for expenses of the ground water management committee.

SECTION 36. (1) The Department of Environmental Quality shall declare a ground water management area if, as a result of information provided to the department or from its state-wide monitoring and assessment activities under section 29 of this Act, the department confirms that, as a result of suspected nonpoint source activities, there is present in the ground water:

(a) Nitrate contaminants at levels greater than 70 percent of the levels established pursuant to section 25 of this Act; or

(b) Any other contaminants at levels greater than 50 percent of the levels established pursuant to section 25 of this Act.

(2) A declaration under subsection (1) of this section shall identify the substances detected in the ground water and all ground water aquifers that may be affected.

SECTION 37. Before declaring a ground water management area under section 36 of this Act, the agency shall have a second laboratory confirm the results that cause the agency to make the declaration.

SECTION 38. Notwithstanding the requirements of section 36 of this Act, for two years after the effective date of this Act, a ground water management area shall not be established on the basis of excessive nitrate levels unless levels of nitrates in ground water are determined to exceed 100 percent of the levels established pursuant to section 25 of this Act.

SECTION 39. After the declaration of a ground water management area, a ground water management committee created under section 35 of this Act shall:

(1) Evaluate those portions of the local action plan, if any, that achieved a reduction in contaminant level;

(2) Advise the state agencies developing an action plan under sections 41 to 43 of this Act regarding local elements of the plan; and

(3) Analyze the local action plan, if any, developed pursuant to section 35 of this Act to determine why the plan failed to improve or prevent further deterioration of the ground water in the ground water management area designated in the declaration.

SECTION 40. After the declaration of a ground water management area, the Strategic Water Management Group shall appoint a ground water management committee for the affected area if a ground water management committee has not already been appointed under section 34 of this Act. If the affected area had previously been designated an area of ground water concern, the same ground water management committee appointed under section 34 of this Act shall continue to address the ground water issues raised as a result of the declaration of a ground water management area.

SECTION 41. After the Strategic Water Management Group is notified that a ground water management area has been declared, the Strategic Water Management Group shall designate a lead agency responsible for developing an action plan and assign other agencies appropriate responsibilities for preparation of a draft action plan within 90 days after the declaration. The agencies shall develop an action plan to reduce existing contamination and to prevent further contamination of the

affected ground water aquifer. The action plan shall include, but need not be limited to:

(1) Identification of practices that may be contributing to the contamination of ground water in the area;

(2) Consideration of all reasonable alternatives for reducing the contamination of the ground water to a level below that level requiring the declaration of a ground water management area;

(3) Recommendations of mandatory actions that, when implemented, will reduce the contamination to a level below that level requiring the declaration of ground water management area;

(4) A proposed time schedule for:

(a) Implementing the group's recommendations;

(b) Achieving estimated reductions in concentrations of the ground water contaminants; and

(c) Public review of the action plan;

(5) Any applicable provisions of a local action plan developed for the area under a declaration of an area of ground water concern; and

(6) Required amendments of affected city or county comprehensive plans and land use regulations in accordance with the schedule and requirements in ORS 197.640 to 197.647 to address the identified ground water protection and management concerns.

SECTION 42. (1) After completion and distribution of the draft action plan under section 41 of this Act, the lead agency shall provide a 60-day period of public comment on the draft action plan and the manner by which members of the public may review the plan or obtain copies of the plan. A notice of the comment period shall be published in two issues of one or more newspapers having general circulation in the counties in which the designated area of the ground water emergency is located, and in two issues of one or more newspapers having general circulation in the state.

(2) Within 60 days after the close of the public comment period, the lead agency shall complete a final action plan. All suggestions and information provided to the lead agency during the public comment period shall be considered by the lead agency and when appropriate shall be acknowledged in the final action plan.

SECTION 43. (1) The Strategic Water Management Group shall, within 30 days after completion of the final action plan, accept the final action plan or remand the plan to the lead agency for revision in accordance with recommendations of the Strategic Water Management Group. If the plan is remanded for revision, the lead agency shall return the revised final action plan to the Strategic Water Management Group within 30 days.

(2) Within 120 days after the Strategic Water Management Group accepts the final action plan, each agency of the group that is responsible for implementing all or part of the plan shall adopt rules necessary to carry out the agency's duties under the action plan. If two or more agencies are required to initiate rulemaking proceedings under this section, the agencies shall consult with one another to coordinate the rules. The agencies may consolidate the rulemaking proceedings.

SECTION 44. (1) If, after implementation of the action plan developed by affected agencies under sections 41 to 43 of this Act, the ground water improves so that the levels of contaminants no longer exceed the levels established under section 36 of this Act, the Strategic Water Management Group shall request the Department of Environmental Quality to repeal the ground water management area declaration and to establish an area of ground water concern.

(2) Before the declaration of a ground water management area is repealed under subsection (1) of this section, the Strategic Water Management Group must find that, according to the best information available, a new or revised local action plan exists that will continue to improve the ground

water in the area and that the Strategic Water Management Group finds can be implemented at the local level without the necessity of state enforcement authority.

(3) Before the Strategic Water Management Group terminates any mandatory controls imposed under the action plan created under sections 41 to 43 of this Act, the ground water management committee must produce a local action plan that includes provisions necessary to improve ground water in the area and that the Strategic Water Management Group finds can be implemented at the local level without the necessity of state enforcement authority.

SECTION 45. Section 46 of this Act is added to and made a part of ORS chapter 516.

SECTION 46. (1) In carrying out its duties related to mineral resources, mineral industries and geology, the State Department of Geology and Mineral Industries shall act in a manner that is consistent with the goal set forth in section 18 of this 1989 Act.

(2) In order to assist in the development of a state-wide repository of information about Oregon's ground water resource, the department shall provide any information, acquired by the department in carrying out its statutory duties, that is related to ground water quality to the centralized repository established pursuant to section 20 of this 1989 Act.

SECTION 47. Section 48 of this Act is added to and made a part of ORS chapter 197.

SECTION 48. (1) The commission shall take actions it considers necessary to assure that city and county comprehensive plans and land use regulations and state agency coordination programs are consistent with the goal set forth in section 18 of this 1989 Act.

(2) The commission shall direct the Department of Land Conservation and Development to take actions the department considers appropriate to assure that any information contained in a city or county comprehensive plan that pertains to the ground water resource of Oregon shall be forwarded to the centralized repository established under section 20 of this 1989 Act.

SECTION 49. ORS 366.155 is amended to read:

366.155. (1) The State Highway Engineer, under the direction of the director, among other things, shall:

(a) So far as practicable, compile statistics relative to the public highways of the state and collect all information in regard thereto which the State Highway Engineer may deem important or of value in connection with highway location, construction, maintenance, improvement or operation.

(b) Keep on file in the office of the department copies of all plans, specifications and estimates prepared by the State Highway Engineer's office.

(c) Make all necessary surveys for the location or relocation of highways and cause to be made and kept in the State Highway Engineer's office a general highway plan of the state.

(d) Collect and compile information and statistics relative to the mileage, character and condition of highways and bridges in the different counties in the state, both with respect to state and county highways.

(e) Investigate and determine the methods of road construction best adapted in the various counties or sections of the state, giving due regard to the topography, natural character and availability of road-building materials and the cost of building and maintaining roads under this Act.

(f) Prepare surveys, plans, specifications and estimates for the construction, reconstruction, improvement, maintenance and repair of any bridge, street, road and highway. In advertising for bids on any such project the director shall invite bids in conformity with such plans and specifications.

(g) Keep an accurate and detailed account of all moneys expended in the location, survey, construction, reconstruction, improvement, maintenance or operation of highways, roads and streets,

including costs for rights of way, under this Act, and keep a record of the number of miles so located, constructed, maintained or operated in each county, the date of construction, the width of such highways and the cost per mile for the construction and maintenance of the highways.

(h) Install and operate a simple but adequate accounting system in order that all expenditures and costs may be classified and that a proper record may be maintained.

(i) Prepare proper and correct statements or vouchers to make possible partial payments on all contracts for highway projects based upon estimates prepared by the State Highway Engineer or under the State Highway Engineer's direction, and submit them to the director for approval.

(j) Prepare proper vouchers covering claims for all salaries and expenses of the State Highway Engineer's office and other expenditures authorized by the director. Such claims as may be approved by the director shall be indorsed by the director and be presented for payment.

(k) Upon request of a county governing body, assist the county on matters relating to road location, construction or maintenance. Plans and specifications for bridges or culverts and standard specifications for road projects that are provided under this paragraph shall be provided without cost. The Department of Transportation shall determine an amount to be charged for assistance under this paragraph in establishing specifications and standards for roads under ORS 368.036. The costs of assistance not specifically provided for under this paragraph shall be paid as provided by agreement between the county governing body and the State Highway Engineer.

(L) Prepare and submit to the commission on or about December 31 of each year an annual report in which the State Highway Engineer shall set forth all that has been done by the Highway Division of the Department of Transportation during the year just ending, which report shall include all funds received, the source or sources from which received, the expenditure and disbursement of all funds and the purposes for which they were expended. The report shall contain a statement of the roads, highways or streets constructed, reconstructed and improved during the period, together with a statement showing in a general way the status of the highway system.

(2) The director may, in the director's discretion, relieve the State Highway Engineer of such portions of the State Highway Engineer's duties and responsibilities with respect to audits, accounting procedures and other like duties and responsibilities provided for in ORS 366.155 to 366.165 as the director considers advisable. The director may require such portion of such duties to be performed and such responsibilities to be assumed by the fiscal officer of the department appointed under ORS 184.637.

(3) In carrying out the duties set forth in this section, the State Highway Engineer shall act in a manner that is consistent with the goal set forth in section 18 of this 1989 Act.

SECTION 50. ORS 448.123 is amended to read:

448.123. **(1)** It is the purpose of ORS 448.119 to 448.285, 454.235, 454.255 and 757.005 to:

[*(1)*] **(a)** Assure all Oregonians safe drinking water.

[*(2)*] **(b)** Provide a simple and effective regulatory program for drinking water systems.

[*(3)*] **(c)** Provide a means to improve inadequate drinking water systems.

(2) In carrying out the purpose set forth in subsection (1) of this section, the Health Division shall act in accordance with the goal set forth in section 18 of this 1989 Act.

(3) If, in carrying out any duty prescribed by law, the Health Division acquires information related to ground water quality in Oregon, the Health Division shall forward a copy of the information to the centralized repository established pursuant to section 20 of this 1989 Act.

SECTION 51. ORS 448.150 is amended to read:

448.150. **(1)** The division shall:

[(1)] **(a)** Conduct periodic sanitary surveys of drinking water systems and sources, take water samples and inspect records to insure the system is not creating an unreasonable risk to health. The division shall provide written reports of such examinations to the local health administrator and to the water supplier.

[(2)] **(b)** Require regular water sampling by water suppliers. These samples shall be analyzed in a laboratory approved by the division. The results of the laboratory analysis shall be reported to the division, the local health department and to the water supplier.

[(3)] **(c)** Investigate any water system that fails to meet the water quality standards established by the division.

[(4)] **(d)** Require every water supplier that provides drinking water that is from a surface water source to conduct sanitary surveys of the watershed as may be considered necessary by the division for the protection of public health. The water supplier shall make written reports of such sanitary surveys of watersheds promptly to the division and to the local health department.

[(5)] **(e)** Investigate reports of waterborne disease pursuant to its authority under ORS 431.110 and take necessary actions as provided for in ORS 446.310, 448.030, 448.115 to 448.285, 454.235, 454.255, 455.680 and 757.005 to protect the public health and safety.

(f) Notify the Department of Environmental Quality of a potential ground water management area if, as a result of its water sampling under paragraphs (a) to (e) of this subsection, the division detects the presence in ground water of:

(A) Nitrate contaminants at levels greater than 70 percent of the levels established pursuant to section 25 of this 1989 Act; or

(B) Any other contaminants at levels greater than 50 percent of the levels established pursuant to section 25 of this 1989 Act.

(2) The notification required under paragraph (f) of subsection (1) of this section shall identify the substances detected in the ground water and all ground water aquifers that may be affected.

SECTION 52. ORS 536.120 is amended to read:

536.120. **(1)** The Strategic Water Management Group shall coordinate all of the following:

[(1)] **(a)** Agency activities insofar as those activities affect the water resources of this state. Such activities include the periodic review and updating by the agencies of the agencies' water related data, policies and management plans.

[(2)] **(b)** The responses of state agencies to problems and issues affecting the water resources of this state when such responses require the participation of numerous state agencies.

(c) Interagency management of ground water as necessary to achieve the goal set forth in section 18 of this 1989 Act.

(d) The regulatory activities of any affected state agency responding to the declaration of a ground water management area under section 36 of this 1989 Act. As used in this subsection "affected state agency" means any agency having management responsibility for, or regulatory control over the ground water resource of this state or any substance that may contaminate the ground water resource of this state.

[(3)] **(e)** The development of the water related portions of each member agency's biennial budget as submitted to the Governor that affect the water related activities of other state agencies.

(2) In addition to its duties under subsection (1) of this section, the Strategic Water Management Group shall, on or before January 1 of each odd-numbered year, prepare a report to the Legislative Assembly. The report shall include the status of ground water in Oregon, efforts made in the immediately preceding year to protect, conserve and restore Oregon's ground water resources, grants awarded under section 21 of this 1989 Act and any proposed legislation the group finds necessary to accomplish the goal set forth in section 18 of this 1989 Act.

SECTION 53. ORS 536.220 is amended to read:

536.220. (1) The Legislative Assembly recognizes and declares that:

(a) The maintenance of the present level of the economic and general welfare of the people of this state and the future growth and development of this state for the increased economic and general welfare of the people thereof are in large part dependent upon a proper utilization and control of the water resources of this state, and such use and control is therefore a matter of greatest concern and highest priority.

(b) A proper utilization and control of the water resources of this state can be achieved only through a coordinated, integrated state water resources policy, through plans and programs for the development of such water resources and through other activities designed to encourage, promote and secure the maximum beneficial use and control of such water resources, all carried out by a single state agency.

(c) The economic and general welfare of the people of this state have been seriously impaired and are in danger of further impairment by the exercise of some single-purpose power or influence over the water resources of this state or portions thereof by each of a large number of public authorities, and by an equally large number of legislative declarations by statute of single-purpose policies with regard to such water resources, resulting in friction and duplication of activity among such public authorities, in confusion as to what is primary and what is secondary beneficial use or control of such water resources and in a consequent failure to utilize and control such water resources for multiple purposes for the maximum beneficial use and control possible and necessary.

(2) The Legislative Assembly, therefore, finds that:

(a) It is in the interest of the public welfare that a coordinated, integrated state water resources policy be formulated and means provided for its enforcement, that plans and programs for the development and enlargement of the water resources of this state be devised and promoted and that other activities designed to encourage, promote and secure the maximum beneficial use and control of such water resources and the development of additional water supplies be carried out by a single state agency which, in carrying out its functions, shall give proper and adequate consideration to the multiple aspects of the beneficial use and control of such water resources with an impartiality of interest except that designed to best protect and promote the public welfare generally.

(b) The state water resources policy shall be consistent with the goal set forth in section 18 of this 1989 Act.

SECTION 54. ORS 536.340 is amended to read:

536.340. Subject at all times to existing rights and priorities to use waters of this state, the commission:

(1) May, by a water resources statement referred to in ORS 536.300 (2), classify and reclassify the lakes, streams, underground reservoirs or other sources of water supply in this state as to the highest and best use and quantities of use thereof for the future in aid of an integrated and balanced

program for the benefit of the state as a whole. The commission may so classify and reclassify portions of any such sources of water supply separately. Classification or reclassification of sources of water supply as provided in the subsection has the effect of restricting the use and quantities of use thereof to the uses and quantities of uses specified in the classification or reclassification, and no other uses or quantities of uses except as approved by the commission under ORS 536.370 to 536.390. **Restrictions on use and quantities of use of a source of water supply resulting from a classification or reclassification under this section shall apply to the use of all waters of this state affected by the classification or reclassification, and shall apply to uses listed in ORS 537.545 that are initiated after the classification or reclassification that imposes the restriction.**

(2) Shall diligently enforce laws concerning cancellation, release and discharge of excessive unused claims to waters of this state to the end that such excessive and unused amounts may be made available for appropriation and beneficial use by the public.

(3) May, by a water resources statement referred to in ORS 536.300 (2) and subject to the preferential uses named in ORS 536.310 (12), prescribe preferences for the future for particular uses and quantities of uses of the waters of any lake, stream or other source of water supply in this state in aid of the highest and best beneficial use and quantities of use thereof. In prescribing such preferences the commission shall give effect and due regard to the natural characteristics of such sources of water supply, the adjacent topography, the economy of such sources of water supply, the economy of the affected area, seasonal requirements of various users of such waters, the type of proposed use as between consumptive and nonconsumptive uses and other pertinent data.

SECTION 55. ORS 536.410 is amended to read:

536.410. (1) When the Water Resources Commission determines that it is necessary to insure compliance with the state water resources policy or that it is otherwise necessary in the public interest to conserve the water resources of this state for the maximum beneficial use and control thereof that any unappropriated waters of this state, including unappropriated waters released from storage or impoundment into the natural flow of a stream for specified purposes, be withdrawn from appropriation for all or any uses **including exempt uses under ORS 537.545**, the commission, on behalf of the state, may issue an order of withdrawal.

(2) Prior to the issuance of the order of withdrawal the commission shall hold a public hearing on the necessity for the withdrawal. Notice of the hearing shall be published in at least one issue each week for at least two consecutive weeks prior to the hearing in a newspaper of general circulation published in each county in which are located the waters proposed to be withdrawn.

(3) The order of withdrawal shall specify with particularity the waters withdrawn from appropriation, the uses for which the waters are withdrawn, the reason for the withdrawal and the duration of the withdrawal. The commission may modify or revoke the order at any time.

(4) Copies of the order of withdrawal and notices of any modification or revocation of the order of withdrawal shall be filed in the Water Resources Department.

(5) While the order of withdrawal is in effect, no application for a permit to appropriate the waters withdrawn for the uses specified in the order and no application for a preliminary permit or license involving appropriations of such waters shall be received for filing by the Water Resources Commission.

SECTION 56. ORS 537.525 is amended to read:

537.525. The Legislative Assembly recognizes, declares and finds that the right to reasonable

control of all water within this state from all sources of water supply belongs to the public, and that in order to insure the preservation of the public welfare, safety and health it is necessary that:

(1) Provision be made for the final determination of relative rights to appropriate ground water everywhere within this state and of other matters with regard thereto through a system of registration, permits and adjudication.

(2) Rights to appropriate ground water and priority thereof be acknowledged and protected, except when, under certain conditions, the public welfare, safety and health require otherwise.

(3) Beneficial use without waste, within the capacity of available sources, be the basis, measure and extent of the right to appropriate ground water.

(4) All claims to rights to appropriate ground water be made a matter of public record.

(5) Adequate and safe supplies of ground water for human consumption be assured, while conserving maximum supplies of ground water for agricultural, commercial, industrial, recreational and other beneficial uses.

(6) The location, extent, capacity, quality and other characteristics of particular sources of ground water be determined.

(7) Reasonably stable ground water levels be determined and maintained.

(8) Depletion of ground water supplies below economic levels, impairment of natural quality of ground water by pollution and wasteful practices in connection with ground water be prevented or controlled within practicable limits.

(9) Whenever wasteful use of ground water, impairment of or interference with existing rights to appropriate surface water, declining ground water levels, interference among wells, overdrawing of ground water supplies or pollution of ground water exists or impends, controlled use of the ground water concerned be authorized and imposed under voluntary joint action by the Water Resources Commission and the ground water users concerned whenever possible, but by the commission under the police power of the state when such voluntary joint action is not taken or is ineffective.

(10) Location, construction, depth, capacity, yield and other characteristics of and matters in connection with wells be controlled in accordance with the purposes set forth in this section.

(11) All activities in the state that affect the quality or quantity of ground water shall be consistent with the goal set forth in section 18 of this 1989 Act.

SECTION 57. ORS 537.545 is amended to read:

537.545. (1) **Except as provided in subsection (3) of this section,** no registration, certificate of registration, application for a permit, permit, certificate of completion or ground water right certificate under ORS 537.505 to 537.795 is required for the use of ground water for:

(a) Stockwatering purposes;

(b) Watering any lawn or noncommercial garden not exceeding one-half acre in area;

(c) Watering the grounds, three acres in size or less, of schools that have less than 100 students and that are located in cities with a population of less than 10,000;

(d) Single or group domestic purposes in an amount not exceeding 15,000 gallons a day;

(e) Down-hole heat exchange purposes; or

(f) Any single industrial or commercial purpose in an amount not exceeding 5,000 gallons a day.

(2) The use of ground water for [*any such purpose*] **a use exempt under subsection (1) of this section,** to the extent that it is beneficial, constitutes a right to appropriate ground water equal to that established by a ground water right certificate issued under ORS 537.700. The Water Resources

Commission may require any person or public agency using ground water for any such purpose to furnish information with regard to such ground water and the use thereof.

(3) After declaration of a ground water management area, any person intending to make a new use of ground water that is exempt under subsection (1) of this section shall apply for a ground water permit under ORS 537.505 to 537.795 to use the water. Any person applying for a permit for an otherwise exempt use shall not be required to pay a fee for the permit.

SECTION 58. ORS 537.665 is amended to read:

537.665. **(1) Upon its own motion, or upon the request of another state agency or local government,** the Water Resources Commission, **within the limitations of available resources,** shall proceed as rapidly as possible to identify and define tentatively the location, extent, depth and other characteristics of each ground water reservoir in this state, and shall assign to each a distinctive name or number or both as a means of identification. The commission may make any investigation and gather all data and information essential to a proper understanding of the characteristics of each ground water reservoir and the relative rights to appropriate ground water from each ground water reservoir.

(2) In identifying the characteristics of each ground water reservoir under subsection (1) of this section, the commission shall coordinate its activities with activities of the Department of Environmental Quality under section 29 of this 1989 Act in order that the final characterization may include an assessment of both ground water quality and ground water quantity.

(3) Before the commission makes a final determination of boundaries and depth of any ground water reservoir, the director shall proceed to make a final determination of the rights to appropriate the ground water of the ground water reservoir under ORS 537.670 to 537.695.

(4) The commission shall forward copies of all information acquired from an assessment conducted under this section to the central repository of information about Oregon's ground water resource established pursuant to section 20 of this 1989 Act.

SECTION 59. ORS 537.775 is amended to read:

537.775. (1) Whenever the Water Resources Commission finds that any well, including any well exempt under ORS 537.545, is by the nature of its construction, operation or otherwise causing wasteful use of ground water, is unduly interfering with other wells or surface water supply **is a threat to health** or is polluting ground water or surface water supplies contrary to ORS 537.505 to 537.795, the commission may order discontinuance of **the use of the well,** [*or*] impose conditions upon the use of such well to such extent as may be necessary to remedy the defect **or order permanent abandonment of the well according to specifications of the commission.**

(2) In the absence of a determination of a critical ground water area, any order issued under this section imposing conditions upon interfering wells shall provide to each party all water to which the party is entitled, in accordance with the date of priority of the water right.

SECTION 60. ORS 537.780 is amended to read:

537.780. In the administration of ORS 537.505 to 537.795, the Water Resources Commission may:

(1) Require that all flowing wells be capped or equipped with valves so that the flow of ground water may be completely stopped when the ground water is not actually being applied to a beneficial use.

(2) Enforce:

(a) General standards for the construction and maintenance of wells and their casings, fittings,

valves, [*and*] pumps[,] and **back-siphoning prevention devices; and**

(b) Special standards for the construction and maintenance of particular wells and their casings, fittings, valves and pumps.

(3)(a) Adopt by rule and enforce when necessary to protect the ground water resource, standards for the construction, maintenance, abandonment or use of any hole through which ground water may be contaminated; or [.]

(b) Enter into an agreement with, or advise, other state agencies that are responsible for holes other than wells through which ground water may be contaminated in order to protect the ground water resource from contamination.

[*(3)*] **(4)** Enforce uniform standards for the scientific measurement of water levels and of ground water flowing or withdrawn from wells.

[*(4)*] **(5)** Enter upon any lands for the purpose of inspecting wells, including wells exempt under ORS 537.545, casings, fittings, valves, pipes, pumps [*and*], measuring devices **and back-siphoning prevention devices.**

[*(5)*] **(6)** Prosecute actions and suits to enjoin violations of ORS 537.505 to 537.795, and appear and become a party to any action, suit or proceeding in any court or before any administrative body when it appears to the satisfaction of the commission that the determination of the action, suit or proceeding might be in conflict with the public policy expressed in ORS 537.525.

[*(6)*] **(7)** Call upon and receive advice and assistance from the Environmental Quality Commission or any other public agency or any person, and enter into cooperative agreements with a public agency or person.

[*(7)*] **(8)** Adopt and enforce rules necessary to carry out the provisions of ORS 537.505 to 537.795 including but not limited to rules governing:

(a) The form and content of registration statements, certificates of registration, applications for permits, permits, certificates of completion, ground water right certificates, notices, proofs, maps, drawings, logs and licenses;

(b) Procedure in hearings held by the commission; and

(c) The circumstances under which the helpers of persons operating well drilling machinery may be exempt from the requirement of direct supervision by a licensed water well constructor.

[*(8)*] **(9)** In accordance with applicable law regarding search and seizure, apply to any court of competent jurisdiction for a warrant to seize any well drilling machine used in violation of ORS 537.747 or 537.753.

SECTION 61. ORS 540.610 is amended to read:

540.610. (1) Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state. Whenever the owner of a perfected and developed water right ceases or fails to use the water appropriated for a period of five successive years, the right to use shall cease, and the failure to use shall be conclusively presumed to be an abandonment of water right. Thereafter the water which was the subject of use under such water right shall revert to the public and become again the subject of appropriation in the manner provided by law, subject to existing priorities.

(2) Subsection (1) of this section shall not:

(a) Apply to, or affect, the use of water, or rights of use, acquired by cities and towns in this state, by appropriation or by purchase, for all reasonable and usual municipal purposes.

(b) Be so construed as to impair any of the rights of such cities and towns to the use of water, whether acquired by appropriation or purchase, or heretofore recognized by act of the legislature,

or which may hereafter be acquired.

(c) Apply to, or affect, the use of water, or rights of use, appurtenant to property obtained by the Department of Veterans' Affairs under ORS 407.135 or 407.145 for three years after the expiration of redemptions as provided in ORS 23.530 to 23.600 while the land is held by the Director of Veterans' Affairs, even if during such time the water is not used for a period of more than five successive years.

(d) Apply to, or affect the use of water, or rights of use, under a water right, if the owner of the property to which the right is appurtenant is unable to use the water due to economic hardship as defined by rule by the commission.

(e) Apply to, or affect, the use of water, or rights of use, under a water right, if the use of water under the right is discontinued under an order of the commission under ORS 537.775.

(3) The right of all cities and towns in this state to acquire rights to the use of the water of natural streams and lakes, not otherwise appropriated, and subject to existing rights, for all reasonable and usual municipal purposes, and for such future reasonable and usual municipal purposes as may reasonably be anticipated by reason of growth of population, or to secure sufficient water supply in cases of emergency, is expressly confirmed.

SECTION 61a. If Senate Bill 153 becomes law, section 61 of this Act is repealed and ORS 540.610, as amended by section 1, chapter _____, Oregon Laws 1989 (Enrolled Senate Bill 153), is further amended to read:

540.610. (1) Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state. Whenever the owner of a perfected and developed water right ceases or fails to use all or part of the water appropriated for a period of five successive years, the failure to use shall establish a rebuttable presumption of forfeiture of all or part of the water right. Thereafter the water which was the subject of use under such water right shall revert to the public and become again the subject of appropriation in the manner provided by law, subject to existing priorities.

(2) Upon a showing of failure to use beneficially for five successive years, the appropriator has the burden of rebutting the presumption of forfeiture by showing one or more of the following:

(a) The water right is for use of water, or rights of use, acquired by cities and towns in this state, by appropriation or by purchase, for all reasonable and usual municipal purposes.

(b) A finding of forfeiture would impair the rights of such cities and towns to the use of water, whether acquired by appropriation or purchase, or heretofore recognized by act of the legislature, or which may hereafter be acquired.

(c) The use of water, or rights of use, are appurtenant to property obtained by the Department of Veterans' Affairs under ORS 407.135 or 407.145 for three years after the expiration of redemptions as provided in ORS 23.530 to 23.600 while the land is held by the Director of Veterans' Affairs, even if during such time the water is not used for a period of more than five successive years.

(d) The use of water, or rights of use, under a water right, if the owner of the property to which the right is appurtenant is unable to use the water due to economic hardship as defined by rule by the commission.

(e) The period of nonuse occurred during a period of time within which land was withdrawn from use in accordance with the Act of Congress of May 28, 1956, chapter 327 (7 U.S.C. 1801-1814; 1821-1824; 1831-1837), or the Federal Conservation Reserve Program, Act of Congress of December 23, 1985, chapter 198 (16 U.S.C. 3831-3836, 3841-3845). If necessary, in a cancellation proceeding un-

der this section, the water right holder rebutting the presumption under this paragraph shall provide documentation that the water right holder's land was withdrawn from use under a federal reserve program.

(f) The end of the alleged period of nonuse occurred more than 15 years before the date upon which evidence of nonuse was submitted to the commission or the commission initiated cancellation proceedings under ORS 540.631, whichever occurs first.

(g) The owner of the property to which the water right was appurtenant is unable to use the water because the use of water under the right is discontinued under an order of the commission under ORS 537.775.

(3) The right of all cities and towns in this state to acquire rights to the use of the water of natural streams and lakes, not otherwise appropriated, and subject to existing rights, for all reasonable and usual municipal purposes, and for such future reasonable and usual municipal purposes as may reasonably be anticipated by reason of growth of population, or to secure sufficient water supply in cases of emergency, is expressly confirmed.

SECTION 62. ORS 561.020 is amended to read:

561.020. (1) The department shall have full responsibility and authority for all the inspectional, regulatory and market development work provided for under the provisions of all statutes which the department is empowered and directed to enforce.

(2) The department shall encourage and work toward long-range planning to develop and promote the agricultural resources of Oregon that they may contribute as greatly as possible to the future economy of the state.

(3) The Director of Agriculture shall coordinate any activities of the department related to a watershed enhancement project approved by the Governor's Watershed Enhancement Board under ORS 541.375 with activities of other cooperating state and federal agencies participating in the project.

(4) The Director of Agriculture shall conduct any activities of the department in a manner consistent with the goal set forth in section 18 of this 1989 Act.

SECTION 63. ORS 568.225 is amended to read:

568.225. **(1)** In recognition of the ever-increasing demands on the renewable natural resources of the state and of the need to conserve, protect and develop such resources, it is hereby declared to be the policy of the Legislative Assembly to provide for the conservation of the renewable natural resources of the state and thereby to conserve and develop natural resources, control and prevent soil erosion, control floods, conserve and develop water resources and water quality, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, conserve natural beauty, promote recreational development, protect the tax base, protect public lands and protect and promote the health, safety and general welfare of the people of this state.

(2) It is further the policy of the Legislative Assembly to authorize soil and water conservation [*local advisory committees*] **districts** established under ORS 568.210 to 568.805 to participate in effectuating the [*above*] policy **set forth in subsection (1) of this section** and for such purposes to cooperate with landowners, land occupiers, other natural resource users, other local governmental units, and with agencies of the government of this state and of the United States, in projects, programs and activities calculated to accelerate such policies. **In effectuating the policy set forth in subsection (1) of this section, the soil and water conservation districts also shall strive to**

achieve the goal set forth in section 18 of this 1989 Act.

SECTION 64. ORS 633.440 is amended to read:

633.440. (1) The department shall administer and enforce ORS 633.310 to 633.495, and for that purpose may make rules and regulations not inconsistent with law.

(2) The department shall prosecute any violations of those sections.

(3) **Upon the declaration of a ground water management area under section 36 of this 1989 Act, or** when the department has reasonable cause to believe any quantity or lot of fertilizer, agricultural mineral, agricultural amendment or lime is being sold or distributed in violation of ORS 633.310 to 633.495 or rules promulgated thereunder [*it*] **the department** may, in accordance with ORS 561.605 to 561.620, issue and enforce a written "withdrawal from distribution" order directing the distributor thereof not to dispose of the quantity or lot of fertilizer, agricultural minerals, agricultural amendments or lime in any manner until written permission is first given by the department. The department shall release the quantity or lot of fertilizer, agricultural minerals, agricultural amendments or lime so withdrawn when said law or rules have been complied with.

(4) Any quantity or lot of fertilizer, agricultural minerals, agricultural amendments or lime found by the department not to be in compliance with ORS 633.310 to 633.495 or rules promulgated thereunder may be seized by the department in accordance with the provisions of ORS 561.605 to 561.620.

SECTION 65. ORS 633.460 is amended to read:

633.460. (1) Each person who as set forth in subsection (3) of this section is a first purchaser of fertilizers, agricultural minerals, agricultural amendments or lime in this state shall pay to the department an inspection fee established by the department by rule of:

(a) Not to exceed [*20*] **45** cents for each ton of fertilizer, agricultural minerals, or agricultural amendments purchased by such person during each calendar year, **25 cents of which shall be continuously appropriated to the State Department of Agriculture for the purpose of funding grants for research and development related to the interaction of pesticides or fertilizers and ground water.**

(b) Not to exceed five cents for each ton of gypsum, land plaster and every agricultural mineral the principal constituent of which is calcium sulphate ($CaSO_4 \cdot 2H_2O$), purchased by such person during each calendar year.

(c) Not to exceed five cents for each ton of lime purchased by such first purchaser during each calendar year.

(2) In computing the tonnage on which the inspection fee must be paid as required in subsection (1) of this section, sales or purchases of fertilizers, agricultural minerals, agricultural amendments and lime in individual packages weighing five pounds net or less, and sales of fertilizers, agricultural minerals, agricultural amendments and lime for shipment to points outside this state, may be excluded.

(3) "First purchaser" or "purchased" for the purpose of this section, except as otherwise prescribed by the department, means the first person in Oregon who buys or purchases, or who takes title to, or who handles, receives or obtains possession of, fertilizer, agricultural minerals, agricultural amendments or lime. The department after public hearing and as authorized under ORS 183.310 to 183.550, may further define and may prescribe "first purchaser" for practical and reasonable rules necessary to effectuate the provisions of this section.

(4) The provisions of ORS 561.450 also apply to any person who refuses to pay inspection fees

due the department.

SECTION 66. ORS 634.016 is amended to read:

634.016. (1) Every pesticide, including each formula or formulation, manufactured, compounded, delivered, distributed, sold, offered or exposed for sale in this state shall be registered each year with the department.

(2) Every device, manufactured, delivered, distributed, sold, offered or exposed for sale in this state, shall be registered each year with the department.

(3) The registration shall be made by the manufacturer or a distributor of the pesticide.

(4) The application for registration shall include:

(a) The name and address of the registrant.

(b) The name and address of the manufacturer if different than the registrant.

(c) The brand name or trade-mark of the pesticide.

(d) A specimen or facsimile of the label of each pesticide, and each formula or formulation, for which registration is sought, except for annual renewals of the registration when the label remains unchanged.

(e) The correct name and total percentage of each active ingredient.

(f) The total percentage of inert ingredients.

(5) The application for registration shall be accompanied by a registration fee to be established by the department for each pesticide, and each formula or formulation, which shall not exceed $40 for each such pesticide, or each formula or formulation.

(6) The department, at the time of application for registration of any pesticide **or after a declaration of a ground water management area under section 36 of this 1989 Act** may:

(a) Restrict or limit the manufacture, delivery, distribution, sale or use of any pesticide in this state.

(b) Refuse to register any pesticide which is highly toxic for which there is no effective antidote under the conditions of use for which such pesticide is intended or recommended.

(c) Refuse to register any pesticide for use on a crop for which no finite tolerances for residues of such pesticide have been established by either the department or the Federal Government.

(d) In restricting the purposes for which pesticides may be manufactured, delivered, distributed, sold or used, or in refusing to register any pesticide, give consideration to:

(A) The damage to health or life of humans or animals, or detriment to the environment, which might result from the distribution and use of such pesticide.

(B) Authoritative findings and recommendations of agencies of the Federal Government and of any advisory committee or group established under ORS 634.306 (10).

(C) The existence of an effective antidote under known conditions of use for which the material is intended or recommended.

(D) Residual or delayed toxicity of the material.

(E) The extent to which a pesticide or its carrying agent simulates by appearance and may be mistaken for human food or animal feed.

(7) The provisions of this section shall not, except as provided herein, apply to:

(a) The use and purchase of pesticides by the Federal Government or its agencies.

(b) The sale or exchange of pesticides between manufacturers and distributors.

(c) Drugs, chemicals or other preparations sold or intended for medicinal or toilet purposes or for use in the arts or sciences.

(d) Common carriers, contract carriers or public warehousemen delivering or storing pesticides, except as provided in ORS 634.322.

SECTION 67. ORS 459.005 is amended to read:

459.005. As used in ORS 275.275, 459.005 to 459.385, unless the context requires otherwise:

(1) "Affected person" means a person or entity involved in the solid waste collection service process including but not limited to a recycling collection service, disposal site permittee or owner, city, county and metropolitan service district.

(2) "Area of the state" means any city or county or combination or portion thereof or other geographical area of the state as may be designated by the commission.

(3) "Board of county commissioners" or "board" includes county court.

(4) "Collection franchise" means a franchise, certificate, contract or license issued by a city or county authorizing a person to provide collection service.

(5) "Collection service" means a service that provides for collection of solid waste or recyclable material or both.

(6) "Commission" means the Environmental Quality Commission.

(7) "Conditionally exempt small quantity generator" means a person that generates a hazardous waste but is conditionally exempt from substantive regulation because the waste is generated in quantities below the threshold for regulation adopted by the commission pursuant to ORS 466.020.

[*(7)*] **(8)** "Department" means the Department of Environmental Quality.

[*(8)*] **(9)** "Disposal site" means land and facilities used for the disposal, handling or transfer of or resource recovery from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, transfer stations, resource recovery facilities, incinerators for solid waste delivered by the public or by a solid waste collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site; but the term does not include a facility subject to the permit requirements of ORS 468.740; a landfill site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar nondecomposable material, unless the site is used by the public either directly or through a solid waste collection service; or a site operated by a wrecker issued a certificate under ORS 822.110.

(10) "Hazardous waste" has the meaning given that term in ORS 466.005.

(11) "Hazardous waste collection service" means a service that collects hazardous waste from exempt small quantity generators and from households.

(12) "Household hazardous waste" means any discarded, useless or unwanted chemical, material, substance or product that is or may be hazardous or toxic to the public or the environment and is commonly used in or around households which may include, but is not limited to, some cleaners, solvents, pesticides, and automotive and paint products.

[*(9)*] **(13)** "Land disposal site" means a disposal site in which the method of disposing of solid waste is by landfill, dump, pit, pond or lagoon.

[*(10)*] **(14)** "Land reclamation" means the restoration of land to a better or more useful state.

[*(11)*] **(15)** "Local government unit" means a city, county, metropolitan service district formed under ORS chapter 268, sanitary district or sanitary authority formed under ORS chapter 450, county service district formed under ORS chapter 451, regional air quality control authority formed under ORS 468.500 to 468.530 and 468.540 to 468.575 or any other local government unit responsible

for solid waste management.

[*(12)*] **(16)** "Metropolitan service district" means a district organized under ORS chapter 268 and exercising solid waste authority granted to such district under this chapter and ORS chapter 268.

(17) "Periodic collection event" means the collection of household hazardous waste or conditionally exempt small quantity generator hazardous waste at a temporary facility.

[*(13)*] **(18)** "Permit" includes, but is not limited to, a conditional permit.

[*(14)*] **(19)** "Person" means the state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity.

[*(15)*] **(20)** "Recyclable material" means any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.

[*(16)*] **(21)** "Regional disposal site" means:

(a) A disposal site selected pursuant to chapter 679, Oregon Laws 1985; or

(b) A disposal site that receives, or a proposed disposal site that is designed to receive more than 75,000 tons of solid waste a year from commercial haulers from outside the immediate service area in which the disposal site is located. As used in this paragraph, "immediate service area" means the county boundary of all counties except a county that is within the boundary of the metropolitan service district. For a county within the metropolitan service district, "immediate service area" means the metropolitan service district boundary.

[*(17)*] **(22)** "Resource recovery" means the process of obtaining useful material or energy resources from solid waste and includes:

(a) "Energy recovery," which means recovery in which all or a part of the solid waste materials are processed to utilize the heat content, or other forms of energy, of or from the material.

(b) "Material recovery," which means any process of obtaining from solid waste, by presegregation or otherwise, materials which still have useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled for the same or other purpose.

(c) "Recycling," which means any process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity.

(d) "Reuse," which means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

[*(18)*] **(23)** "Solid waste collection service" or "service" means the collection, transportation or disposal of or resource recovery from solid wastes but does not include that part of a business operated under a certificate issued under ORS 822.110.

[*(19)*] **(24)** "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, waste paper and cardboard; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial, demolition and construction wastes; discarded or abandoned vehicles or parts thereof; discarded home and industrial appliances; manure, vegetable or animal solid and semisolid wastes, dead animals and other wastes; but the term does not include:

(a) Hazardous wastes as defined in ORS 466.005.

(b) Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals.

[*(20)*] **(25)** "Solid waste management" means prevention or reduction of solid waste; management

of the storage, collection, transportation, treatment, utilization, processing and final disposal of solid waste; or resource recovery from solid waste; and facilities necessary or convenient to such activities.

[*(21)*] **(26)** "Source separate" means that the person who last uses recyclable material separates the recyclable material from solid waste.

[*(22)*] **(27)** "Transfer station" means a fixed or mobile facility normally used, as an adjunct of a solid waste collection and disposal system or resource recovery system, between a collection route and a disposal site, including but not limited to a large hopper, railroad gondola or barge.

[*(23)*] **(28)** "Waste" means useless or discarded materials.

[*(24)*] **(29)** "Wasteshed" means an area of the state having a common solid waste disposal system or designated by the commission as an appropriate area of the state within which to develop a common recycling program.

SECTION 68. Sections 69 to 76 and 155 and 156 of this Act are added to and made a part of ORS 459.005 to 459.385.

SECTION 69. (1) The Legislative Assembly finds:

(a) Persons have limited opportunities to properly manage household hazardous waste;

(b) Businesses that are conditionally exempt small quantity generators of hazardous waste do not have feasible options for the management of hazardous waste; and

(c) The disposal of household hazardous waste and exempt small quantity generator hazardous waste in solid waste disposal sites and sewage facilities presents a potential hazard to the public health and the environment because these sites and facilities may not be designed for the disposal of hazardous waste.

(2) Therefore, the Legislative Assembly declares that it is in the interest of public health, safety and the environment to provide:

(a) Alternatives to disposal of hazardous waste and household hazardous waste at solid waste disposal sites and sewage facilities; and

(b) Information and education programs about:

(A) Alternatives for the management of hazardous waste and household hazardous waste;

(B) Methods of reusing and recycling hazardous waste and household hazardous waste; and

(C) Alternatives to the use of products that lead to the generation of hazardous waste and household hazardous waste.

SECTION 70. (1) The department shall conduct, for a period not to exceed three years, a pilot project to operate periodic household hazardous waste collection events in local government units outside the boundaries of the metropolitan service district. The pilot project may include periodic collection of conditionally exempt small quantity generator waste.

(2) In determining which local government units are to be involved in the pilot project, the department shall consider:

(a) The amount of money available for the pilot project;

(b) The order in which the department receives requests from local government units to participate;

(c) The population of each local government unit requesting to be part of the pilot project, and the area served by the proposed collection event so that the most people and the widest areas can be served;

(d) Geographic coverage throughout the state that allows as many areas of the state as possible

to have some kind of reasonable access to the pilot project; and

(e) The information provided by each local government unit requesting to be part of the pilot project.

(3) In addition to conducting the pilot project, the department shall assist local government units to promote an effective household hazardous waste collection program.

(4) The department shall report to the Sixty-seventh Legislative Assembly on the implementation of the pilot project and the results of the pilot project.

SECTION 71. In order to participate in the pilot project under section 70 of this 1989 Act, a local government unit shall:

(1) Submit a written request to the department describing the local government's proposed periodic collection events, including a detailed description of the work to be provided by the local government unit;

(2) Agree to promote the project at a level acceptable to the department;

(3) Select sites suitable for holding the collection events;

(4) Recruit and train volunteers to assist with the collection events; and

(5) Otherwise assist with local coordination of the periodic collection event.

SECTION 72. As a part of the pilot project described in section 70 of this 1989 Act, and at the request of a local government unit, the department may contract for administration of all or part of a periodic household hazardous waste collection event, including the management, recycling and disposal of waste collected by the local government unit in its program.

SECTION 73. (1) The Department of Environmental Quality shall study management options and funding alternatives for hazardous waste generated by conditionally exempt generators. The department shall report its findings and recommendations to the Sixty-sixth Legislative Assembly.

(2) The department shall contract for a pilot project, for a period not to exceed three years, within the boundaries of the metropolitan service district, to provide for the collection or receipt of hazardous waste from conditionally exempt small quantity generators. The pilot project may also collect or receive household hazardous waste.

(3) The pilot project under this section may include a collection service or receiving stations for conditionally exempt small quantity generator hazardous waste or other management alternatives identified in the study conducted under subsection (1) of this section.

(4) Any fees charged to conditionally exempt generators involved in the pilot project shall be reasonable and balance the need to promote waste reduction through fees on disposal and the need to encourage the public to use the service.

(5) The department may contract with the metropolitan service district to carry out the requirements of subsections (2) to (4) of this section.

(6) To the extent funds are available, the department may conduct similar pilot projects in other local government units outside the boundaries of the metropolitan service district.

(7) The department shall report to the Sixty-seventh Legislative Assembly on the implementation of the pilot project and the results of the pilot project.

SECTION 74. (1) On or before January 1, 1991, the metropolitan service district shall establish permanent depots to receive household hazardous waste. The depots shall be:

(a) Developed at geographically diverse locations throughout the district; and

(b) Located and operationally designed to conveniently receive household hazardous waste from the general public on an ongoing basis.

(2) In conjunction with establishing permanent depots under subsection (1) of this section, the metropolitan service district also shall develop and implement a promotion program to encourage citizens to use the depots for household hazardous waste disposal.

SECTION 75. (1) Before any local government operates a permanent collection depot or periodic collection events for household hazardous waste or conditionally exempt small quantity generator hazardous waste, the local government shall receive written approval from the department.

(2) In requesting written approval from the department, a local government unit proposing to operate a permanent collection depot or periodic collection events shall submit a detailed proposal. The proposal shall include at least the following information:

(a) Measures to be taken to insure safety of the public and employes or volunteers working at the collection site;

(b) Measures to be taken to prevent spills or releases of hazardous waste and a plan to respond to a spill or release if one occurs;

(c) A copy of the request for proposals for a contractor to properly manage and recycle or dispose of the waste collected in a manner consistent with the commission's rules for hazardous waste collection, storage, transportation and disposal; and

(d) Measures to be implemented to insure no waste is accepted from generators of hazardous waste subject to regulation under ORS 466.005 to 466.385 and 466.890 unless the intent is to specifically collect such waste.

(3) The department may request additional information about the proposed program from the local government unit. The department shall not approve a program unless the program provides adequate provisions to protect the public health, safety and the environment.

SECTION 76. The department shall implement a state-wide household hazardous waste public education program. The program shall include but need not be limited to providing information about:

(1) Alternatives to disposal of household hazardous waste at solid waste disposal sites;

(2) Methods of reusing or recycling household hazardous waste; and

(3) Alternatives to the use of products that lead to the generation of household hazardous waste.

SECTION 77. ORS 468.065 is amended to read:

468.065. Subject to any specific requirements imposed by ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter:

(1) Applications for all permits authorized or required by ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter shall be made in a form prescribed by the department. Any permit issued by the department shall specify its duration, and the conditions for compliance with the rules and standards, if any, adopted by the commission pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter.

(2) By rule and after hearing, the commission may establish a schedule of permit fees for permits issued pursuant to ORS [*459.205,*] 468.310, 468.315, 468.555 and 468.740. The permit fees contained in the schedule shall be based upon the anticipated cost of filing and investigating the application, of issuing or denying the requested permit, and of an inspection program to determine compliance or noncompliance with the permit. The permit fee shall accompany the application for the permit.

(3) The department may require the submission of plans, specifications and corrections and revisions thereto and such other reasonable information as it considers necessary to determine the

eligibility of the applicant for the permit.

(4) The department may require periodic reports from persons who hold permits under ORS 448.305, 454.010 to 454.040, 454.205 to 454.225, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter. The report shall be in a form prescribed by the department and shall contain such information as to the amount and nature or common description of the pollutant, contaminant or waste and such other information as the department may require.

(5) Any fee collected under this section shall be deposited in the State Treasury to the credit of an account of the department. Such fees are continuously appropriated to meet the administrative expenses of the program for which they are collected. The fees accompanying an application to a regional air pollution control authority pursuant to a permit program authorized by the commission shall be retained by and shall be income to the regional authority. Such fees shall be accounted for and expended in the same manner as are other funds of the regional authority. However, if the department finds after hearing that the permit program administered by the regional authority does not conform to the requirements of the permit program approved by the commission pursuant to ORS 468.555, such fees shall be deposited and expended as are permit fees submitted to the department.

SECTION 78. ORS 275.275 is amended to read:

275.275. (1)(a) The proceeds arising under ORS 275.090 to 275.290 and 275.296 to 275.310 first shall be applied to refund the county general fund for the full amount advanced by the county to pay the state tax upon all properties upon which the county has foreclosed liens for delinquent taxes, and second, shall be applied to refund the county general fund for all the costs and expenses incurred by the county in the maintenance and supervision of such properties and in any suits by it to quiet its title to property sold. The proceeds so applied as refunds shall not amount to more than the tax actually paid and the costs and expenses actually incurred by the county.

(b) After the refunds authorized under paragraph (a) of this subsection are made, the county treasurer shall credit to the general fund of the county proceeds arising under ORS 275.090 to 275.290 and 275.296 to 275.310 from the sale of real property acquired by the county in any manner other than by foreclosure of delinquent tax liens or by exchange for land originally acquired by foreclosure of delinquent tax liens and proceeds arising under ORS 275.294 from any lease or conveyance granting rights to explore, prospect for or remove biogas that is produced by decomposition of solid waste at any land disposal site or former land disposal site owned by the county. The proceeds described in this paragraph include payments for such real property sold under contract pursuant to ORS 275.190 or 275.200. As used in this paragraph, "land disposal site" has the meaning given that term in ORS 459.005 *[(9)]*.

(2)(a) Except for the proceeds arising under ORS 275.294 that are described in subsection (1) of this section, all proceeds arising under ORS 275.294 shall be segregated from the proceeds described in subsection (1) of this section and shall be deposited in a separate account maintained by the county. Only moneys obtained under ORS 275.294, and interest earned thereon, shall be credited to the account established under this paragraph.

(b) Not more than 10 percent of the proceeds arising under ORS 275.294 may be applied to reimburse any taxing district within the county for costs and expenses necessarily incurred by the district in providing improved, additional or extraordinary services required on lands in the county as a result of exploration, drilling, mining, logging or other activities authorized under a lease or conveyance under ORS 275.294. Such services include, but are not limited to, fire protection and

road construction and maintenance.

(c) Ten percent of the proceeds arising under ORS 275.294 may be applied to reimburse the county for administrative expenses incurred under ORS 275.294 and this subsection. If, in any year, such expenses exceed 10 percent of the proceeds arising under ORS 275.294, the amount of expenses not reimbursed may be carried forward into succeeding years until the county is fully reimbursed. However, not more than 10 percent of the proceeds arising under ORS 275.294 in any one year may be used for such reimbursement.

(d) Costs and expenses sought to be reimbursed under this subsection shall be verified by the county treasurer or auditor.

(e) Moneys applied as reimbursement under this subsection shall be distributed by the county treasurer in accordance with an order of the county governing body.

(3) After a portion of the proceeds is applied as provided in subsections (1) and (2) of this section, the balance of the proceeds arising under ORS 275.090 to 275.310, including the payments for land sold under contract pursuant to ORS 275.190 or 275.200, shall be distributed by the county treasurer in accordance with an order of the county governing body in accordance with the formula provided in ORS 311.390 which is currently being used for the distribution of tax collections. Notwithstanding ORS 294.080, as used in this subsection, "balance of the proceeds arising under ORS 275.090 to 275.310" includes all accumulated interest earned on the proceeds arising under ORS 275.294, unless a court of competent jurisdiction rules otherwise.

(4) Distribution of moneys under subsections (2) and (3) of this section shall be made on or before June 30 and December 31 in each year.

SECTION 79. ORS 284.310 is amended to read:

284.310. As used in ORS 284.310 to 284.530, unless the context requires otherwise:

(1) "Department" means the Economic Development Department.

(2) "Municipality" means a city, a county, a port incorporated under ORS 777.010 and 777.050, the Port of Portland created by ORS 778.010, a metropolitan service district organized under ORS chapter 268 or a domestic water supply district organized under ORS chapter 264.

(3) "Infrastructure project" means:

(a) A project for the construction of sewage treatment works, solid waste disposal sites, water supply works, roads, public transportation, railroad industrial spurs or sidings or other facilities that comprise the physical foundation for industrial and commercial activity.

(b) A project, in consultation with the Department of Transportation, the Public Utility Commission and other affected agencies, for the acquisition, reconstruction, rehabilitation, operation and maintenance of an abandoned railroad line or railroad line that has been designated by the owner and operator thereof as subject to abandonment within a three-year period pursuant to federal law and regulations governing abandonment of common carrier railroad lines. The project may include reconstruction or rehabilitation necessary to begin operation of the line.

(4) "Public transportation" includes public depots, public parking, public docks, public wharves, railroads and airport facilities.

(5) "Roads" includes:

(a) Ways described as streets, highways, throughways or alleys;

(b) Road related structures that are in the right of way such as tunnels, culverts or similar structures; and

(c) Structures that provide for continuity of the right of way such as bridges.

(6) "Sewage treatment works" includes all facilities necessary for collecting, pumping, treating and disposing of sanitary or storm sewage.

(7) "Solid waste disposal site" has the meaning given to the term "disposal site" by ORS 459.005 *[(8)]*.

(8) "Water supply works" includes all facilities necessary for tapping natural sources of domestic and industrial water, treating and protecting the quality of the water and transmitting it to the point of sale to any public or private agency for domestic, municipal and industrial water supply service.

(9) "Urban infrastructure projects" includes all those projects located in whole or in part within the acknowledged Portland Metropolitan Area Regional Urban Growth Boundary, and the acknowledged urban growth boundaries of the cities of Eugene, Springfield, Salem, Keizer or Medford or projects that will principally benefit these areas. The Director of the Economic Development Department is authorized to resolve situations left in question by this definition.

(10) "Nonurban infrastructure projects" includes all those projects which do not meet the definition of urban infrastructure projects.

SECTION 80. Sections 81 to 91 of this Act are added to and made a part of ORS 453.307 to 453.372.

SECTION 81. In order to protect life and property against the dangers of emergencies involving a hazardous substance as defined in ORS 453.307, the State Fire Marshal may assign and make available for use and duty in any county, city or district, under the direction and command of a person designated by the State Fire Marshal, any part of a regional hazardous material response team and specialized equipment that may be necessary to respond to the emergency.

SECTION 82. The State Fire Marshal shall establish by rule a plan for the effective implementation of a state-wide hazardous material emergency response system, which, to the extent practicable, shall be consistent with the emergency response plan adopted under ORS 466.620. The state-wide hazardous material emergency response system shall include, but need not be limited to:

(1) Provisions for coordinating the duties and responsibilities of regional hazardous material response teams, including related procedures for 24-hour dispatching and emergency communications;

(2) A schedule of fees for computing the reimbursement for extraordinary response costs incurred by a regional hazardous material response team as authorized by sections 81 to 91 of this 1989 Act; and

(3) Provisions for ongoing training programs for local government and state agency employes involved in response to spills or releases of oil and hazardous material. The State Fire Marshal may coordinate its training programs with emergency response training programs offered by local, state and federal agencies, community colleges and institutes of higher education and private industry in order to reach the maximum number of employes, avoid unnecessary duplication and conserve limited training funds.

SECTION 83. (1) In order to determine the need for response to a spill or release or threatened spill or release under ORS 453.307 to 453.372, or enforcing the provisions of ORS 453.307 to 453.372, any person who prepares, manufactures, processes, packages, stores, transports, handles, uses, applies, treats or disposes of oil or hazardous material shall, upon the request of the State Fire Marshal:

(a) Furnish information relating to the oil or hazardous material; and

(b) Permit the State Fire Marshal at all reasonable times to have access to and copy, records relating to the type, quantity, storage locations and hazards of the oil or hazardous material.

(2) In order to carry out subsection (1) of this section, the State Fire Marshal may enter to inspect at reasonable times any establishment or other place where oil or hazardous material is present.

SECTION 84. (1) In order to determine the need for response to a spill or release or threatened spill or release under ORS 453.307 to 453.372, any person who prepares, manufactures, processes, packages, stores, transports, handles, uses, applies, treats or disposes of oil or hazardous material shall, upon the request of any authorized local government official, permit the official at all reasonable times to have access to and copy, records relating to the type, quantity, storage locations and hazards of the oil or hazardous material.

(2) In order to carry out subsection (1) of this section a local government official may enter to inspect at reasonable times any establishment or other place where oil or hazardous material is present.

(3) As used in this section, "local government official" includes but is not limited to an officer, employe or representative of a county, city, fire department, fire district or police agency.

SECTION 85. During operations authorized under sections 81 to 91 this 1989 Act, members of regional hazardous materials response teams shall be protected and defended from liability under ORS 30.260 to 30.300.

SECTION 86. (1) In order to accomplish the purposes of sections 81 to 91 of this 1989 Act, the State Fire Marshal may lend equipment and make grants, as funds are available, to any local government participating in the state-wide hazardous material emergency response system.

(2) In allocating state equipment grants under sections 81 to 91 of this 1989 Act, the State Fire Marshal may provide up to 90 percent of the financing for the equipment. A local government receiving grant moneys shall contribute at least 10 percent to the equipment costs. Such contribution may be in a form agreed upon by the local government and the State Fire Marshal and may include, but need not be limited to, providing emergency response to areas outside the local jurisdiction, paying of insurance costs of the equipment or providing maintenance for the equipment.

SECTION 87. (1) The State Fire Marshal and any local government may enter into contracts with each other concerning eligible equipment loans or purchases. The contract may include any provisions agreed upon by the parties thereto, and for grants shall include the following provisions:

(a) An estimate of the reasonable cost of the eligible equipment purchases, as determined by the State Fire Marshal.

(b) An agreement by the local government:

(A) To proceed expeditiously with, and complete, the equipment purchases in accordance with plans approved by the State Fire Marshal; and

(B) To provide for the payment of the local government's share of the cost of the equipment purchases.

(2) The State Fire Marshal may adopt rules necessary for making and enforcing contracts under this section and establishing procedures to be followed in applying for state equipment loans or grants authorized by section 86 of this 1989 Act.

(3) All contracts entered into pursuant to this section shall be subject to approval by the Attorney General as to form. All payments by the state pursuant to such contracts shall be made after audit and upon warrant on vouchers approved by the State Fire Marshal.

SECTION 88. (1) When requested in writing by the State Fire Marshal, the Executive Department shall draw a warrant on the State Fire Marshal Fund in favor of the State Fire Marshal for use as a revolving fund. The State Treasurer shall hold the revolving fund in a special account against which the State Fire Marshal may draw checks.

(2) The State Fire Marshal may use the revolving fund for the purposes specified in sections 86 and 87 of this 1989 Act.

(3) All claims by the State Fire Marshal for reimbursement of advances paid from the revolving fund are subject to approval by the Executive Department. When such claims have been approved, a warrant covering them shall be drawn in favor of the State Fire Marshal, charged against the appropriate funds and accounts and used to reimburse the revolving fund.

SECTION 89. (1) Whenever the State Fire Marshal dispatches a regional hazardous material response team to an emergency involving a hazardous material or hazardous substance, the State Fire Marshal may bill the person responsible for causing the emergency for the cost of responding to the emergency. The billing shall be on forms established by the State Fire Marshal for such purposes.

(2) If the person fails to pay the cost set forth in a billing within 30 days after the second billing, the State Fire Marshal may either:

(a) Bring an action for the recovery of such unpaid cost from the person responsible for causing the hazardous material or hazardous substance emergency; or

(b) Initiate a contested case hearing according to the applicable provisions of ORS 183.310 to 183.550.

(3) Notwithstanding any provision of ORS 183.310 to 183.550, nothing in subsection (2) of this section shall be considered to require the State Fire Marshal to conduct a contested case hearing as a prerequisite to bringing an action under paragraph (a) of subsection (2) of this section.

SECTION 90. The State Fire Marshal may disburse moneys from the revolving fund established under section 88 of this 1989 Act to any local government unable to pay the expenses incurred by a regional hazardous material response team that responds to an emergency within the jurisdiction of the local government or to defray any extraordinary costs of a local response team responding to the emergency.

SECTION 91. Before initial adoption of rules to carry out the provisions of sections 81 to 91 of this 1989 Act, the State Fire Marshal shall report to the President of the Senate and the Speaker of the House of Representatives and to the appropriate legislative committee.

SECTION 92. ORS 466.620 is amended to read:

466.620. [*(1)*] In accordance with the applicable provisions of ORS 183.310 to 183.550, the Environmental Quality Commission shall adopt an oil and hazardous material emergency response master plan consistent with the plan adopted by the Interagency Hazard Communications Council pursuant to the provisions of ORS 453.317 (1) to (6), 453.510, 453.825 and 453.835, and after consultation with the Interagency Hazard Communications Council, the Oregon State Police, the Oregon Fire Chiefs Association and any other appropriate agency or organization.

[*(2) The master plan adopted under subsection (1) of this section shall include but need not be limited to provisions for ongoing training programs for local government and state agency employes involved in response to spills or releases of oil and hazardous material. The department may coordinate its training programs with emergency response training programs offered by local, state and federal agencies, community colleges and institutes of higher education and private industry in order to reach*

the maximum number of employes, avoid unnecessary duplication and conserve limited training funds.]

SECTION 93. ORS 466.670 is amended to read:

466.670. (1) The Oil and Hazardous Material Emergency Response and Remedial Action Fund is established separate and distinct from the General Fund in the State Treasury. [*As permitted by federal court decisions, federal statutory requirements and administrative decisions, after payment of associated legal expenses, moneys not to exceed $2.5 million received by the State of Oregon from the Petroleum Violation Escrow Fund of the United States Department of Energy that is not obligated by federal requirements to existing energy programs shall be paid into the State Treasury and credited to the fund.*] **Moneys received by the Department of Environmental Quality for the purpose of oil or hazardous material emergency response or remedial action shall be paid into the State Treasury and credited to the fund.**

(2) The State Treasurer shall invest and reinvest moneys in the Oil and Hazardous Material Emergency Response and Remedial Action Fund in the manner provided by law.

(3) The moneys in the Oil and Hazardous Material Emergency Response and Remedial Action Fund are appropriated continuously to the Department of Environmental Quality to be used in the manner described in ORS 466.675.

SECTION 94. ORS 466.675 is amended to read:

466.675. Moneys in the Oil and Hazardous Material Emergency Response and Remedial Action Fund may be used by the Department of Environmental Quality for the following purposes:

[*(1) Training local government employes involved in response to spills or releases of oil and hazardous material.*]

[*(2) Training of state agency employes involved in response to spills or releases of oil and hazardous material.*]

[*(3)*] **(1)** Funding actions and activities authorized by ORS 466.645, 466.205, 468.800 and 468.805.

[*(4)*] **(2)** Providing for the general administration of ORS 466.605 to 466.680 including the [*purchase of equipment and*] payment of personnel costs of the department or any other state agency related to the enforcement of ORS 466.605 to 466.680.

SECTION 95. ORS 466.010 is amended to read:

466.010. (1)(a) The Legislative Assembly finds that it is in the interest of public health and safety and environment to protect Oregon citizens from the potential harmful effects of the transportation and treatment or disposal of hazardous waste and PCB within Oregon.

(b) Therefore, the Legislative Assembly declares that it is the purpose of ORS 466.005 to 466.385 and 466.890 to:

(A) Protect the public health and safety and environment of Oregon to the maximum extent possible;

(B) Exercise the maximum amount of control over actions within Oregon relating to hazardous waste and PCB transportation and treatment or disposal;

(C) Limit to the extent possible the treatment or disposal of hazardous waste and PCB in Oregon to materials originating in the states that are parties to the Northwest Interstate Compact on Low-Level Radioactive Waste Management under ORS 469.930; and

(D) Limit to the extent possible the size of any hazardous waste or PCB treatment or disposal facility in Oregon to a size [*that is appropriate to treat or dispose of waste or PCB originating in Oregon and, if capacity permits, to waste or PCB originating in those states that are parties to the*

Northwest Interstate Compact on Low-Level Radioactive Waste Management under ORS 469.930] **equal to the amount of waste and PCB originating in Oregon, Washington, Idaho and Alaska of the type handled by such a treatment or disposal facility.**

(2) The Legislative Assembly further finds and declares that in the interest of public health and safety and to protect the environment, it is the policy of the State of Oregon to give priority in managing hazardous waste in Oregon to methods that reduce the quantity and toxicity of hazardous waste generated before using methods that reuse hazardous waste, recycle hazardous waste that cannot be reused, treat hazardous waste or dispose of hazardous waste by landfilling.

SECTION 96. ORS 466.055 is amended to read:

466.055. Before issuing a permit for a new facility designed to dispose of or treat hazardous waste or PCB, the commission must find, on the basis of information submitted by the applicant, the department or any other interested party, that the proposed facility meets the following criteria:

(1) The proposed facility location:

(a) Is suitable for the type and amount of hazardous waste or PCB intended for treatment or disposal at the facility;

(b) Provides the maximum protection possible to the public health and safety and environment of Oregon from release of the hazardous waste or PCB stored, treated or disposed of at the facility; and

(c) Is situated sufficient distance from urban growth boundaries, as defined in ORS 197.295, to protect the public health and safety, accessible by transportation routes that minimize the threat to the public health and safety and to the environment and sufficient distance from parks, wilderness and recreation areas to prevent adverse impacts on the public use and enjoyment of those areas.

(2) Subject to any applicable standards adopted under ORS 466.035, the design of the proposed facility:

(a) Allows for treatment or disposal of the range of hazardous waste or PCB as required by the commission; and

(b) Significantly adds to:

(A) The range of hazardous waste or PCB handled at a treatment or disposal facility currently permitted under ORS 466.005 to 466.385; or

(B) The type of technology employed at a treatment or disposal facility currently permitted under ORS 466.005 to 466.385.

(3) The proposed facility uses the best available technology for treating or disposing of hazardous waste or PCB as determined by the department or the United States Environmental Protection Agency.

(4) The need for the facility is demonstrated by:

(a) Lack of adequate current treatment or disposal capacity **in Oregon, Washington, Idaho and Alaska** to handle hazardous waste or PCB generated by Oregon companies;

(b) A finding that operation of the proposed facility would result in a higher level of protection of the public health and safety or environment; or

(c) Significantly lower treatment or disposal costs to Oregon companies.

(5) The proposed hazardous waste or PCB treatment or disposal facility has no major adverse effect on either:

(a) Public health and safety; or

(b) Environment of adjacent lands.

SECTION 97. ORS 466.060 is amended to read:

466.060. **(1)** Before issuing a permit for a facility designed to treat or dispose of hazardous waste or PCB, the permit applicant must demonstrate, and the commission must find, that the owner and operator meet the following criteria:

[*(1)*] **(a)** The owner, any parent company of the owner and the operator have adequate financial and technical capability to properly construct and operate the facility; and

[*(2)*] **(b)** The compliance history of the owner including any parent company of the owner and the operator in owning and operating other similar facilities, if any, indicates an ability and willingness to operate the proposed facility in compliance with the provisions of ORS 466.005 to 466.385 and 466.890 or any condition imposed on the permittee by the commission.

(2) If requested by the permit applicant, information submitted as confidential under paragraph (a) of subsection (1) of this section shall be maintained confidential and exempt from public disclosure to the extent provided by Oregon law.

SECTION 98. Sections 99 and 100 of this Act are added to and made a part of ORS 466.005 to 466.385.

SECTION 99. Any person operating a hazardous waste or PCB disposal facility pursuant to a permit issued under ORS 466.005 to 466.385 shall not accept hazardous waste or PCB from an Oregon generator unless the generator first certifies that the generator has implemented a toxics use reduction and hazardous waste reduction program as required under Oregon law, or with respect to an out-of-state generator, the generator has certified compliance with the waste minimization requirements of section 224(a) of the Hazardous and Solid Waste Amendments of 1984, P.L. 98-616.

SECTION 100. (1) The Department of Environmental Quality shall work with representatives of the States of Washington, Idaho and Alaska to establish provisions in each state to assure that any generator disposing of hazardous waste or PCB at an Oregon hazardous waste or PCB disposal facility has implemented a toxics use reduction and hazardous waste reduction program substantially equivalent to any toxics use reduction and hazardous waste reduction program required of Oregon generators.

(2) The department shall report to the appropriate legislative interim committee on the department's progress in carrying out the purpose of subsection (1) of this section.

SECTION 101. Sections 102 to 111 of this Act are added to and made a part of ORS 466.540 to 466.590.

SECTION 102. (1) The Legislative Assembly finds that:

(a) The costs of cleanup may result in economic hardship or bankruptcy for individuals and businesses that are otherwise financially viable;

(b) These persons may be willing to clean up their sites and pay the associated costs; however, financial assistance from private lenders may not be available to pay for the cleanup; and

(c) It is in the interest of the public health, safety, welfare and the environment to establish a program of financial assistance for cleanups, to help individuals and businesses maintain financial viability, increasing the share of cleanup costs paid by responsible persons and ultimately decreasing amounts paid from state funds.

(2) Therefore, the Legislative Assembly declares that it is the intent of sections 102 to 111 of this 1989 Act:

(a) To assure that moneys for financial assistance are available on a continuing basis consistent

with the length and terms provided by the financial assistance agreements; and

(b) To provide authority to the Department of Environmental Quality to develop and implement innovative approaches to financial assistance for cleanups conducted under ORS 466.540 to 466.590 or, at the discretion of the department, under other applicable authorities.

SECTION 103. As used in sections 102 to 111 of this 1989 Act, "person" includes but need not be limited to a person liable under ORS 466.567. Except as provided in subsection (2) of section 104 of this 1989 Act, "person" does not include the state or any state agency or the Federal Government or any agency of the Federal Government.

SECTION 104. (1) The Department of Environmental Quality may conduct:

(a) A financial assistance program, including but not limited to loan guarantees, to assist persons in financing the cost of remedial action.

(b) Activities necessary to carry out the purpose of ORS 466.590, 468.220 and 468.230 and sections 102 to 111 of this 1989 Act, including but not limited to entering into contracts or agreements, making and guaranteeing loans, taking security and instituting appropriate actions to enforce agreements made under section 106 of this 1989 Act.

(2) The department may enter into a contract or agreement for services to implement a financial assistance program with any person, including but not limited to a financial institution or a unit of local, state or federal government. The services may include but need not be limited to evaluating creditworthiness of applicants, preparing and marketing financial assistance packages and administering and servicing financial assistance agreements.

SECTION 105. In accordance with the applicable provisions of ORS 183.310 to 183.550, the Environmental Quality Commission may adopt rules necessary to carry out the provisions of ORS 466.590, 468.220 and 468.230 and sections 102 to 111 of this 1989 Act and to insure that interest on bonds issued under ORS 468.195 to be used for removal or remedial action of hazardous substances is not includable in gross income under the United States Internal Revenue Code.

SECTION 106. (1) The department may provide financial assistance only to persons who meet all of the following eligibility requirements:

(a) The department has determined that removal or remedial action proposed by the applicant is necessary to protect the public health, safety and welfare or the environment.

(b) The applicant demonstrates to the department's satisfaction that the applicant either is unable to obtain financing for the removal or remedial action from other sources or that financing for the removal or remedial action is not available to the applicant at reasonable rates and terms.

(c) The applicant demonstrates to the department's satisfaction that there is a reasonable likelihood the applicant has the ability to repay.

(d) The applicant agrees to conduct the removal or remedial action according to an agreement with the department.

(e) Any other requirement the department considers necessary or appropriate.

(2) A financial assistance agreement shall include any provision the department considers necessary, but shall at least include the following provisions:

(a) Terms of the financial assistance; and

(b) A statement that moneys obligated by the department under the agreement are limited to moneys in the Hazardous Substance Remedial Action Fund expressly designated by the department for financial assistance purposes.

SECTION 107. (1) The obligation of the department to provide financial assistance or to ad-

(3) The State Treasurer may invest and reinvest moneys in the Hazardous Substance Remedial Action Fund in the manner provided by law.

(4) The moneys in the Hazardous Substance Remedial Action Fund are appropriated continuously to the department to be used as provided in subsection (5) of this section.

(5) Moneys in the Hazardous Substance Remedial Action Fund may be used for the following purposes:

(a) Payment of the [*state's*] **department's** remedial action costs;

(b) Funding any action or activity authorized by ORS 466.540 to 466.590 and 466.900, **including but not limited to providing financial assistance pursuant to an agreement entered into under section 106 of this 1989 Act**; and

(c) Providing the state cost share for a removal or remedial action, as required by section 104(c)(3) of the federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510 and as amended by P.L. 99-499.

(6)(a) The Orphan Site Account is established in the Hazardous Substance Remedial Action Fund in the State Treasury. All moneys credited to the Orphan Site Account are continuously appropriated to the department for:

(A) Expenses of the department related to facilities or activities associated with the removal or remedial action where the department determines the responsible party is unknown, unwilling or unable to undertake all required removal or remedial action; and

(B) Grants and loans to local government units for facilities or activities associated with the removal or remedial action of a hazardous substance.

(b) The Orphan Site Account may not be used to pay the state's remedial action costs at facilities owned by the state.

(c) The Orphan Site Account may be used to pay claims for reimbursement filed and approved under ORS 466.570 (7).

(d) If bonds have been issued under ORS 468.195 to provide funds for removal or remedial action, the department shall first transfer from the Orphan Site Account to the Pollution Control Sinking Fund, solely from the fees collected pursuant to paragraph (c) of subsection (2) of section 124 of this 1989 Act, under section 138 of this 1989 Act and from sections 139 to 148 of this 1989 Act for such purposes, any amount necessary to provide for the payment of the principal and interest upon such bonds. Moneys from repayment of financial assistance or recovered from a responsible party shall not be used to provide for the payment of the principal and interest upon such bonds.

(7)(a) Of the funds in the Orphan Site Account derived from the fees collected pursuant to paragraph (c) of subsection (2) of section 124 of this 1989 Act, under section 138 of this 1989 Act and sections 139 to 148 of this 1989 Act for the purpose of providing funds for the Orphan Site Account, and the proceeds of any bond sale under ORS 468.195 supported by the fees collected pursuant to paragraph (c) of subsection (2) of section 124 of this 1989 Act, under section 138 of this 1989 Act and sections 139 to 148 of this 1989 Act for the purpose of providing funds for the Orphan Site Account, no more than 25 percent may be obligated in any biennium by the department to pay for removal or remedial action at facilities determined by the department to have an unwilling responsible party, unless the department first receives approval from the Legislative Assembly or the Emergency Board.

(b) Before the department obligates money from the Orphan Site Account derived from

the fees collected pursuant to paragraph (c) of subsection (2) of section 124 of this 1989 Act, under section 138 of this 1989 Act and sections 139 to 148 of this 1989 Act for the purpose of providing funds for the Orphan Site Account, and the proceeds from any bond sale under ORS 468.195 supported by fees collected pursuant to paragraph (c) of subsection (2) of section 124 of this 1989 Act, under section 138 of this 1989 Act and sections 139 to 148 of this 1989 Act for the purpose of providing funds for the Orphan Site Account, for removal or remedial action at a facility determined by the department to have an unwilling responsible party, the department must first determine whether there is a need for immediate removal or remedial action at the facility to protect public health, safety, welfare or the environment. The department shall determine the need for immediate removal or remedial action in accordance with rules adopted by the Environmental Quality Commission.

SECTION 114. ORS 468.220 is amended to read:

468.220. (1) The department shall be the agency for the State of Oregon for the administration of the Pollution Control Fund. The department is hereby authorized to use the Pollution Control Fund for one or more of the following purposes:

(a) To grant funds not to exceed 30 percent of total project costs for eligible projects as defined in ORS 454.505 or sewerage systems as defined in ORS 468.700.

(b) To acquire, by purchase, or otherwise, general obligation bonds or other obligations of any municipal corporation, city, county, or agency of the State of Oregon, or combinations thereof, issued or made for the purpose of paragraph (a) of this subsection in an amount not to exceed 100 percent of the total project costs for eligible projects.

(c) To acquire, by purchase, or otherwise, other obligations of any city that are authorized by its charter in an amount not to exceed 100 percent of the total project costs for eligible projects.

(d) To grant funds not to exceed 30 percent of the total project costs for facilities for the disposal of solid waste, including without being limited to, transfer and resource recovery facilities.

(e) To make loans or grants to any municipal corporation, city, county, or agency of the State of Oregon, or combinations thereof, for planning of eligible projects as defined in ORS 454.505, sewerage systems as defined by ORS 468.700 or facilities for the disposal of solid waste, including without being limited to, transfer and resource recovery facilities. Grants made under this paragraph shall be considered a part of any grant authorized by paragraph (a) or (d) of this subsection if the project is approved.

(f) To acquire, by purchase, or otherwise, general obligation bonds or other obligations of any municipal corporation, city, county, or agency of the State of Oregon, or combinations thereof, issued or made for the purpose of paragraph (d) of this subsection in an amount not to exceed 100 percent of the total project costs.

(g) To advance funds by contract, loan or otherwise, to any municipal corporation, city, county or agency of the State of Oregon, or combination thereof, for the purpose of paragraphs (a) and (d) of this subsection in an amount not to exceed 100 percent of the total project costs.

(h) To pay compensation required by law to be paid by the state for the acquisition of real property for the disposal by storage of environmentally hazardous wastes.

(i) To dispose of environmentally hazardous wastes by the Department of Environmental Quality whenever the department finds that an emergency exists requiring such disposal.

(j) To acquire for the state real property and facilities for the disposal by landfill, storage or otherwise of solid waste, including but not limited to, transfer and resource recovery facilities.

(k) To acquire for the state real property and facilities for the disposal by incineration or otherwise of hazardous waste or PCB.

(L) To provide funding for the Assessment Deferral Loan Program Revolving Fund established in ORS 468.975.

(m) To provide funding for the Orphan Site Account established in ORS 466.590 but only to the extent that the department reasonably estimates that debt service from bonds issued to finance such facilities or activities shall be fully paid from fees collected pursuant to paragraph (c) of subsection (2) of section 124 of this 1989 Act, under section 138 of this 1989 Act, under sections 139 to 148 of this 1989 Act for the purpose of providing funds for the Orphan Site Account and other available funds, but not from repayments of financial assistance under sections 102 to 111 of this 1989 Act or from moneys recovered from responsible parties.

(n) To advance funds by contract, loan or otherwise, to any municipal corporation, city, county or agency of this state, or combination thereof, for facilities or activities related to removal or remedial action of hazardous substances.

(2) The facilities referred to in paragraphs (a) to (c) of subsection (1) of this section shall be only such as conservatively appear to the department to be not less than 70 percent self-supporting and self-liquidating from revenues, gifts, grants from the Federal Government, user charges, assessments and other fees.

(3) The facilities referred to in paragraphs (d), (f) and (g) of subsection (1) of this section shall be only such as conservatively appear to the department to be not less than 70 percent self-supporting and self-liquidating from revenues, gifts, grants from the Federal Government, user charges, assessments and other fees.

(4) The real property and facilities referred to in paragraphs (j) and (k) of subsection (1) of this section shall be only such as conservatively appear to the department to be not less than 70 percent self-supporting and self-liquidating from revenues, gifts, grants from the Federal Government, user charges, assessments and other fees.

(5) The department may sell or pledge any bonds, notes or other obligations acquired under paragraph (b) of subsection (1) of this section.

(6) Before making a loan or grant to or acquiring general obligation bonds or other obligations of a municipal corporation, city, county or agency for facilities for the disposal of solid waste or planning for such facilities, the department shall require the applicant to demonstrate that it has adopted a solid waste management plan that has been approved by the department. The plan must include a waste reduction program.

(7) Any grant authorized by this section shall be made only with the prior approval of the Joint Committee on Ways and Means during the legislative sessions or the Emergency Board during the interim period between sessions.

(8) The department may assess those entities to whom grants and loans are made under this section to recover expenses incurred in administering this section.

SECTION 115. ORS 468.230 is amended to read:

468.230. (1) The commission shall maintain, with the State Treasurer, a Pollution Control Sinking Fund, separate and distinct from the General Fund. The Pollution Control Sinking Fund shall provide for the payment of the principal and interest upon bonds issued under authority of Article XI-H of the Constitution of Oregon and ORS 468.195 to 468.260 and administrative expenses incurred

in issuing the bonds. Moneys of the sinking fund are hereby appropriated for such purpose. With the approval of the commission, the moneys in the Pollution Control Sinking Fund may be invested as provided by ORS 293.701 to 293.776, 293.810 and 293.820, and earnings from such investment shall be credited to the Pollution Control Sinking Fund.

(2) The Pollution Control Sinking Fund shall consist of all moneys received from ad valorem taxes levied pursuant to ORS 468.195 to 468.260 and assessments collected under ORS 468.220 (8), **moneys transferred from the Orphan Site Account under ORS 466.590 (6),** all moneys that the Legislative Assembly may provide in lieu of such taxes, all earnings on the Pollution Control Fund, Pollution Control Sinking Fund, and all other revenues derived from contracts, bonds, notes or other obligations, acquired, by the commission by purchase, loan or otherwise, as provided by Article XI-H of the Constitution of Oregon and by ORS 468.195 to 468.260.

(3) The Pollution Control Sinking Fund shall not be used for any purpose other than that for which the fund was created. Should a balance remain therein after the purposes for which the fund was created have been fulfilled or after a reserve sufficient to meet all existing obligations and liabilities of the fund has been set aside, the surplus remaining may be transferred to the Pollution Control Fund at the direction of the commission.

SECTION 116. Sections 117, 132 and 133 of this Act are added to and made a part of ORS 466.540 to 466.590.

SECTION 117. (1) A potentially responsible party shall be considered unwilling under ORS 466.590 if:

(a) The department requests the potentially responsible party to enter into negotiations for an agreement to perform removal or remedial action, and the potentially responsible party refuses to enter into negotiations within 60 days after receipt of the department's written request; or

(b) After entering into negotiations for an agreement to perform removal or remedial action, the potentially responsible party and the department are unable to reach agreement and the potentially responsible party refuses to agree, within 60 days after receipt of a written request from the department, to nonbinding review under subsection (2) of this section, or to agree to an independent expert's decision under subsection (2) of this section.

(2) If the department and a potentially responsible party enter into negotiations for an agreement to perform removal or remedial action, and the parties to the negotiations are unable to reach agreement on one or more issues, any party to the negotiations may request that the issues in dispute be submitted to nonbinding review under this section. Within 15 days after the request, the parties may select a mutually acceptable independent expert, each party to bear the party's own costs. A request for nonbinding review shall be in writing and served upon each of the other parties to the negotiations and shall state with reasonable specificity the issues in dispute. If the parties are unable to agree upon an expert, the department shall petition the circuit court for the county in which the facility is located for the appointment of an independent expert. Each party to the negotiations may submit to the court a list of acceptable experts. Within 30 days after receipt of the petition, the circuit court shall appoint an independent expert from the names submitted by the parties. Within 15 days after the selection of the independent expert, each of the parties shall submit to the independent expert a written statement of the party's position and the factual, legal and equitable arguments in support of the party's position. Upon request of any party, or on the independent expert's own motion, the independent expert shall allow oral argument regarding the issues in dispute. Within 60 days after selection of the independent expert, the independent expert shall

issue an advisory decision in settlement of the issues in dispute. No portion of the independent expert's decision shall be binding upon any party to the negotiations or the nonbinding review until that portion of the decision is incorporated into a final agreement between the parties. The department or any potentially responsible party may refuse to agree with the independent expert's decision without prejudicing or affecting in any way any right, remedy or obligation of the department or the party or any other person. Neither the independent expert's decision nor the department's decision not to agree to the independent expert's decision shall be appealable to the Environmental Quality Commission or subject to judicial review.

(3) The Environmental Quality Commission shall establish by rule the subjects that may be resolved by nonbinding review under this section.

SECTION 118. Section 117 of this Act is repealed July 1, 1993.

SECTION 119. Section 99 of this Act does not become operative until January 1, 1993. Pursuant to ORS 466.020 as amended by section 112 of this Act, the Environmental Quality Commission shall adopt rules necessary to implement the certification requirements of section 99 of this Act on or before January 1, 1993.

SECTION 120. Sections 121 to 131, 134 and 135 of this Act are added to and made a part of ORS 453.307 to 453.372.

SECTION 121. As used in sections 121 to 131, 134 and 135 of this 1989 Act:

(1) "Department" means the Department of Revenue.

(2) "Facility" means all buildings, equipment, structures and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person or by any person who controls, is controlled by or under common control with such person.

(3) "Hazardous substance" means any chemical substance or waste for which a material safety data sheet is required by the Accident Prevention Division of the Department of Insurance and Finance.

(4) "Material safety data sheet" means written or printed material concerning a hazardous chemical which is prepared in accordance with rules of the Accident Prevention Division of the Department of Insurance and Finance.

(5) "Person" includes any entity operating a facility that is included in one or more of the standard industrial classification categories identified by the State Fire Marshal or added by the State Fire Marshal under section 131 of this 1989 Act. "Entity" includes any individual, trust, firm, association, corporation, partnership, joint stock company, joint venture, public or municipal corporation, commission, political subdivision, the state or any agency or commission thereof, interstate body, and the Federal Government and any agency thereof.

(6) "Possess" or "possession" means the physical possession of a hazardous substance within this state.

SECTION 122. It is the intent of sections 121 to 131, 134 and 135 of this 1989 Act to impose a fee on the possession of hazardous substances at facilities in this state. These provisions are not intended to relieve any person from any other duty or responsibility imposed by law.

SECTION 123. (1) Beginning January 1, 1990, and annually thereafter, any person possessing a hazardous substance at a facility in this state in aggregate amounts at or above the threshold quantities designated by rule by the State Fire Marshal shall pay a fee for each facility in accordance with the fee schedules established under section 124 of this 1989 Act.

(2) If any person fails to pay the fee imposed under subsection (1) of this section within 60 days,

there shall be added to the fee a penalty of five percent of the amount of the fee. Any payment made after 60 days shall bear interest at the rate prescribed under ORS 305.220.

SECTION 124. (1) Not later than November 15, 1989, and annually thereafter, the State Fire Marshal shall send a statement to each person subject to the fee imposed under section 123 of this 1989 Act, indicating the amount of the fee due. The amount of the fee shall be in accordance with the fee schedules established under subsection (2) of this section.

(2) On or before November 1, 1989, by rule and after hearing, the State Fire Marshal shall establish three schedules of fees to be submitted annually by each employer returning a hazardous substance survey under ORS 453.317, except as otherwise provided in subsection (4) of this section. In each case the fee shall be based upon the aggregate amount of the single largest annual aggregate substance reported that is manufactured, stored or used at the facility. The programs to be funded from fees collected under sections 121 to 131, 134 and 135 of this 1989 Act and the maximum range of the fees that may be considered, beginning July 1, 1989, are as follows:

(a) For funding the Community Right to Know and Protection Act, not less than $25 and not more than $2,000.

(b) For funding the Toxics Use Reduction and Hazardous Waste Reduction Act, not less than $25 and not more than $2,000.

(c) For each employer's share of a total of up to $1 million to be deposited into the Orphan Site Account established under ORS 466.590, not less than zero and not more than $9,000. This schedule shall not require an employer to pay more than $25,000.

(3) The Department of Revenue shall collect fees established under this section. The department shall determine the amounts to be distributed under subsection (2) of this section and shall transfer the appropriate amounts to the State Fire Marshal, the Department of Environmental Quality and the Orphan Site Account in accordance with expenditures approved by the Legislative Assembly for the State Fire Marshal and the Department of Environmental Quality. The remaining moneys are continuously appropriated to the State Fire Marshal to pay the expenses of the State Fire Marshal in administering and enforcing the provisions of sections 121 to 131, 134 and 135 of this 1989 Act.

(4) The following are exempt from the fee imposed under this section:

(a) Crude oil and petroleum products derived from the refining of crude oil, including plant condensate, gasoline, diesel motor fuel, aviation fuel, lubrication oil, crankcase motor oil, kerosene, benzol, fuel oil, residual fuel, petroleum coke, asphalt base, liquified or liquifiable gases such as butane, ethane and propane and other products described during petroleum processing, but not including derivatives, such as petroleum jellies, cleaning solvents or asphalt paving.

(b) Solid waste as defined in ORS 459.005.

(c) Hazardous waste as defined in ORS 466.005.

(d) Any substance or activity which the Constitution or laws of the United States prohibit the state from taxing.

(e) From the fee imposed under the schedule established under paragraph (c) of subsection (2) of this section, any person whose property is exempt from taxation under ORS 307.090.

SECTION 125. (1) The State Fire Marshal for good cause may extend, for not to exceed one month, the time for payment of the fee due under sections 121 to 131, 134 and 135 of this 1989 Act. The extension may be granted at any time if a written request is filed with the State Fire Marshal within or prior to the period for which the extension may be granted. If the time for payment is extended at the request of a person, interest at the rate established under ORS 305.220, for each

month, or fraction of a month, from the time the payment was originally due to the time payment is actually made, shall be added and paid.

(2) If the person fails to pay the amount due, the State Fire Marshal may either:

(a) Bring an action for the recovery of the fee due; or

(b) Initiate a contested case hearing according to the applicable provisions of ORS 183.310 to 183.550.

(3) Notwithstanding any provision of ORS 183.310 to 183.550, nothing in subsection (2) of this section shall be considered to require the State Fire Marshal to conduct a contested case hearing as a prerequisite to bringing an action under paragraph (a) of subsection (2) of this section.

SECTION 126. (1) Every person who possesses a hazardous substance shall keep at its registered place of business complete and accurate records for each facility of any hazardous substance purchased by, or brought in or caused to be brought in to the facility, or stored, used or manufactured at the facility.

(2) The State Fire Marshal or an authorized representative of the State Fire Marshal, upon oral or written reasonable notice, may make such examinations of the books, papers, records and equipment required to be kept under this section as it may deem necessary in carrying out the provisions of sections 121 to 131, 134 and 135 of this 1989 Act.

SECTION 127. The department, in consultation with the State Fire Marshal, is authorized to establish those rules and procedures for the implementation and enforcement of sections 121 to 131, 134 and 135 of this 1989 Act that are consistent with its provisions and are considered necessary and appropriate.

SECTION 128. The provisions of ORS chapters 305 and 314 as to liens, delinquencies, claims for refund, issuance of refunds, conferences, appeals to the director of the department, appeals to the Oregon Tax Court, stay of collection pending appeal, cancellation, waiver, reduction or compromise of fees, penalties or interest, subpenaing and examining witnesses and books and papers, and the issuance of warrants and the procedures relating thereto, shall apply to the collection of fees, penalties and interest by the department under sections 121 to 131, 134 and 135 of this 1989 Act, except where the context requires otherwise.

SECTION 129. All moneys received by the Department of Revenue under sections 121 to 131, 134 and 135 of this 1989 Act shall be deposited in the State Treasury and credited to a suspense account established under ORS 293.445. After payment of administration expenses incurred by the department in the administration of sections 121 to 131, 134 and 135 of this 1989 Act and of refunds or credits arising from erroneous overpayments, the balance of the money shall be distributed according to the provisions of section 124 of this 1989 Act. Moneys collected under sections 121 to 131, 134 and 135 of this 1989 Act and credited to the Orphan Site Account shall not be used for removal or remedial action costs at solid waste disposal sites for which a fee is collected under section 137 or 138 of this 1989 Act.

SECTION 130. The fee imposed by section 123 of this 1989 Act is in addition to all other state, county or municipal fees on a hazardous substance.

SECTION 131. The State Fire Marshal by rule may add persons or substances to or exempt persons or substances from liability for the fee imposed under sections 121 to 131, 134 and 135 of this 1989 Act to conform to the reporting requirements established by the State Fire Marshal under the Community Right to Know and Protection Act.

SECTION 132. (1) Notwithstanding the totals established in sections 123, 138 and 140 of this

1989 Act, after July 1, 1991, the Environmental Quality Commission by rule may increase the total amount to be collected annually as a fee and deposited into the Orphan Site Account under sections 123, 138 and 140 of this 1989 Act. The commission shall approve an increase if the commission determines:

(a) Existing fees being deposited into the Orphan Site Account are not sufficient to pay debt service on bonds sold to pay for removal or remedial actions at sites where the department determines the responsible party is unknown, unwilling or unable to undertake all required removal or remedial action; or

(b) Revenues from the sale of bonds cannot be used to pay for activities related to removal or remedial action, and existing fees being deposited into the Orphan Site Account are not sufficient to pay for these activities.

(2) The increased amount approved by the commission under subsection (1) of this section:

(a) Shall be no greater than the amount needed to pay anticipated costs specifically identified by the Department of Environmental Quality at sites where the department determines the responsible party is unknown, unwilling or unable to undertake all required removal or remedial action; and

(b) Shall be specifically approved by the Joint Committee on Ways and Means during the legislative sessions or the Emergency Board during the interim period between sessions.

SECTION 133. Nothing in sections 117, 121 to 131, 132, 134, 135, 137, 138 and 139 to 148 of this 1989 Act, including the limitation on the amount a local government unit must contribute under sections 137 and 138 of this 1989 Act, shall be construed to affect or limit the liability of any person.

SECTION 134. Before final adoption of initial rules to carry out the provisions of sections 121 to 131, 134 and 135 of this 1989 Act or subsequent amendment of the initial fee schedules established under section 122 of this 1989 Act, the State Fire Marshal shall obtain specific approval of the fees by the Joint Committee on Ways and Means during the legislative sessions or the Emergency Board during the interim period between sessions.

SECTION 135. Nothing in sections 121 to 131 of this 1989 Act shall require units of local government to pay a fee imposed under the schedules established under paragraphs (a) and (b) of subsection (2) of section 124 of this 1989 Act because of the use of material which would otherwise be subject to a fee under sections 121 to 131, 134 and 135 of this 1989 Act, if the use of such material by the unit of local government is specifically required by a state or federal law or rule or if the use of such material is reasonably necessary to enable the unit of local government to meet a standard imposed by state or federal law or rule, or is the by-product of processes employed to meet a standard imposed by state or federal rule or law.

SECTION 136. Sections 137 and 138 of this Act are added to and made a part of ORS 459.005 to 459.385.

SECTION 137. A local government unit that is responsible for conducting a remedial action or removal or related activities under ORS 466.570 at a solid waste disposal site, or a local government unit that contributed solid waste to a solid waste disposal site for which the local government is liable under ORS 466.567 or other applicable law, shall impose a charge to be added to all billings for solid waste collection services rendered within the boundaries of that local government unit unless the local government unit provides an equivalent amount of funding through another source. A charge imposed under this section shall be subject to the following requirements:

(1) The charge shall be:

(a) An amount equal to a maximum amount of $12 per capita per year and $60 per capita per local government unit;

(b) Collected for each volumetric or weight unit of solid waste collected;

(c) Imposed equitably on all persons who dispose of solid waste; and

(d) For a local government unit imposing and collecting a charge on behalf of another local government unit responsible for remedial action or related activities at a disposal site, an amount that, as a proportion of the total cost, equals the proportion of solid waste the local government unit contributed to such disposal site.

(2) The charge shall be collected on behalf of the local government unit by solid waste collectors who are subject to franchising, licensing or permitting requirements adopted by the local government unit. Notwithstanding any restriction on rates contained in a franchise or other local regulations, a solid waste collector may add the charge to bills for solid waste collection. The local government unit may enter into an intergovernmental agreement with any other unit of local government to provide for imposition and collection of the charge on behalf of the local government unit.

(3) The solid waste collector shall remit the proceeds of the charge to the local government unit according to procedures adopted by the local government unit by ordinance. However, solid waste collectors shall not be responsible for covering any shortage caused by failure of a customer to pay charges for solid waste collection.

(4) A local government unit imposing a charge under this subsection may require solid waste collectors to submit reports or other documentation necessary to establish compliance with the requirements of this section or the ordinance adopted by the local government unit. All information contained in such reports relating to the number of accounts served by the solid waste collector or the revenue produced from such accounts shall be exempt from public disclosure.

(5) A solid waste collector required to collect charges under this subsection may retain five percent of the charge in order to defray the costs of collecting and accounting for the proceeds of the charge.

(6) If a person disposes of solid waste at a disposal site within the boundaries of a local government unit imposing a fee under this section without using the services of a commercial solid waste collector, the person shall pay the fee established by this section at the time the person disposes of solid waste at the disposal site. That portion of the charge attributable to administrative costs as provided in subsection (5) of this section shall be retained by the operator of the solid waste disposal site. The operator of the solid waste disposal site shall remit the balance of the charge according to procedures established by ordinance by the local government unit imposing the charge.

(7) Except for the amount allocated to defray the administrative expenses of a solid waste collector or disposal site operator under subsections (5) and (6) of this section, proceeds of the charge shall be placed into a dedicated local government remedial action fund established by the local government unit and may be used only to pay for remedial action costs. As used in this subsection, "remedial action costs" also includes the cost of retiring debt incurred in connection with a remedial action.

(8) The amount collected through the charge shall be the amount necessary to fund the local government unit's remedial action costs at one or more solid waste disposal sites for which a local government unit is responsible for conducting a remedial action or removal or related activities under ORS 466.570, or is liable under ORS 466.567 or other applicable law and necessary adminis-

trative expenses incurred under this section, and may include an increment to cover any delinquencies in collections. The amount of the charge may be adjusted from time to time as necessary to maintain the remedial action fund at the level necessary to accommodate the local government unit's remedial action responsibilities, but shall not exceed the maximum amounts provided in paragraph (a) of subsection (1) of this section.

(9) Any local government unit located within the boundaries of a metropolitan service district may enter into an intergovernmental agreement with the district to transfer to the district the funding authority granted under this subsection and the responsibility for performing all remedial action obligations for which the local government unit may be responsible.

(10) As used in this section, "remedial action," "remedial action costs" and "removal" have the meaning given those terms in ORS 466.540.

SECTION 138. (1) In addition to the permit fees provided in ORS 459.235, upon approval by the Emergency Board of the sale of bonds to provide funds for the Orphan Site Account, and annually on January 1 thereafter, there is imposed a fee on all disposal sites that receive domestic solid waste except transfer stations. The amount raised shall be up to $1 million per year, based on the estimated tonnage or the actual tonnage, if known, received at the site and any other similar or related factors the commission finds appropriate.

(2) For solid waste generated within the boundaries of a metropolitan service district, the fee imposed under subsection (1) of this section, but not the permit fees provided in ORS 459.235, shall be levied on the district, not the disposal site.

(3)(a) A local government unit that franchises or licenses a domestic solid waste site shall allow the disposal site to pass through the amount of the fees established by the commission in subsection (1) of this section to the users of the site.

(b) If a disposal site that receives domestic solid waste passes through all or a portion of the fees established by the commission in subsection (1) of this section to a solid waste collector who uses the site, a local government unit that franchises or licenses the collection of solid waste shall allow the franchisee or licensee to include the amount of the fee in the solid waste collection service rate.

(4) Except as provided in subsection (5) of this section, moneys collected under this section shall be deposited in the Orphan Site Account created under ORS 466.590 to be used to pay the costs of removal or remedial action of hazardous substances, in excess of the maximum amount collected under section 137 of this 1989 Act at:

(a) Solid waste disposal sites owned or operated by a local government unit; or

(b) Privately owned or operated solid waste disposal sites that receive or received domestic solid waste for which the department determines the responsible party is unknown, unwilling or unable to undertake any portion or phase of a removal or remedial action.

(5) The moneys collected under this section, or proceeds of any bond sale under ORS 468.195 for which moneys collected under this section are pledged for repayment shall be made available to a local government unit to pay removal or remedial action costs at a site if:

(a) The local government unit is responsible for conducting removal or remedial action under ORS 466.570; and

(b) The local government unit repays any moneys equal to the amount that may be raised by the charge imposed under section 137 of this 1989 Act and interest on such moneys, in accordance with an agreement between the local government unit and the department. A local government unit is

not required to repay the first $100,000 the local government unit expends on removal or remedial action.

(6) As used in this section, "removal" and "remedial action" have the meaning given those terms in ORS 466.540.

SECTION 139. As used in sections 139 to 148 of this Act:

(1) "Bulk facility" means a facility, including pipeline terminals, refinery terminals, rail and barge terminals and associated underground and aboveground tanks, connected or separate, from which petroleum products are withdrawn from bulk and delivered into a cargo tank or barge used to transport those products.

(2) "Cargo tank" means an assembly used for transporting, hauling or delivering petroleum products and consisting of a tank having one or more compartments mounted on a wagon, truck, trailer, truck-trailer, railcar or wheels. "Cargo tank" does not include any assembly used for transporting, hauling or delivering petroleum products that holds less than 100 gallons in individual, separable containers.

(3) "Department" means the Department of Revenue.

(4) "Person" means an individual, trust, firm, joint stock company, corporation, partnership, joint venture, consortium, association, state, municipality, commission, political subdivision of a state or any interstate body, any commercial entity and the Federal Government or any agency of the Federal Government.

(5) "Petroleum product" means a petroleum product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including motor gasoline, gasohol, other alcohol-blended fuels, aviation gasoline, kerosene, distillate fuel oil and number 1 and number 2 diesel. The term does not include naphtha-type jet fuel, kerosene-type jet fuel, or a petroleum product destined for use in chemical manufacturing or feedstock of that manufacturing or fuel sold to vessels engaged in interstate or foreign commerce.

(6) "Withdrawal from bulk" means the removal of a petroleum product from a bulk facility for delivery directly into a cargo tank or a barge to be transported to another location other than another bulk facility for use or sale in this state.

SECTION 140. (1) Beginning September 1, 1989, the seller of a petroleum product withdrawn from a bulk facility, on withdrawal from bulk of the petroleum product, shall collect from the person who orders the withdrawal a petroleum products withdrawal delivery fee in the maximum amount of $10.

(2) Beginning September 1, 1989, any person who imports petroleum products in a cargo tank or a barge for delivery into a storage tank, other than a tank connected to a bulk facility, shall pay a petroleum products import delivery fee in the maximum amount of $10 to the Department of Revenue for each such delivery of petroleum products into a storage tank located in the state.

(3) Subsections (1) and (2) of this section do not apply to a delivery or import of petroleum products destined for export from this state if the petroleum products are in continuous movement to a destination outside the state.

(4) The seller of petroleum products withdrawn from a bulk facility and each person importing petroleum products shall remit the first payment on October 1, 1989. Beginning January 1, 1990, payment of the fee due shall be on a quarterly basis.

(5) Each operator of a bulk facility and each person who imports petroleum products shall register with the Department of Revenue by August 1, 1989, or 30 days prior to operating a bulk facility

or importing a cargo tank of petroleum products, whichever comes first.

SECTION 141. On or before September 1, 1989, the State Fire Marshal shall report to the Emergency Board the amount of the petroleum products withdrawal fee and petroleum products import delivery fee necessary to provide funding for operation of the state-wide hazardous material emergency response system under sections 81 to 91 of this Act. Upon approval of the Emergency Board, the State Fire Marshal immediately shall adopt by rule the fee amounts.

SECTION 142. (1) The Department of Revenue shall collect the fee imposed under section 140 of this Act.

(2) Any petroleum product which the Constitution or laws of the United States prohibit the state from taxing is exempt from the fee imposed under section 140 of this Act.

SECTION 143. The Department of Revenue for good cause may extend, for not to exceed one month, the time for payment of the fee due under sections 139 to 148 of this Act. The extension may be granted at any time if a written request is filed with the department within or prior to the period for which the extension may be granted. If the time for payment is extended at the request of a person, interest at the rate established under ORS 305.220, for each month, or fraction of a month, from the time the payment was originally due to the time payment is actually made, shall be added and paid.

SECTION 144. (1) Each operator of a bulk facility and each person who imports petroleum products into this state shall keep at the person's registered place of business complete and accurate records of any petroleum products sold, purchased by or brought in or caused to be brought in to the place of business.

(2) The Department of Revenue, upon oral or written reasonable notice, may make such examinations of the books, papers, records and equipment required to be kept under this section as it may deem necessary in carrying out the provisions of sections 139 to 148 of this Act.

SECTION 145. The department is authorized to establish those rules and procedures for the implementation and enforcement of sections 139 to 148 of this Act that are consistent with its provisions and are considered necessary and appropriate.

SECTION 146. The provisions of ORS chapters 305 and 314 as to liens, delinquencies, claims for refund, issuance of refunds, conferences, appeals to the director of the department, appeals to the Oregon Tax Court, stay of collection pending appeal, cancellation, waiver, reduction or compromise of fees, penalties or interest, subpenaing and examining witnesses and books and papers, and the issuance of warrants and the procedures relating thereto, shall apply to the collection of fees, penalties and interest by the department under sections 139 to 148 of this Act, except where the context requires otherwise.

SECTION 147. All moneys received by the Department of Revenue under sections 139 to 148 of this Act shall be deposited in the State Treasury and credited to a suspense account established under ORS 293.445. After payment of administration expenses incurred by the department in the administration of sections 139 to 148 of this Act and of refunds or credits arising from erroneous overpayments, the balance of the money shall be credited to the appropriate accounts as approved by the Legislative Assembly to carry out the state's oil, hazardous material and hazardous substance emergency response program and to provide up to $1 million each year to fund the Orphan Site Account. If the balance of the money is less than that approved by the Legislative Assembly, the department shall distribute the money to the accounts in a ratio equal to the ratio of the amounts approved by the Legislative Assembly.

SECTION 148. The fee imposed by section 140 of this Act is in addition to all other state, county or municipal fees on a petroleum product.

SECTION 149. Sections 150 to 153 of this Act are added to and made a part of ORS 459.205 to 459.355.

SECTION 150. As used in sections 150 to 153 of this 1989 Act:

(1) "Domestic solid waste" includes but is not limited to residential, commercial and institutional wastes generated within this state.

(2) "Domestic solid waste" does not include:

(a) Sewage sludge or septic tank and cesspool pumpings;

(b) Building demolition or construction wastes and land clearing debris, if delivered to a disposal site that is limited to those purposes;

(c) Source separated recyclable material, or material recovered at the disposal site;

(d) Waste going to an industrial waste facility;

(e) Waste received at an ash monofill from a resource recovery facility; or

(f) Other material excluded by the commission in order to support the purposes of ORS 459.015.

SECTION 151. The Legislative Assembly finds and declares that:

(1) Domestic solid waste disposal capacity is a matter of state-wide concern;

(2) The disposal in Oregon of domestic solid waste generated both outside and within Oregon will reduce the total capacity available for disposal of domestic solid waste generated in this state;

(3) The disposal in Oregon of domestic solid waste generated outside Oregon and within Oregon will add to the level of environmental risk associated with the transportation and disposal of those wastes; and

(4) It is in the best interest of the public health, safety and welfare of the people of Oregon to reduce the amount of domestic solid waste being generated in Oregon in order to extend the useful life of existing domestic solid waste disposal sites and to reduce the environmental risks associated with receiving waste generated outside Oregon at those sites.

SECTION 152. (1) In addition to the permit fees provided in ORS 459.235, the commission shall establish a schedule of fees to begin July 1, 1990, for all disposal sites that receive domestic solid waste except transfer stations. The schedule shall be based on the estimated tonnage or the actual tonnage, if known, received at the site and any other similar or related factors the commission finds appropriate. The fees collected pursuant to the schedule shall be sufficient to assist in the funding of programs to reduce the amount of domestic solid waste generated in Oregon and to reduce environmental risks at domestic waste disposal sites.

(2) For solid waste generated within the boundaries of a metropolitan service district, the schedule of fees, but not the permit fees provided in ORS 459.235, established by the commission in subsection (1) of this section shall be levied on the district, not the disposal site.

(3) The commission also may require submittal of information related to volumes and sources of waste or recycled material if necessary to carry out the activities in section 153 of this 1989 Act.

(4)(a) A local government that franchises or licenses a domestic solid waste site shall allow the disposal site to pass through the amount of the fees established by the commission in subsection (1) of this section to the users of the site.

(b) If a disposal site that receives domestic solid waste passes through all or a portion of the fees established by the commission in subsection (1) of this section to a solid waste collector who uses the site, a local government that franchises or licenses the collection of solid waste shall allow

the franchisee or licensee to include the amount of the fee in the solid waste collection service rate.

(5) The fees generated under subsection (1) of this section shall be sufficient to accomplish the purposes set forth in section 153 of this 1989 Act but shall be no more than 50 cents per ton.

SECTION 153. (1) The fees established by the commission under section 152 of this 1989 Act shall be deposited in the General Fund and credited to an account of the department. Such moneys are continuously appropriated to the department to carry out the purposes set forth in subsection (2) of this section.

(2) The fees collected under section 152 of this 1989 Act shall be used only for the following purposes:

(a) To implement the provisions of sections 69 to 76 of this 1989 Act.

(b) Department of Environmental Quality programs to promote and enhance waste reduction and recycling state wide, including data collection, performance measurement, education and promotion, market development and demonstration projects.

(c) Department of Environmental Quality activities for ground water monitoring and enforcement of ground water protection standards at domestic solid waste landfills.

(d) Solid waste planning activities by counties and the metropolitan service district, as approved by the department, including planning for special waste disposal, planning for closure of solid waste disposal sites, capacity planning for domestic solid waste and regional solid waste planning.

(e) Grants to local government units for recycling and solid waste planning activities.

(f) To pay administrative costs incurred by the department in accomplishing the purposes set forth in this section, the amount allocated under this subsection shall not exceed 10 percent of the fees generated under section 152 of this 1989 Act.

SECTION 154. ORS 459.235 is amended to read:

459.235. (1) Applications for permits shall be on forms prescribed by the department. An application shall contain a description of the existing and proposed operation and the existing and proposed facilities at the site, with detailed plans and specifications for any facilities to be constructed. The application shall include a recommendation by the local government unit or units having jurisdiction and such other information the department deems necessary in order to determine whether the site and solid waste disposal facilities located thereon and the operation will comply with applicable requirements.

(2) Subject to the review of the Executive Department, and the prior approval of the appropriate legislative review agency, [*permit fees may be charged in accordance with ORS 468.065 (2)*] **the commission may establish a schedule of fees for disposal site permits. The permit fees contained in the schedule shall be based on the anticipated cost of filing and investigating the application, of issuing or denying the requested permit and of an inspection program to determine compliance or noncompliance with the permit. The permit fee shall accompany the application for the permit.**

(3) If the application is for a regional disposal facility, the applicant shall file with the department a surety bond in the form and amount established by rule by the commission. The bond or financial assurance shall be executed in favor of the State of Oregon and shall be in an amount as determined by the department to be reasonably necessary to protect the environment, and the health, safety and welfare of the people of the state. The commission may allow the applicant to substitute other financial assurance for the bond, in the form and amount the commission considers satisfactory.

SECTION 155. (1) Beginning on January 1, 1991, every person who disposes of solid waste generated out-of-state in a disposal site or regional disposal site shall pay a surcharge as established by the Environmental Quality Commission under section 156 of this 1989 Act. The surcharge shall be in addition to any other fee charged for disposal of solid waste at the site.

(2) The surcharge collected under this section shall be deposited in the State Treasury to the credit of an account of the Department of Environmental Quality. Such moneys are continuously appropriated to the department to meet the costs of the department in administering the solid waste program under ORS 459.005 to 459.385.

SECTION 156. Subject to approval by the Joint Committee on Ways and Means during the legislative sessions or the Emergency Board during the interim between sessions, the Environmental Quality Commission shall establish by rule the amount of the surcharge to be collected under section 155 of this 1989 Act. The amount of the surcharge shall be based on the costs to the State of Oregon and its political subdivisions of disposing of solid waste generated out-of-state which are not otherwise paid for under the provisions of ORS 459.235 and sections 69 to 76, 150 to 153, 155 and 156 of this 1989 Act. These costs may include but need not be limited to costs incurred for:

(1) Solid waste management;

(2) Issuing new and renewal permits for solid waste disposal sites;

(3) Environmental monitoring;

(4) Ground water monitoring; and

(5) Site closure and post-closure activities.

SECTION 157. ORS 466.785, as amended by section 50, chapter 539, Oregon Laws 1987, is further amended to read:

466.785. (1) Fees may be required of every permittee of an underground storage tank. Fees shall be in an amount determined by the commission to be adequate to carry on the duties of the department or the duties of a state agency or local unit of government that has contracted with the department under ORS 466.730. Such fees shall not exceed [*$20*] **$25** per tank per year.

(2) Fees collected by the department under this section shall be deposited in the State Treasury to the credit of an account of the department. All fees paid to the department shall be continuously appropriated to the department to carry out the provisions of ORS 466.705 to 466.835 and 466.895.

SECTION 158. ORS 466.795 is amended to read:

466.795. (1) The Underground Storage Tank Insurance Fund is established separate and distinct from the General Fund in the State Treasury to be used solely for the purpose of satisfying the financial responsibility requirements of ORS 466.815.

(2) Fees received by the department pursuant to subsection (6) of this section, shall be deposited into the State Treasury and credited to the Underground Storage Tank Insurance Fund.

(3) The State Treasurer may invest and reinvest moneys in the Underground Storage Tank Insurance Fund in the manner provided by law.

(4) The moneys in the Underground Storage Tank Insurance Fund are appropriated continuously to the department to be used as provided for in subsection (5) of this section.

(5) Moneys in the Underground Storage Tank Insurance Fund may be used by the department for the following purposes, as they pertain to underground storage tanks:

(a) Compensation to the department or any other person, for taking corrective actions; [*and*]

(b) Compensation to a third party for bodily injury and property damage caused by a release; **and** [.]

(c) Payment of the department's costs in administering the Underground Storage Tank Insurance Fund, which shall be limited to 15 percent of the premium collected.

(6) The commission may establish an annual financial responsibility fee to be collected from an owner or permittee of an underground storage tank. The fee shall be in an amount determined by the commission to be adequate to meet the financial responsibility requirements established under ORS 466.815 and any applicable federal law.

(7) Before the effective date of any regulations relating to financial responsibility adopted by the United States Environmental Protection Act pursuant to P.L. 98-616 and P.L. 99-499, the department shall formulate a plan of action to be followed if it becomes necessary for the Underground Storage Tank Insurance Fund to become operative in order to satisfy the financial responsibility requirements of ORS 466.815. In formulating the plan of action, the department shall consult with the Director of the Department of Insurance and Finance, owners and permittees of underground storage tanks and any other interested party. The plan of action must be reviewed by the Legislative Assembly or the Emergency Board before implementation.

SECTION 159. (1) It is the intent of the Legislative Assembly that funds assessed pursuant to sections 139 to 148 of this Act are not subject to the provisions of section 2, Article VIII or section 3a, Article IX of the Oregon Constitution.

(2)(a) Jurisdiction to determine whether sections 139 to 148 of this Act impose a tax or excise levied on, with respect to or measured by the extraction, production, storage, use, sale, distribution or receipt of oil or natural gas or levied on the ownership of oil or natural gas that is subject to the provisions of section 2, Article VIII or section 3a, Article IX of the Oregon Constitution is conferred upon the Supreme Court. A petition for review shall be filed within 60 days only after September 1, 1989. Any person interested in or affected or aggrieved by sections 139 to 148 of this Act may petition for judicial review. The petition shall state the facts showing how the petitioner is interested, affected or aggrieved, and the ground upon which the petition is based. The Supreme Court shall give priority on its docket to a petition for review filed under this subsection. Filing of a petition shall stay the operation of sections 139 to 148 of this Act.

(b) Judicial review under paragraph (a) of this subsection shall be limited to:

(A) The provisions of this Act authorizing the imposition of the fee; and

(B) The legislative history and any supporting documents related to section 2, Article VIII or section 3a, Article IX of the Oregon Constitution.

(c) The court may declare the provisions of sections 139 to 148 of this Act invalid if it finds that the provisions violate constitutional provisions.

SECTION 160. If sections 139 to 148 of this Act or any part thereof are judicially declared to impose a tax or excise levied on, with respect to or measured by the extraction, production, storage, use, sale, distribution or receipt of oil or natural gas or levied on the ownership of oil or natural gas, that is subject to the provisions of section 2, Article VIII or section 3a, Article IX of the Oregon Constitution, sections 139, 140, 141, 142, 143, 144, 145, 146, 147 and 148 of this Act are repealed.

SECTION 161. Sections 162 to 168 of this Act become operative on the date the Supreme Court declares that sections 139 to 148 of this Act impose a tax or excise levied on, with respect to or measured by the extraction, production, storage, use, sale, distribution or receipt of oil or natural gas or levied on the ownership of oil or natural gas, that is subject to the provisions of section 2, Article VIII or section 3a, Article IX of the Oregon Constitution.

SECTION 162. (1) In addition to any other fees required by law, each petroleum supplier shall

pay to the Department of Revenue annually its share of an assessment to be deposited in accordance with section 165 of this Act. The amount of the total assessment shall be not more than $1 million each year for that portion of the fee necessary to carry out the state's hazardous material emergency response system and up to $1 million each year for that portion of the fee necessary to provide funding for the Orphan Site Account.

(2) Each petroleum supplier shall provide the Department of Revenue, on or before September 1, 1989, and by May 1 of each year thereafter, a verified statement showing the petroleum supplier's gross operating revenues derived within the state for the preceding calendar year. The statement shall be in the form prescribed by the Department of Revenue and is subject to audit by the department. The statement shall include an entry showing the total operating revenue derived by petroleum suppliers from fuels sold that are subject to the requirements of section 3a, Article IX of the Oregon Constitution, ORS 319.020 and 319.530 with reference to aircraft fuel and motor vehicle fuel or from oil and natural gas extracted within this state subject to section 2, Article VIII of the Oregon Constitution. The department may grant an extension of not more than 15 days for the requirements of this subsection if:

(a) The petroleum supplier makes a showing of hardship caused by the deadline;

(b) The petroleum supplier provides reasonable assurance that the petroleum supplier can comply with the revised deadline; and

(c) The extension of time does not prevent an affected agency from fulfilling its statutory responsibilities.

(3) The amount assessed to a petroleum supplier shall be based on the ratio which that supplier's annual gross operating revenue derived within this state in the preceding calendar year bears to the total gross operating revenue derived within this state during that year by all petroleum suppliers. The Department of Revenue shall exempt from payment of an assessment any individual petroleum supplier whose calculated share of the annual assessment is less than $250.

(4) Based on the formula set forth in subsection (3) of this section, on or before October 1, 1989, and by June 1 of each year thereafter, the Department of Revenue shall send each petroleum supplier subject to assessment a fee billing by registered or certified mail. The amount assessed to the petroleum supplier shall be considered to the extent otherwise permitted by law a government-imposed cost and recoverable by the petroleum supplier as a cost included within the price of the service or product supplied.

(5) The amounts assessed to individual petroleum suppliers pursuant to subsection (3) of this section shall be paid to the Department of Revenue not later than November 1, 1989, and by July 1 of each year thereafter.

(6) As used in this section:

(a) "Department" means the Department of Revenue.

(b) "Gross operating revenue" means gross receipts from sales or service made or provided within this state during the regular course of the petroleum supplier's business, but does not include:

(A) Revenue derived from interutility sales within the state; or

(B) Revenue received by a petroleum supplier from the sale of fuels that are:

(i) Used to operate railroad locomotives; or

(ii) Subject to the requirements of section 3a, Article IX of the Oregon Constitution, ORS 319.020 or 319.530 or section 2, Article VIII of the Oregon Constitution.

(c) "Petroleum supplier" has the meaning given that term in ORS 469.020 but does not include

a person supplying natural gas.

(7) The amount of revenues that must be derived from any class of petroleum suppliers by assessment pursuant to this subsection shall be determined by the department.

(8) A fee billing sent by the department under this section shall be subject to appeal under ORS 305.275. The filing of an appeal shall not operate to stay the obligation of a petroleum supplier to pay amounts assessed to it on or before the statutory deadline.

SECTION 163. (1) In addition to any other fee required by law, each railroad company that transports hazardous substance in Oregon shall pay, on or before January 1 of each even-numbered year, a biennial fee to the Department of Revenue. The fee shall be determined by dividing the number of miles of main track, branch line track and yard track in this state, as determined under ORS 308.570, into the sum of up to $100,000. Each railroad company shall then be billed for its pro rata share based on the number of miles of track owned.

(2) The Director of the Department of Revenue shall deposit the fee collected under subsection (1) of this section in accordance with section 165 of this Act.

(3) As used in this section:

(a) "Hazardous substance" has the meaning given that term in ORS 453.307.

(b) "Railroad" means a Class 1 railroad as defined in ORS 760.005.

SECTION 164. (1) In addition to other fees and taxes imposed by law upon motor carriers, there shall be assessed against and collected, on or before January 1 of each even-numbered year, from every motor carrier a biennial fee.

(2) The fee imposed under subsection (1) of this section shall be based upon the estimated incidence of hazardous substance spilled or discharged by motor carriers.

(3) For the purpose of computing the fee under subsection (1) of this section:

(a) Not more than $100 shall be assessed for any motor carrier transporting hazardous substance; and

(b) Not more than $25 shall be assessed for each motor carrier.

(4) The fee imposed under this section shall be paid to the Department of Revenue and deposited in accordance with section 165 of this Act.

(5) The Public Utility Commission shall provide the Department of Revenue with a list of all motor carriers registered with the Public Utility Commission. The list shall be current as of January 1 of each odd-numbered year and shall identify all motor carriers and those motor carriers who transport any hazardous substance.

(6) As used in this section:

(a) "Hazardous substance" has the meaning given that term in ORS 767.458.

(b) "Motor carrier" has the meaning given that term in ORS 767.005.

SECTION 165. All moneys received by the Department of Revenue under sections 162 to 164 of this Act shall be deposited in the State Treasury and credited to a suspense account established under ORS 293.445. After payment of administration expenses incurred by the department in the administration of sections 162 to 164 of this Act and of refunds or credits arising from erroneous overpayments, the balance of the money shall be credited to the appropriate accounts as approved by the Legislative Assembly to carry out the state's hazardous material emergency response system and to provide funding for the Orphan Site Account. If the balance of the money is less than that approved by the Legislative Assembly, the department shall distribute the money to the accounts in a ratio equal to the ratio of the amounts approved by the Legislative Assembly. Moneys collected

under sections 162 to 168 of this Act and credited to the Orphan Site Account shall not be used for removal or remedial action costs at solid waste disposal sites for which a fee is collected under section 137 or 138 of this Act.

SECTION 166. The provisions of ORS chapters 305 and 314 as to liens, delinquencies, claims for refund, issuance of refunds, conferences, appeals to the Director of the Department of Revenue, appeals to the Oregon Tax Court, stay of collection pending appeal, cancellation, waiver, reduction or compromise of fees, penalties or interest, subpenaing and examining witnesses and books and papers and the issuance of warrants and the procedures relating thereto, shall apply to the collection of fees, penalties and interest by the Department of Revenue under sections 162 to 168 of this Act, except where the context requires otherwise.

SECTION 167. If any person fails to pay a fee imposed under sections 162 to 168 of this Act, within 60 days after receiving a billing, there shall be added to the fee, a penalty of five percent of the amount of the fee. Any payment made after 60 days shall bear interest at the rate prescribed under ORS 305.220.

SECTION 168. Before final adoption of initial rules to carry out the provisions of sections 162 to 168 of this Act or subsequent amendment of the initial assessments established under sections 162 to 168 of this Act, the Department of Revenue shall obtain specific approval of the fees by the Joint Committee on Ways and Means during the legislative sessions or the Emergency Board during the interim period between sessions.

SECTION 169. If the Supreme Court declares that sections 139 to 148 of this Act impose a tax or excise levied on, with respect to or measured by the extractions, production, storage, use, sale, distribution or receipt of oil or natural gas or levied on the ownership of oil or natural gas, that is subject to the provisions of section 2, Article VIII, or section 3a, Article IX of the Oregon Constitution, ORS 466.590, as amended by section 113 of this Act, is further amended to read:

466.590. (1) The Hazardous Substance Remedial Action Fund is established separate and distinct from the General Fund in the State Treasury.

(2) The following shall be deposited into the State Treasury and credited to the Hazardous Substance Remedial Action Fund:

(a) Fees received by the department under ORS 466.587.

(b) Moneys recovered or otherwise received from responsible parties for remedial action costs. Moneys recovered from responsible parties for costs paid by the department from the Orphan Site Account established under subsection (6) of this section shall be credited to the Orphan Site Account.

(c) Moneys received under the schedule of fees established under paragraph (c) of subsection (2) of section 124 of this 1989 Act, **under** section 138 of this 1989 Act and [*sections 139 to 148 of this 1989 Act*] **under sections 162 to 168 of this 1989 Act** for the purpose [*described in ORS 466.590 (6)(a)(A)*] **of providing funds for the Orphan Site Account** which shall be credited to the Orphan Site Account established under subsection (6) of this section.

(d) Any penalty, fine or punitive damages recovered under ORS 466.567, 466.570, 466.583 or 466.900.

(e) Fees received by the department under section 110 of this 1989 Act.

(f) Moneys and interest, that are paid, recovered or otherwise received under financial assistance agreements.

(g) Moneys appropriated to the fund by the Legislative Assembly.

(h) Moneys from any grant made to the fund by a federal agency.

(3) The State Treasurer may invest and reinvest moneys in the Hazardous Substance Remedial Action Fund in the manner provided by law.

(4) The moneys in the Hazardous Substance Remedial Action Fund are appropriated continuously to the department to be used as provided in subsection (5) of this section.

(5) Moneys in the Hazardous Substance Remedial Action Fund may be used for the following purposes:

(a) Payment of the department's remedial action costs;

(b) Funding any action or activity authorized by ORS 466.540 to 466.590 and 466.900, including but not limited to providing financial assistance pursuant to an agreement entered into under section 106 of this 1989 Act; and

(c) Providing the state cost share for a removal or remedial action, as required by section 104(c)(3) of the federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510 and as amended by P.L. 99-499.

(6)(a) The Orphan Site Account is established in the Hazardous Substance Remedial Action Fund in the State Treasury. All moneys credited to the Orphan Site Account are continuously appropriated to the department for:

(A) Expenses of the department related to facilities or activities associated with the removal or remedial action where the department determines the responsible party is unknown, unwilling or unable to undertake all required removal or remedial action; and

(B) Grants and loans to local government units for facilities or activities associated with the removal or remedial action of a hazardous substance.

(b) The Orphan Site Account may not be used to pay the state's remedial action costs at facilities owned by the state.

(c) The Orphan Site Account may be used to pay claims for reimbursement filed and approved under ORS 466.570 (7).

(d) If bonds have been issued under ORS 468.195 to provide funds for removal or remedial action, the department shall first transfer from the Orphan Site Account to the Pollution Control Sinking Fund, solely from the fees collected pursuant to paragraph (c) of subsection (2) of section 124 of this 1989 Act, under section 138 of this 1989 Act and from [*sections 139 to 148 of this 1989 Act,*] **sections 162 to 168 of this 1989 Act** for such purposes, any amount necessary to provide for the payment of the principal and interest upon such bonds. Moneys from repayment of financial assistance or recovered from a responsible party shall not be used to provide for the payment of the principal and interest upon such bonds.

(7)(a) Of the funds in the Orphan Site Account derived from the fees collected pursuant to paragraph (c) of subsection (2) of section 124 of this 1989 under section 138 of this 1989 Act and sections [*139 to 148 of this 1989 Act*] **162 to 168 of this 1989 Act** for the purpose [*described in ORS 466.590 (6)(a)(A)*] **of providing funds for the Orphan Site Account**, and the proceeds of any bond sale under ORS 468.195 supported by the fees collected pursuant to paragraph (c) of subsection (2) of section 124 of this 1989 Act, under section 138 of this 1989 Act and sections [*139 to 148 of this 1989 Act*] **162 to 168 of this 1989 Act** for the purpose [*described in ORS 466.590 (6)(a)(A)*] **of providing funds for the Orphan Site Account**, no more than 25 percent may be obligated in any biennium by the department to pay for removal or remedial action at facilities determined by the department to have an unwilling responsible party, unless the department first receives approval

from the Legislative Assembly or the Emergency Board.

(b) Before the department obligates money from the Orphan Site Account derived from the fees collected pursuant to paragraph (c) of subsection (2) of section 124 of this 1989 Act, under section 138 of this 1989 Act and sections [*139 to 148 of this 1989 Act*] **162 to 168 of this 1989 Act** for the purpose [*described in ORS 466.590 (6)(a)(A)*] **of providing funds for the Orphan Site Account** and the proceeds from any bond sale under ORS 468.195 supported by fees collected pursuant to paragraph (c) of subsection (2) of section 124 of this 1989 Act, under section 138 of this 1989 Act and [*sections 139 to 148 of this 1989 Act*] for the purpose described in ORS 466.590 (6)(a)(A), for removal or remedial action at a facility determined by the department to have an unwilling responsible party, the department must first determine whether there is a need for immediate removal or remedial action at the facility to protect public health, safety, welfare or the environment. The department shall determine the need for immediate removal or remedial action in accordance with rules adopted by the Environmental Quality Commission.

SECTION 170. If the Supreme Court declares that sections 139 to 148 of this Act impose a tax or excise levied on, with respect to or measured by the extractions, production, storage, use, sale, distribution or receipt of oil or natural gas or levied on the ownership of oil or natural gas, that is subject to the provisions of section 2, Article VIII or section 3a, Article IX of the Oregon Constitution, ORS 468.220, as amended by section 114 of this Act, is further amended to read:

468.220. (1) The department shall be the agency for the State of Oregon for the administration of the Pollution Control Fund. The department is hereby authorized to use the Pollution Control Fund for one or more of the following purposes:

(a) To grant funds not to exceed 30 percent of total project costs for eligible projects as defined in ORS 454.505 or sewerage systems as defined in ORS 468.700.

(b) To acquire, by purchase, or otherwise, general obligation bonds or other obligations of any municipal corporation, city, county, or agency of the State of Oregon, or combinations thereof, issued or made for the purpose of paragraph (a) of this subsection in an amount not to exceed 100 percent of the total project costs for eligible projects.

(c) To acquire, by purchase, or otherwise, other obligations of any city that are authorized by its charter in an amount not to exceed 100 percent of the total project costs for eligible projects.

(d) To grant funds not to exceed 30 percent of the total project costs for facilities for the disposal of solid waste, including without being limited to, transfer and resource recovery facilities.

(e) To make loans or grants to any municipal corporation, city, county, or agency of the State of Oregon, or combinations thereof, for planning of eligible projects as defined in ORS 454.505, sewerage systems as defined by ORS 468.700 or facilities for the disposal of solid waste, including without being limited to, transfer and resource recovery facilities. Grants made under this paragraph shall be considered a part of any grant authorized by paragraph (a) or (d) of this subsection if the project is approved.

(f) To acquire, by purchase, or otherwise, general obligation bonds or other obligations of any municipal corporation, city, county, or agency of the State of Oregon, or combinations thereof, issued or made for the purpose of paragraph (d) of this subsection in an amount not to exceed 100 percent of the total project costs.

(g) To advance funds by contract, loan or otherwise, to any municipal corporation, city, county or agency of the State of Oregon, or combination thereof, for the purpose of paragraphs (a) and (d) of this subsection in an amount not to exceed 100 percent of the total project costs.

(h) To pay compensation required by law to be paid by the state for the acquisition of real property for the disposal by storage of environmentally hazardous wastes.

(i) To dispose of environmentally hazardous wastes by the Department of Environmental Quality whenever the department finds that an emergency exists requiring such disposal.

(j) To acquire for the state real property and facilities for the disposal by landfill, storage or otherwise of solid waste, including but not limited to, transfer and resource recovery facilities.

(k) To acquire for the state real property and facilities for the disposal by incineration or otherwise of hazardous waste or PCB.

(L) To provide funding for the Assessment Deferral Loan Program Revolving Fund established in ORS 468.975.

(m) To provide funding for the Orphan Site Account established in ORS 466.590 but only to the extent that the department reasonably estimates that debt service from bonds issued to finance such facilities or activities shall be fully paid from fees collected pursuant to paragraph (c) of subsection (2) of section 124 of this 1989 Act, under section 138 of this 1989 Act, under [*sections 139 to 148 of this 1989 Act,*] **sections 162 to 168 of this 1989 Act** for the purpose [*described in ORS 466.590 (6)(a)(A)*] **of providing funds for the Orphan Site Account** and other available funds, but not from repayments of financial assistance under sections 102 to 111 of this 1989 Act or from moneys recovered from responsible parties.

(n) To advance funds by contract, loan or otherwise, to any municipal corporation, city, county or agency of this state, or combination thereof, for facilities or activities related to removal or remedial action of hazardous substances.

(2) The facilities referred to in paragraphs (a) to (c) of subsection (1) of this section shall be only such as conservatively appear to the department to be not less than 70 percent self-supporting and self-liquidating from revenues, gifts, grants from the Federal Government, user charges, assessments and other fees.

(3) The facilities referred to in paragraphs (d), (f) and (g) of subsection (1) of this section shall be only such as conservatively appear to the department to be not less than 70 percent self-supporting and self-liquidating from revenues, gifts, grants from the Federal Government, user charges, assessments and other fees.

(4) The real property and facilities referred to in paragraphs (j) and (k) of subsection (1) of this section shall be only such as conservatively appear to the department to be not less than 70 percent self-supporting and self-liquidating from revenues, gifts, grants from the Federal Government, user charges, assessments and other fees.

(5) The department may sell or pledge any bonds, notes or other obligations acquired under paragraph (b) of subsection (1) of this section.

(6) Before making a loan or grant to or acquiring general obligation bonds or other obligations of a municipal corporation, city, county or agency for facilities for the disposal of solid waste or planning for such facilities, the department shall require the applicant to demonstrate that it has adopted a solid waste management plan that has been approved by the department. The plan must include a waste reduction program.

(7) Any grant authorized by this section shall be made only with the prior approval of the Joint Committee on Ways and Means during the legislative sessions or the Emergency Board during the interim period between sessions.

(8) The department may assess those entities to whom grants and loans are made under this

section to recover expenses incurred in administering this section.

SECTION 171. If the Supreme Court declares that sections 139 to 148 of this Act impose a tax or excise levied on, with respect to or measured by the extractions, production, storage, use, sale, distribution or receipt of oil or natural gas or levied on the ownership of oil or natural gas, that is subject to the provisions of section 2, Article VIII, or section 3a, Article IX of the Oregon Constitution, section 132 of this Act is amended to read:

Sec. 132. (1) Notwithstanding the totals established in sections 123, 138 and [*140*] **162** of this 1989 Act, after July 1, 1991, the Environmental Quality Commission by rule, may increase the total amount to be collected annually as a fee and deposited into the Orphan Site Account under sections 123, 138[,] and [*140*] **162** of this 1989 Act. The commission shall approve an increase if the commission determines:

(a) Existing fees being deposited into the Orphan Site Account are not sufficient to pay debt service on bonds sold to pay for removal or remedial actions at sites where the department determines the responsible party is unknown, unwilling or unable to undertake all required removal or remedial action; or

(b) Revenues from the sale of bonds cannot be used to pay for activities related to removal or remedial action, and existing fees being deposited into the Orphan Site Account are not sufficient to pay for these activities.

(2) The increased amount approved by the commission under subsection (1) of this section:

(a) Shall be no greater than the amount needed to pay anticipated costs specifically identified by the Department of Environmental Quality at sites where the department determines the responsible party is unknown, unwilling or unable to undertake all required removal or remedial action; and

(b) Shall be specifically approved by the Joint Committee on Ways and Means during the legislative sessions or the Emergency Board during the interim period between sessions.

SECTION 172. If the Supreme Court declares that sections 139 to 148 of this Act impose a tax or excise levied on, with respect to or measured by the extractions, production, storage, use, sale, distribution or receipt of oil or natural gas or levied on the ownership of oil or natural gas, that is subject to the provisions of section 2, Article VIII, or section 3a, Article IX of the Oregon Constitution, section 133 of this Act is amended to read:

Sec. 133. Nothing in sections 117, 121 to 131, 132, 134, 135, 137, 138 and [*139 to 148*] **162 to 168** of this 1989 Act, including the limitation on the amount a local government unit must contribute under sections 137 and 138 of this 1989 Act, shall be construed to affect or limit the liability of any person.

SECTION 173. Notwithstanding any provision of paragraph (c) of subsection (2) of section 124 of this Act, the fee imposed under paragraph (c) of subsection (2) of section 124 of this Act or under sections 139 to 148 of this Act shall not include any amount to be deposited in the Orphan Site Account until after the Emergency Board first approves the issuance of bonds under ORS 468.195 to provide funding for the Orphan Site Account. Following the initial approval of the issuance of bonds, the fee imposed under paragraph (c) of subsection (2) of section 124 of this Act, the fee imposed under section 138 of this Act and the fee imposed under sections 139 to 148 of this Act shall all be assessed whether the bonds are issued for removal or remedial action at a solid waste disposal site or at another site for which the Department of Environmental Quality determines the responsible party is unknown, unwilling or unable to undertake all required removal or remedial action.

SECTION 174. Notwithstanding any provision of ORS 466.590, during the biennium beginning July 1, 1989, moneys collected under the schedule established in paragraph (c) of subsection (2) of section 124 of this Act, under section 138 of this Act and under sections 139 to 148 of this Act to be used for removal or remedial action at sites for which the Department of Environmental Quality determines the responsible party is unknown, unwilling or unable to undertake all required removal or remedial action, may be used only for payment of debt service on bonds issued under ORS 468.195 for the purposes allowed under ORS 468.220 (1)(m).

SECTION 175. ORS 466.653, 466.660 and 466.665 are repealed.

SECTION 176. Notwithstanding any other law, the amount of $1,441,487 is established for the biennium beginning July 1, 1989, as the maximum limit for payment of expenses incurred in carrying out the provisions of the Community Right to Know and Protection Act from fees, moneys or other revenues, including Miscellaneous Receipts, excluding federal funds, collected or received by the Executive Department, Office of the State Fire Marshal under sections 121 to 131 of this Act.

SECTION 177. Notwithstanding any other law limiting expenditures of the Department of Revenue for the payment of expenses, there is authorized to be expended, in addition to other limitations established by law, the amount of $91,582 for the biennium beginning July 1, 1989, from fees collected by the Department of Revenue, as the maximum limit for payment of expenses for administration of this Act.

SECTION 178. In addition to and not in lieu of any other appropriation, there is appropriated to the Executive Department, Office of the State Fire Marshal, for the biennium beginning July 1, 1989, out of the State Fire Marshal Fund from moneys derived from the gross premium tax under ORS 731.820, the sum of $500,000 for the purpose of providing training under ORS 453.347.

SECTION 179. In addition to and not in lieu of any other appropriation, there is appropriated to the Executive Department for the Office of the State Fire Marshal, out of the State Fire Marshal Fund, from moneys derived from the gross premium tax under ORS 731.820, for the biennium beginning July 1, 1989, the sum of $200,000 for the purpose of establishing the revolving fund under section 88 of this Act.

SECTION 180. Notwithstanding any other law, the amount of $33,000 is established for the biennium beginning July 1, 1989, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, excluding federal funds, collected or received by the Department of Energy for the purposes of sections 81 to 91 of this Act.

SECTION 181. Notwithstanding any other law, the amount of $67,000 is established for the biennium beginning July 1, 1989, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, excluding federal funds, collected or received by the Emergency Management Division of the Executive Department for the purposes of sections 81 to 91 of this Act.

SECTION 182. Notwithstanding any other law, the amount of $3,323,666 is established for the biennium beginning July 1, 1989, as the maximum limit for payment of expenses incurred in carrying out the state-wide hazardous material emergency response system from fees, moneys or other revenues, including Miscellaneous Receipts, excluding federal funds, collected or received by the Executive Department, Office of the State Fire Marshal.

SECTION 183. Notwithstanding any other law, the amount of $250,000 is established for the biennium beginning July 1, 1989, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, excluding federal funds, collected or received

by the Department of Agriculture.

SECTION 184. Notwithstanding any other law, the amount of $183,484 is established for the biennium beginning July 1, 1989, as the maximum limit for payment of expenses incurred in carrying out duties under the state-wide hazardous material spill response system, from fees, moneys or other revenue, including Miscellaneous Receipts, excluding federal funds, collected or received by the Department of Higher Education.

SECTION 185. (1) In addition to and not in lieu of any other appropriation, there is appropriated to the Emergency Board for the biennium beginning July 1, 1989, out of the General Fund, the sum of $100,000, which may be expended for the purpose of carrying out section 30 of this Act. The Emergency Board may authorize expenditures of any or all of the amount appropriated by this section upon submission of a plan to carry out such provisions by the Health Division of the Department of Human Resources.

(2) If all of the moneys referred to in subsection (1) of this section are not allocated by the Emergency Board prior to December 1, 1990, such moneys on that date become available for any other purpose for which the Emergency Board lawfully may allocate funds.

SECTION 186. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect on its passage.

Senate Bill 166

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Department of Environmental Quality)

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 Environmental Quality Commission to adopt rules for management of used oil including rule to prohibit use of untested used oil for dust control. Exempts generators who use used oil for dust control on generator's own property or immediately adjacent property. Imposes civil penalties for persons violating used oil rules.

A BILL FOR AN ACT

Relating to used oil; creating new provisions; and amending ORS 468.140.

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

SECTION 1. Sections 2 and 3 of this Act are added to and made a part of ORS 468.850 to 468.871.

SECTION 2. The Environmental Quality Commission shall adopt rules and issue orders relating to the use, management, disposal of and resource recovery from used oil. The rules shall include but need not be limited to performance standards and other requirements necessary to protect the public health, safety and environment, and a provision prohibiting the use of untested used oil for dust suppression. The commission shall insure that the rules do not discourage the recovery or recycling of used oil in a manner that is consistent with the protection of human health, safety and the environment.

SECTION 3. Except to the extent that a use of used oil is prohibited or regulated by federal law, the rules adopted under section 2 of this 1989 Act shall not prohibit or regulate the use of used oil for dust suppression or as an herbicide if the used oil is generated by a business or industry and does not contain polychlorinated biphenyls, or contain or show a characteristic of hazardous waste as defined in ORS 466.005 or is generated by a household and is:

(1) Used on property owned by the generator; or

(2) Generated and used on property leased by the generator or used on property immediately adjacent to property owned or leased by the generator with the written approval of the property owner on whose property the oil is to be applied.

SECTION 4. ORS 468.140 is amended to read:

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

(a) The terms or conditions of any permit required or authorized by law and issued by the department or a regional air quality control authority.

(b) Any provision of ORS 164.785, 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745, ORS chapter 467 and this chapter.

(c) Any rule or standard or order of the commission adopted or issued pursuant to ORS 448.305,

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745, ORS chapter 467 and this chapter.

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

(e) Any rule or standard or order of a regional authority adopted or issued under authority of ORS 468.535 (1).

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

(3)(a) In addition to any other penalty provided by law, any person who intentionally or negligently causes or permits the discharge of oil into the waters of the state shall incur a civil penalty not to exceed the amount of $20,000 for each violation.

(b) In addition to any other penalty provided by law, [*any person who violates the terms or conditions of a permit authorizing waste discharge into the air or waters of the state or violates any law, rule, order or standard in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter relating to air or water pollution*] **the following persons** shall incur a civil penalty not to exceed the amount of $10,000 for each day of violation: [.]

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

(B) Any person who violates any law, rule, order or standard in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter relating to air or water pollution.

(C) Any person who violates the provisions of a rule adopted or an order issued under section 2 of this 1989 Act.

(4) Paragraphs (c) and (e) of subsection (1) of this section do not apply to violations of motor vehicle emission standards which are not violations of standards for control of noise emissions.

(5) Notwithstanding the limits of ORS 468.130 (1) and in addition to any other penalty provided by law, any person who intentionally or negligently causes or permits open field burning contrary to the provisions of ORS 468.450, 468.455 to 468.480, 476.380 and 478.960 shall be assessed by the department a civil penalty of at least $20 but not more than $40 for each acre so burned. Any fines collected by the department pursuant to this subsection shall be deposited with the State Treasurer to the credit of the General Fund and shall be available for general governmental expense.

SECTION 5. No later than 12 months after the effective date of this Act, the Environmental Quality Commission shall adopt rules under section 2 of this Act relating to dust suppression.

B-Engrossed
Senate Bill 167

Ordered by the Senate July 2
Including Senate Amendments dated February 23 and July 2

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with presession filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Department of Environmental Quality)

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.

Establishes limit on amount Department of Environmental Quality may recover for administrative costs for management of state insurance fund for underground storage tank owners. Establishes maximum permit fee of *[$30]* **$25** per underground storage tank per year. **Establishes $1 expenditure limitation on moneys received by the Department of Environmental Quality for purposes of Act.**

Declares emergency, effective July 1, 1989.

A BILL FOR AN ACT

Relating to underground storage tanks; creating new provisions; amending ORS 466.785 and 466.795; limiting expenditures; and declaring an emergency.

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

SECTION 1. ORS 466.785, as amended by section 50, chapter 539, Oregon Laws 1987, is further amended to read:

466.785. (1) Fees may be required of every permittee of an underground storage tank. Fees shall be in an amount determined by the commission to be adequate to carry on the duties of the department or the duties of a state agency or local unit of government that has contracted with the department under ORS 466.730. Such fees shall not exceed *[$20]* **$25** per tank per year.

(2) Fees collected by the department under this section shall be deposited in the State Treasury to the credit of an account of the department. All fees paid to the department shall be continuously appropriated to the department to carry out the provisions of ORS 466.705 to 466.835 and 466.895.

SECTION 2. ORS 466.795 is amended to read:

466.795. (1) The Underground Storage Tank Insurance Fund is established separate and distinct from the General Fund in the State Treasury to be used solely for the purpose of satisfying the financial responsibility requirements of ORS 466.815.

(2) Fees received by the department pursuant to subsection (6) of this section, shall be deposited into the State Treasury and credited to the Underground Storage Tank Insurance Fund.

(3) The State Treasurer may invest and reinvest moneys in the Underground Storage Tank Insurance Fund in the manner provided by law.

(4) The moneys in the Underground Storage Tank Insurance Fund are appropriated continuously to the department to be used as provided for in subsection (5) of this section.

(5) Moneys in the Underground Storage Tank Insurance Fund may be used by the department for the following purposes, as they pertain to underground storage tanks:

NOTE: Matter in **bold face** in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.

(a) Compensation to the department or any other person, for taking corrective actions; [*and*]

(b) Compensation to a third party for bodily injury and property damage caused by a release; **and** [.]

(c) Payment of the department's costs in administering the Underground Storage Tank Insurance Fund, which shall be limited to 15 percent of the premium collected.

(6) The commission may establish an annual financial responsibility fee to be collected from an owner or permittee of an underground storage tank. The fee shall be in an amount determined by the commission to be adequate to meet the financial responsibility requirements established under ORS 466.815 and any applicable federal law.

(7) Before the effective date of any regulations relating to financial responsibility adopted by the United States Environmental Protection Act pursuant to P.L. 98-616 and P.L. 99-499, the department shall formulate a plan of action to be followed if it becomes necessary for the Underground Storage Tank Insurance Fund to become operative in order to satisfy the financial responsibility requirements of ORS 466.815. In formulating the plan of action, the department shall consult with the Director of the Department of Insurance and Finance, owners and permittees of underground storage tanks and any other interested party. The plan of action must be reviewed by the Legislative Assembly or the Emergency Board before implementation.

SECTION 3. If House Bill 3515 becomes law, ORS 466.795, as amended by section 2 of this Act, is further amended to read:

466.795. (1) The Underground Storage Tank Insurance Fund is established separate and distinct from the General Fund in the State Treasury to be used solely for the purpose of satisfying the financial responsibility requirements of ORS 466.815.

(2) [*Fees received by the department pursuant to subsection (6) of this section,*] **Moneys received by the department under section 147, chapter _____, 1989 Oregon Laws (Enrolled House Bill 3515),** shall be deposited into the State Treasury and credited to the Underground Storage Tank Insurance Fund.

(3) The State Treasurer may invest and reinvest moneys in the Underground Storage Tank Insurance Fund in the manner provided by law.

(4) The moneys in the Underground Storage Tank Insurance Fund are appropriated continuously to the department to be used as provided for in subsection (5) of this section.

(5) Moneys in the Underground Storage Tank Insurance Fund may be used by the department for the following purposes, as they pertain to underground storage tanks:

(a) Compensation to the department or any other person, for taking corrective actions; and

(b) Compensation to a third party for bodily injury and property damage caused by a release; and

(c) Payment of the department's costs in administering the Underground Storage Tank Insurance Fund, which shall be limited to 15 percent of the premium collected.

[*(6) The commission may establish an annual financial responsibility fee to be collected from an owner or permittee of an underground storage tank. The fee shall be in an amount determined by the commission to be adequate to meet the financial responsibility requirements established under ORS 466.815 and any applicable federal law.*]

[*(7)*] **(6)** Before the effective date of any regulations relating to financial responsibility adopted by the United States Environmental Protection Act pursuant to P.L. 98-616 and P.L. 99-499, the department shall formulate a plan of action to be followed if it becomes necessary for the Under-

ground Storage Tank Insurance Fund to become operative in order to satisfy the financial responsibility requirements of ORS 466.815. In formulating the plan of action, the department shall consult with the Director of the Department of Insurance and Finance, owners and permittees of underground storage tanks and any other interested party. The plan of action must be reviewed by the Legislative Assembly or the Emergency Board before implementation.

SECTION 4. Section 147, chapter _____, Oregon Laws 1989 (House Bill 3515), is amended to read:

Sec. 147. (1) All moneys received by the Department of Revenue under sections 139 to 148 of this Act shall be deposited in the State Treasury and credited to a suspense account established under ORS 293.445. After payment of administration expenses incurred by the department in the administration of sections 139 to 148 of this Act and of refunds or credits arising from erroneous overpayments, the balance of the money shall be credited to the appropriate accounts as approved by the Legislative Assembly to:

(a) Carry out the state's oil, hazardous material and hazardous substance emergency response program; [*and to*]

(b) Provide up to $1 million each year to fund the Orphan Site Account; **and** [.]

(c) To provide funds for the Underground Storage Tank Insurance Fund in an amount adequate to establish a program to enable owners and permittees of underground storage tanks to satisfy the financial responsibility requirements established under ORS 466.815 and any applicable federal law.

(2) If the balance of the money is less than that approved by the Legislative Assembly, the department shall distribute the money to the accounts in a ratio equal to the ratio of the amounts approved by the Legislative Assembly.

SECTION 5. If the Supreme Court declares that section 147, chapter _____, Oregon Laws 1989 (House Bill 3515), imposes a tax or excise levied on, with respect to or measured by the extractions, production, storage, use, sale, distribution or receipt of oil or natural gas or levied on the ownership of oil or natural gas, that is subject to the provisions of section 2, Article VIII, or section 3a, Article IX of the Oregon Constitution, section 4 of this Act is repealed and ORS 466.795, as amended by section 3 of this Act, is further amended to read:

466.795. (1) The Underground Storage Tank Insurance Fund is established separate and distinct from the General Fund in the State Treasury to be used solely for the purpose of satisfying the financial responsibility requirements of ORS 466.815.

(2) **Fees received by the department pursuant to subsection (6) of this section,** [*Moneys received by the department under section 147, chapter _____, 1989 Oregon Laws (Enrolled House Bill 3515),*] shall be deposited into the State Treasury and credited to the Underground Storage Tank Insurance Fund.

(3) The State Treasurer may invest and reinvest moneys in the Underground Storage Tank Insurance Fund in the manner provided by law.

(4) The moneys in the Underground Storage Tank Insurance Fund are appropriated continuously to the department to be used as provided for in subsection (5) of this section.

(5) Moneys in the Underground Storage Tank Insurance Fund may be used by the department for the following purposes, as they pertain to underground storage tanks:

(a) Compensation to the department or any other person, for taking corrective actions; and

(b) Compensation to a third party for bodily injury and property damage caused by a release;

and

(c) Payment of the department's costs in administering the Underground Storage Tank Insurance Fund, which shall be limited to 15 percent of the premium collected.

(6) The commission may establish an annual financial responsibility fee to be collected from an owner or permittee of an underground storage tank. The fee shall be in an amount determined by the commission to be adequate to meet the financial responsibility requirements established under ORS 466.815 and any applicable federal law.

[(6)] **(7)** Before the effective date of any regulations relating to financial responsibility adopted by the United States Environmental Protection Act pursuant to P.L. 98-616 and P.L. 99-499, the department shall formulate a plan of action to be followed if it becomes necessary for the Underground Storage Tank Insurance Fund to become operative in order to satisfy the financial responsibility requirements of ORS 466.815. In formulating the plan of action, the department shall consult with the Director of the Department of Insurance and Finance, owners and permittees of underground storage tanks and any other interested party. The plan of action must be reviewed by the Legislative Assembly or the Emergency Board before implementation.

SECTION 6. Notwithstanding any other law, the amount of $1 is established for the biennium beginning July 1, 1989, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, excluding federal funds, collected or received by the Department of Environmental Quality for the purposes of this Act.

SECTION 7. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect on July 1, 1989.

A-Engrossed
Senate Bill 168

Ordered by the Senate March 23
Including Senate Amendments dated March 23

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with presession filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Department of Environmental Quality)

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.

Requires applicant for certification of federally licensed or permitted project to pay costs incurred by Environmental Quality Commission and Department of Environmental Quality in preparing to review application. **Sets application fees.** Requires applicant to pay all costs of commission and department in reviewing application for certification. **Sets maximum amounts for total costs applicant must pay for new project and for relicensing. Excludes costs associated with defending decision.**

Declares emergency, effective July 1, 1989.

A BILL FOR AN ACT

Relating to certification fees; amending ORS 468.065; appropriating money; and declaring an emergency.

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

SECTION 1. ORS 468.065 is amended to read:

468.065. Subject to any specific requirements imposed by ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter:

(1) Applications for all permits authorized or required by ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter shall be made in a form prescribed by the department. Any permit issued by the department shall specify its duration, and the conditions for compliance with the rules and standards, if any, adopted by the commission pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter.

(2) By rule and after hearing, the commission may establish a schedule of [*permit*] fees for permits issued pursuant to ORS 459.205, 468.310, 468.315, 468.555 and 468.740. The [*permit*] fees contained in the schedule shall be based upon the anticipated cost of filing and investigating the application, of issuing or denying the requested permit, and of an inspection program to determine compliance or noncompliance with the permit. The [*permit*] fee shall accompany the application for the permit.

(3) An applicant for certification of a project under ORS 468.732 or 468.734 shall pay as a fee all expenses incurred by the commission and department related to the review and decision of the director and commission. These expenses may include legal expenses, expenses incurred in processing and evaluating the application, issuing or denying certification and expenses of commissioning an independent study by a contractor of any aspect of the proposed project. These expenses shall not include the costs incurred in defending a decision of

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

either the director or the commission against appeals or legal challenges. Every applicant for certification shall submit to the department a fee at the same time as the application for certification is filed. The fee for a new project shall be $5,000, and the fee for an existing project needing relicense shall be $3,000. To the extent possible, the full cost of the investigation shall be paid from the application fee paid under this section. However, if the costs exceed the fee, the applicant shall pay any excess costs shown in an itemized statement prepared by the department. In no event shall the department incur expenses to be borne by the applicant in excess of 110 percent of the fee initially paid without prior notification to the applicant. In no event shall the total fee exceed $40,000 for a new project or $30,000 for an existing project needing relicense. If the costs are less than the initial fee paid, the excess shall be refunded to the applicant.

[*(3)*] **(4)** The department may require the submission of plans, specifications and corrections and revisions thereto and such other reasonable information as it considers necessary to determine the eligibility of the applicant for the permit.

[*(4)*] **(5)** The department may require periodic reports from persons who hold permits under ORS 448.305, 454.010 to 454.040, 454.205 to 454.225, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter. The report shall be in a form prescribed by the department and shall contain such information as to the amount and nature or common description of the pollutant, contaminant or waste and such other information as the department may require.

[*(5)*] **(6)** Any fee collected under this section shall be deposited in the State Treasury to the credit of an account of the department. Such fees are continuously appropriated to meet the administrative expenses of the program for which they are collected. The fees accompanying an application to a regional air pollution control authority pursuant to a permit program authorized by the commission shall be retained by and shall be income to the regional authority. Such fees shall be accounted for and expended in the same manner as are other funds of the regional authority. However, if the department finds after hearing that the permit program administered by the regional authority does not conform to the requirements of the permit program approved by the commission pursuant to ORS 468.555, such fees shall be deposited and expended as are permit fees submitted to the department.

SECTION 2. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect July 1, 1989.

A-Engrossed
Senate Bill 482

Ordered by the Senate March 14
Including Senate Amendments dated March 14

Sponsored by Senators BRENNEMAN, BRADBURY, Representatives HANLON, RIJKEN (at the request of Florence Rotary Club)

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.

Prohibits use of waste tires in construction of artificial reefs in ocean waters. **Allows such use in bays or estuaries.** [*Removes reference to use of waste tires in artificial fishing reefs.*]

A BILL FOR AN ACT

Relating to solid waste control; amending ORS 459.710 and 459.770.

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

SECTION 1. ORS 459.710 is amended to read:

459.710. (1) Except as provided in subsection (2) of this section, after July 1, 1989, no person shall dispose of waste tires in a land disposal site, as defined in ORS 459.005.

(2) After July 1, 1989, a person may dispose of waste tires in a land disposal site permitted by the department if:

(a) The waste tires are chipped in accordance with standards established by the Environmental Quality Commission;

(b) The waste tires were located for disposal before July 1, 1989, at a land disposal site permitted by the department;

(c) The commission finds that the reuse or recycling of waste tires is not economically feasible;

(d) The waste tires are received from a solid waste collector, operating under a license or franchise from any local government unit, who transports fewer than 10 tires at any one time; or

(e) The waste tires are received from a person transporting fewer than five tires in combination with the person's own solid waste for disposal.

(3) Except as provided in subsection (4) of this section, no person shall use waste tires as material in the construction of artificial reefs in the ocean waters of the State of Oregon.

(4) Subsection (3) of this section shall not apply to the use of waste tires in the construction of any artificial reef in any tidal or nontidal bay or estuary of this state. As used in this subsection, "estuary" has the meaning given that term in ORS 541.605.

SECTION 2. ORS 459.770 is amended to read:

459.770. (1) Any person who purchases waste tires generated in Oregon or tire chips or similar materials from waste tires generated in Oregon and who uses the tires or chips or similar material for energy recovery or other appropriate uses may apply for partial reimbursement of the cost of purchasing the tires or chips or similar materials.

(2) Any person who uses, but does not purchase, waste tires or chips or similar materials, for

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

energy recovery or another appropriate use, may apply for a reimbursement of part of the cost of such use.

(3) Any costs reimbursed under this section shall not exceed the amount in the Waste Tire Recycling Account. If applications for reimbursement during a period specified by the commission exceed the amount in the account, the commission shall prorate the amount of all reimbursements.

(4) The intent of the partial reimbursement of costs under this section is to promote the use of waste tires by enhancing markets for waste tires or chips or similar materials. The commission shall limit or eliminate reimbursements if the commission finds they are not necessary to promote the use of waste tires.

(5) The commission shall adopt rules to carry out the provisions of this section. The rules shall:

(a) Govern the types of energy recovery or other appropriate uses eligible for reimbursement **under this section. These uses shall include but need not be limited to:**

(A) Recycling other than retreading; or

(B) Artificial fishing reefs in nonocean waters of this state. [*including but not limited to recycling other than retreading, or use for artificial fishing reefs;*]

(b) Establish the procedure for applying for a reimbursement. [*; and*]

(c) Establish the amount of reimbursement.

B-Engrossed
Senate Bill 855

Ordered by the House May 19
Including Senate Amendments dated April 27
and House Amendments dated May 19

Sponsored by Senators GOLD, BRADBURY, BROCKMAN, BUNN, CEASE, COHEN, DUKES, FAWBUSH, GRENSKY, HAMBY, HANNON, J. HILL, L. HILL, HOUCK, JOLIN, KENNEMER, KERANS, KINTIGH, KITZHABER, McCOY, OTTO, ROBERTS, SHOEMAKER, SPRINGER, TROW, Representatives AGRONS, BAUMAN, CALOURI, CARTER, CEASE, DIX, DWYER, GERSHON, HOSTICKA, D. JONES, KEISLING, PARKINSON, PICKARD, STEIN

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.

Declares that requiring recycling will increase useful life of solid waste disposal sites and protect public health and safety. Requires, as condition of disposal permit, that local government units from within or outside state that send more than 75,000 tons of solid waste per year for disposal in exclusive farm use zone develop and implement waste reduction program acceptable to Department of Environmental Quality. **Allows out-of-state reduction plans to be part of contract negotiated with disposal site operator.** Requires that program provide opportunity to recycle. Specifies that contracts between disposal site and local government may not affect Environmental Quality Commission's authority to establish or modify opportunity to recycle requirements.

A BILL FOR AN ACT

Relating to solid waste control; amending ORS 459.015, 459.055 and 459.305.

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

SECTION 1. ORS 459.015 is amended to read:

459.015. (1) The Legislative Assembly finds and declares that:

(a) The planning, development and operation of recycling programs is a matter of state-wide concern.

(b) The opportunity to recycle should be provided to every person in Oregon.

(c) There is a shortage of appropriate sites for landfills in Oregon.

(d) It is in the best interests of the people of Oregon to extend the useful life of existing solid waste disposal sites by encouraging recycling and reuse of materials whenever recycling is economically feasible, **and by requiring solid waste to undergo volume reduction through recycling and reuse measures before disposal in landfills to the maximum extent feasible. Implementation of recycling and reuse measures will not only increase the useful life of solid waste disposal sites, but also decrease the potential public health and safety impacts associated with landfill operation.**

(2) In the interest of the public health, safety and welfare and in order to conserve energy and natural resources, it is the policy of the State of Oregon to establish a comprehensive state-wide program for solid waste management which will:

(a) After consideration of technical and economic feasibility, establish priority in methods of managing solid waste in Oregon as follows:

(A) First, to reduce the amount of solid waste generated;

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

(B) Second, to reuse material for the purpose for which it was originally intended;

(C) Third, to recycle material that cannot be reused;

(D) Fourth, to recover energy from solid waste that cannot be reused or recycled, so long as the energy recovery facility preserves the quality of air, water and land resources; and

(E) Fifth, to dispose of solid waste that cannot be reused, recycled or from which energy cannot be recovered by landfilling or other method approved by the department.

(b) Clearly express the Legislative Assembly's previous delegation of authority to cities and counties for collection service franchising and regulation and the extension of that authority under the provisions of ORS 459.005, 459.015, 459.035, 459.165 to 459.200, 459.250, 459.992 and 459.995.

(c) Retain primary responsibility for management of adequate solid waste management programs with local government units, reserving to the state those functions necessary to assure effective programs, cooperation among local government units and coordination of solid waste management programs throughout the state.

(d) Promote research, surveys and demonstration projects to encourage resource recovery.

(e) Promote research, surveys and demonstration projects to aid in developing more sanitary, efficient and economical methods of solid waste management.

(f) Provide advisory technical assistance and planning assistance to local government units and other affected persons in the planning, development and implementation of solid waste management programs.

(g) Develop, in coordination with federal, state and local agencies and other affected persons, long-range plans including regional approaches to promote reuse, to provide land reclamation in sparsely populated areas, and in urban areas necessary disposal facilities for resource recovery.

(h) Provide for the adoption and enforcement of minimum performance standards necessary for safe, economic and proper solid waste management.

(i) Provide authority for counties to establish a coordinated program for solid waste management, to regulate solid waste management and to license or franchise the providing of service in the field of solid waste management.

(j) Encourage utilization of the capabilities and expertise of private industry in accomplishing the purposes of ORS 459.005 to 459.105, 459.205 to 459.245 and 459.255 to 459.285.

(k) Promote means of preventing or reducing at the source, materials which otherwise would constitute solid waste.

(L) Promote application of resource recovery systems which preserve and enhance the quality of air, water and land resources.

SECTION 2. ORS 459.055 is amended to read:

459.055. (1) Before issuing a permit for a landfill disposal site to be established after October 3, 1979, in any area zoned for exclusive farm use, the department shall determine that the site can and will be reclaimed for uses permissible in the exclusive farm use zone. A permit issued for a disposal site in such an area shall contain requirements that:

(a) Assure rehabilitation of the site to a condition comparable to its original use at the termination of the use for solid waste disposal;

(b) Protect the public health and safety and the environment;

(c) Minimize the impact of the facility on adjacent property;

(d) Minimize traffic; and

(e) Minimize rodent and vector production and sustenance.

[*(2) Before issuing a permit for a landfill disposal site established under ORS 459.047 or 459.049, or for a disposal site established as a conditional use in an area zoned for exclusive farm use, the department shall require the local government unit responsible for solid waste disposal pursuant to statute or agreement between governmental units to prepare a waste reduction program and shall review that program in the manner provided in subsection (5) of this section. Such program shall provide for:*]

(2) Before issuing a permit for a landfill disposal site established under ORS 459.047 or 459.049, or for a disposal site established after October 3, 1979, as a conditional use in an area zoned for exclusive farm use, the department shall require:

(a) The local government unit responsible for solid waste disposal pursuant to statute or agreement between governmental units that sends more than 75,000 tons of solid waste a year to the disposal site to prepare a waste reduction program accepted by the department; and

(b) That any contract or agreement to dispose of more than 75,000 tons of out-of-state solid waste a year in an Oregon disposal site established under ORS 459.047 or 459.049 provides for a waste reduction program accepted by the department.

(3) A disposal site permitted under the provisions of subsection (2) of this section may not accept solid waste from a local government that does not have a waste reduction program or a contract accepted by the department. The department shall review the local government programs and the contract programs in the manner provided in subsection (6) of this section. Such programs shall provide for:

(a) A commitment by the local government unit to reduce the volume of waste that would otherwise be disposed of in a landfill through techniques such as source reduction, recycling, reuse and resource recovery;

(b) An opportunity to recycle that meets or exceeds the requirements of ORS 459.165 to 459.200 and 459.250;

[*(b)*] **(c)** A timetable for implementing each portion of the waste reduction program;

[*(c)*] **(d)** Energy efficient, cost-effective approaches for waste reduction;

[*(d)*] **(e)** Procedures commensurate with the type and volume of solid waste generated in the area; and

[*(e)*] **(f)** Legal, technical and economical feasibility.

[*(3) If a local government unit has failed to implement the waste reduction program required*]

(4) If the waste reduction program required pursuant to this section **is not implemented,** the commission may, by order, direct such implementation**, or may prohibit the disposal site from accepting waste from that local government unit.**

[*(4)*] **(5)** The department shall report to each Legislative Assembly on the use made of this section, the level of compliance with waste reduction programs and recommendations for further legislation.

[*(5)*] **(6)** A waste reduction program prepared under subsection (2) of this section shall be reviewed by the department and shall be accepted by the department if it meets the criteria prescribed therein.

[*(6)*] **(7)** Notwithstanding ORS 459.245 (1), if the department fails to act on an application subject to the requirements of this section within 60 days, the application shall not be considered granted.

(8) No contract or agreement between an owner or operator of a disposal site and local

government unit shall affect the authority of the commission to establish or modify the requirements of an acceptable waste reduction program under subsection (2) of this section.

SECTION 3. ORS 459.305 is amended to read:

459.305. (1) Except as otherwise provided by rules adopted by the Environmental Quality Commission under subsection (3) of this section, after July 1, 1988, a regional disposal site may not accept solid waste generated from any local or regional government unit within or outside the State of Oregon unless the Department of Environmental Quality certifies that the government unit has implemented an opportunity to recycle that meets the requirements of ORS 459.165 to 459.200 and 459.250.

(2) The Environmental Quality Commission shall adopt rules to establish a program for certification of recycling programs established by local or regional governments in order to comply with the requirement of subsection (1) of this section. **No contract or agreement between an owner or operator of a disposal site and a local government unit shall affect the authority of the commission to establish or modify the requirements of an acceptable opportunity to recycle under ORS 459.165 to 459.200 and 459.250.**

(3) Not later than July 1, 1988, the commission shall establish by rule the amount of solid waste that may be accepted from an out-of-state local or regional government before the local or regional government must comply with the requirement set forth in subsection (1) of this section. Such rule shall not become effective until July 1, 1990.

(4) Subject to review of the Executive Department and the prior approval of the appropriate legislative review agency, the department may establish a certification fee in accordance with ORS 468.065.

(5) After July 1, 1988, if the metropolitan service district sends solid waste generated within the boundary of the metropolitan service district to a regional disposal site, the metropolitan service district shall:

(a) At least semiannually operate or cause to be operated a collection system or site for receiving household hazardous waste;

(b) Provide residential recycling containers, as a pilot project implemented not later than July 1, 1989; and

(c) Provide an educational program to increase participation in recycling and household hazardous materials collection programs.

(6) The certification requirement under subsection (1) of this section shall not apply to a local government unit implementing a waste reduction program under ORS 459.055.

B-Engrossed
Senate Bill 987

Ordered by the House July 1
Including Senate Amendments dated June 27 and House Amendments dated July 1

Sponsored by Senator KERANS, Representative EDMUNSON

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.

Makes eligible for tax credit allowed for connecting to sewage treatment works such connections that are made consistent with agreement entered into between local governing body and Environmental Quality Commission **or ordered by Assistant Director for Health after January 1, 1989, and before January 1, 1990.**

Applies to installations or connections made on or after January 1, [*1987*] **1985.** Revises provisions regarding unused tax credits to allow carrying forward for eight succeeding tax years.

A BILL FOR AN ACT

Relating to taxation; creating new provisions; and amending ORS 316.095.

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

SECTION 1. ORS 316.095 is amended to read:

316.095. (1) A resident individual shall be allowed a credit of [*$500*] **$750** against the taxes otherwise due under this chapter, for installing or connecting to a sewage treatment works [*as required by*] **if:**

(a) **Required by** an order issued, before July 1, 1989, under ORS 454.275 to 454.380 or ORS chapter 468;

(b) **Required by** a rule adopted, before July 1, 1989, by the Environmental Quality Commission; [*or*]

(c) **Required by, installed or connected pursuant to** the terms of an intergovernmental agreement, entered into before July 1, 1989, between a local governing body and the Environmental Quality Commission; **or** [.]

(d) Required by an order from the Assistant Director for Health under ORS 222.840 to 222.915 or 431.705 to 431.760 issued after January 1, 1989, and before January 1, 1990.

(2) To qualify for the credit under this section:

(a) Subject to subsection (4) of this section, the credit must be claimed for the year in which the connection is made or the costs are incurred. [*for the project after September 27, 1987.*] **The credit applies to installations or connections made on or after January 1, 1985.**

(b) The taxpayer who is allowed the credit must be the person who actually expended funds for construction or installation of the project.

(c) The treatment works must be required by an order[,] **or** rule [*or intergovernmental agreement*] of the Environmental Quality Commission **or required by, installed or connected con-**

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

sistent with an intergovernmental agreement between a local governing body and the Environmental Quality Commission.

(d) The residence connected to the treatment works must be the principal residence of, and owned by, the taxpayer claiming the credit.

(3) The credit allowed in any one year shall not exceed [*$100*] **$150 per qualifying residence** or the tax liability of the taxpayer.

[*(4) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for each succeeding tax year until the entire credit is used.*]

(4) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, and any credit not used in that fifth succeeding tax year may be carried forward and used in the sixth succeeding tax year, and any credit not used in that sixth succeeding tax year may be carried forward and used in the seventh succeeding tax year, and any credit not used in that seventh succeeding tax year may be carried forward and used in the eighth succeeding tax year, but may not be carried forward for any tax year thereafter.

(5) A husband and wife who file separate returns for a taxable year may each claim a share of the tax credit that would have been allowed on a joint return in proportion to the contribution of each.

(6) The tax claim for tax credit shall be substantiated by submission, with the tax return, of receipt of payment by the taxpayer. For purposes of this subsection, "receipt of payment" means a canceled check or an actual receipt for payment issued by the installing or constructing entity and issued on the date the payment is or was actually acknowledged.

SECTION 2. (1) Subject to subsections (2) and (3) of this section, the amendments to ORS 316.095 by section 1 of this Act apply to tax years beginning on or after January 1, 1985.

(2) Notwithstanding ORS 305.265, 314.410 or other law, upon compliance with subsection (3) of this section, for a tax year beginning on or after January 1, 1985, and prior to January 1, 1989, any return, including but not limited to a return of estimated tax under ORS 316.557 to 316.589, shall be adjusted, any assessment of taxes, including tax, interest and penalty, shall be canceled, and any credit or refund due the taxpayer shall be paid, without interest, to the extent necessary to carry out the retroactive application under subsections (1) and (3) of this section.

(3) Any taxpayer who has not been granted a credit under ORS 316.095 (1987 Replacement Part) for a tax year beginning on or after January 1, 1985, and before January 1, 1989, either because the credit was not applicable for that year or because the taxpayer had no or insufficient tax liability, or for other reason, may make application for the credit allowed by the amendments to ORS 316.095 by section 1 of this Act and this section. The application shall be made on or before April 15, 1991. Personal income tax forms prepared and distributed for the tax years 1989 and 1990 shall contain information describing the credit and the manner in which application under this subsection may

be made. If a taxpayer fails to make the application described in this subsection within the required time, no adjustment, cancellation, credit or refund shall be made under subsections (1) and (2) of this section.

A-Engrossed
Senate Bill 1038

Ordered by the Senate May 23
Including Senate Amendments dated May 23

Sponsored by COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

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.

Establishes financial assurance [*requirements*] **provisions** for [*person having control over*] **ships over 300 gross tons that transport bulk** oil [*or hazardous material transported*] in waters of state. **Specifies methods by which assurance may be established.** [*Requires port authority to suspend operation of ship until demonstration of proof that requirements have been met.*] **Requires Environmental Quality Commission, by January 1, 1990, to adopt rules to carry out Act. Allows required documentation of compliance to be kept on ship or filed with Department of Environmental Quality. Requires owner or operator to maintain on ship certificate of compliance with Federal Water Pollution Control Act. Requires maritime pilot to report to department owner or operator of ship carrying oil without required financial assurances.**

[*Declares emergency, effective on passage.*]

A BILL FOR AN ACT

Relating to oil spills; creating new provisions; and amending ORS 468.140.

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

SECTION 1. Sections 2 to 5 of this Act are added to and made a part of ORS 468.780 to 468.815.

SECTION 2. The Legislative Assembly finds that oil spills, hazardous material spills and other forms of incremental pollution present serious danger to the fragile marine environment of the state. Therefore, it is the intent of sections 2 to 5 of this 1989 Act to establish financial assurance for ships that transport oil and other hazardous material in the waters of the state.

SECTION 3. (1) Any ship over 300 gross tons, that transports oil in bulk as cargo, using any port or place in this state or the waters of the state shall establish, under rules adopted by the Environmental Quality Commission, evidence of financial assurance in the amount of the greater of:

(a) $1 million; or

(b) $150 per gross ton of the ship.

(2) The financial assurance established under subsection (1) of this section shall meet the liability to the State of Oregon for:

(a) Actual costs for removal of spills of oil;

(b) Civil penalties and fines imposed in connection with the spill of oil; and

(c) Natural resource damages.

SECTION 4. (1) Financial assurance may be established by any of the following methods or a combination of these methods acceptable to the Environmental Quality Commission:

(a) Evidence of insurance;

(b) Surety bond;

(c) Qualifications as a self-insurer; or

(d) Any other evidence of financial assurance approved by the commission.

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

(2) Any bond filed shall be issued by a bonding company authorized to do business in the United States.

(3) Documentation of the financial assurance shall be kept on the ship or filed with the department. The owner or operator of any other ship shall maintain on the ship a certificate issued by the United States Coast Guard evidencing compliance with the requirements of section 311 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

SECTION 5. The maritime pilot piloting a ship subject to the provisions of section 3 of this 1989 Act shall report to the Department of Environmental Quality any ship owner or operator having control over oil who does not provide financial assurance as required under sections 3 and 4 of this 1989 Act.

SECTION 6. Not later than January 1, 1990, the Environmental Quality Commission shall adopt rules to carry out the provisions of sections 2 to 5 of this Act.

SECTION 7. ORS 468.140 is amended to read:

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

(a) The terms or conditions of any permit required or authorized by law and issued by the department or a regional air quality control authority.

(b) Any provision of ORS 164.785, 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745, ORS chapter 467 and this chapter.

(c) Any rule or standard or order of the commission adopted or issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745, ORS chapter 467 and this chapter.

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

(e) Any rule or standard or order of a regional authority adopted or issued under authority of ORS 468.535 (1).

(f) The financial assurance requirement under sections 3 and 4 of this 1989 Act or any rule related to the financial assurance requirement under section 3 of this 1989 Act.

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

(3)(a) In addition to any other penalty provided by law, any person who intentionally or negligently causes or permits the discharge of oil into the waters of the state shall incur a civil penalty not to exceed the amount of $20,000 for each violation.

(b) In addition to any other penalty provided by law, any person who violates the terms or conditions of a permit authorizing waste discharge into the air or waters of the state or violates any law, rule, order or standard in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter relating to air or water pollution shall incur a civil penalty not to exceed the amount of $10,000 for each day of violation.

(4) Paragraphs (c) and (e) of subsection (1) of this section do not apply to violations of motor vehicle emission standards which are not violations of standards for control of noise emissions.

(5) Notwithstanding the limits of ORS 468.130 (1) and in addition to any other penalty provided by law, any person who intentionally or negligently causes or permits open field burning contrary to the provisions of ORS 468.450, 468.455 to 468.480, 476.380 and 478.960 shall be assessed by the department a civil penalty of at least $20 but not more than $40 for each acre so burned. Any fines

collected by the department pursuant to this subsection shall be deposited with the State Treasurer to the credit of the General Fund and shall be available for general governmental expense.

B-Engrossed
Senate Bill 1039

Ordered by the Senate June 30
Including Senate Amendments dated April 18 and June 30

Sponsored by COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

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.

Directs Department of Environmental Quality to develop oil or hazardous material spill response plan by July 1, 1991, for oil or hazardous material spills on specified waters of state. Specifies required elements of plan. Appropriates moneys from General Fund to department for purposes of Act.

A BILL FOR AN ACT

Relating to oil or hazardous material spills; creating new provisions; amending ORS 468.780; and appropriating money.

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

SECTION 1. Sections 2 and 3 of this Act are added to and made a part of ORS 468.780 to 468.815.

SECTION 2. The Department of Environmental Quality shall develop an integrated, interagency response plan for oil or hazardous material spills in the Columbia River, the Willamette River up to Willamette Falls and the coastal waters and estuaries of the state. In developing the response plan, the department shall work with all affected local, state and federal agencies and with any volunteer group interested in participating in oil or hazardous material spill response.

SECTION 3. The plan developed under section 2 of this 1989 Act shall include at a minimum:

(1) A compilation of maps and information about the waters of the state including shorelines, access points, critical habitats, shoreline sensitivity, disposal sites, ownership and jurisdictional control over each area. This portion of the plan shall use and expand the computer mapping system currently being developed by the Department of Energy.

(2) An index of federal, state and local agency personnel, private contractors, volunteers, labor employment centers, wildlife rehabilitation centers and other sources of persons and equipment available to respond in the event of an oil or hazardous material spill. The index shall include information necessary to contact the organizations and persons in the index in the event of an oil or hazardous material spill.

(3) A spill response strategy. This strategy shall include methods for discovery of the spill, notification of agencies, organizations and individuals in the index, evaluation and initiation of response, containment and countermeasures and clean-up. The spill response strategy shall also include provisions for documenting the response measures taken and procedures for cost recovery.

(4) Provisions for coordinating Oregon's oil or hazardous material spill response procedures for coastal and interstate waters with the states of Washington and California. To the maximum extent practicable, interstate cooperation shall include but need not be limited to coordination of:

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

(a) Development of coastal and ocean information systems with those of adjacent states; and

(b) Oregon's oil or hazardous material spill response, damage assessment and cost recovery procedures for coastal or interstate waters with those developed by adjacent states.

SECTION 4. ORS 468.780 is amended to read:

468.780. As used in ORS 468.020, 468.095, 468.140 (3) and 468.780 to 468.815[, *unless the context requires otherwise*]:

(1) "Hazardous material" has the meaning given that term in ORS 466.605.

[*(1)*] **(2)** "Oils" or "oil" means oil, including gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse and any other petroleum related product.

[*(2)*] **(3)** "Person having control over oil" includes but is not limited to any person using, storing or transporting oil immediately prior to entry of such oil into the waters of the state, and shall specifically include carriers and bailees of such oil.

[*(3)*] **(4)** "Ship" means any boat, ship, vessel, barge or other floating craft of any kind.

SECTION 5. If House Bill 3515 becomes law, section 2 of this Act is amended to read:

Sec. 2. **(1)** The Department of Environmental Quality shall develop an integrated, interagency response plan for oil or hazardous material spills in the Columbia River, the Willamette River up to Willamette Falls and the coastal waters and estuaries of the state. In developing the response plan, the department shall work with all affected local, state and federal agencies and with any volunteer group interested in participating in oil or hazardous material spill response.

(2) The plan developed under subsection (1) of this section shall be consistent to the extent practicable with the plan for a state-wide hazardous material emergency response system established by the State Fire Marshal under section 82, chapter_____, Oregon Laws 1989 (Enrolled House Bill 3515).

SECTION 6. The Department of Environmental Quality shall complete the initial plan required under sections 2 and 3 of this 1989 Act by July 1, 1991.

SECTION 7. In addition to and not in lieu of any other appropriation, there is appropriated to the Department of Environmental Quality, out of the General Fund, the sum of $250,000 for developing the oil or hazardous material spill response plan required under sections 2 and 3 of this Act.

A-Engrossed
Senate Bill 1079

Ordered by the Senate May 9
Including Senate Amendments dated May 9

Sponsored by Senators COHEN, ROBERTS, SHOEMAKER, Representatives BAUMAN, CARTER, STEIN

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.

[*Prohibits sale of laundry detergent containing phosphate. Prescribes exemptions. Defines "cleaning agent".*]
[*Prescribes effective date.*]
Requires Department of Environmental Quality to establish task force on phosphorus and other nutrients in state waters. Prescribes membership and duties. Requires department to report findings to Sixty-sixth Legislative Assembly. Requires Legislative Assembly to determine whether to ban phosphates in detergents.

A BILL FOR AN ACT

Relating to phosphate.

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

SECTION 1. (1) The Department of Environmental Quality shall establish a task force on phosphorus and other nutrients in the waters of the state. The task force shall include representatives of municipal waste water treatment agencies, nonmunicipal point source dischargers, agriculture, forestry, manufacturers of consumer cleansing products and citizens. The task force shall assist the Department of Environmental Quality in identifying the sources of phosphorus and other nutrients contributing to the growth of algae in the waters of the state that the Department of Environmental Quality identifies in which algae growth is adversely affecting water quality. When appropriate, the task force shall assist the Department of Environmental Quality in identifying:

(a) Nutrient sources in waste ater treatment plant influent;

(b) The relative contribution of these nutrient sources on waste water treatment plant effluent; and

(c) The potential impact of regulating or eliminating phosphorus from detergents and other sources on potential nutrient control strategies and water quality.

(2) The Department of Environmental Quality shall report to the Sixty-sixth Legislative Assembly regarding the findings of the task force established under subsection (1) of this section. Based on the findings of the report, the Legislative Assembly shall determine whether it is appropriate to eliminate specific sources of phosphorus, including but not limited to, imposing a ban on phosphates in detergents.

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

A-Engrossed
Senate Bill 1083

Ordered by the House June 29
Including House Amendments dated June 29

Sponsored by Senators COHEN, HAMBY, L. HILL, SHOEMAKER, Representatives BAUMAN, BUNN, CARTER, DWYER, D. JONES, KEISLING, SCHROEDER, WEHAGE

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.

Allows tax credit for use of reclaimed plastic until July 1, 1995. Allows credit for equipment, **personal** property or machinery necessary to collect, transport or process reclaimed plastic used to make reclaimed plastic product rather than limiting credit to manufacturing reclaimed plastic product. Defines "reclaimed plastic." **Provides for apportionment of credit for nonresidents and part-year residents and for short tax years. Prevents taxpayer from claiming both this credit and one for alternative energy device or business energy tax credit.**

A BILL FOR AN ACT

Relating to reclaimed plastic; amending ORS 316.103, 317.106, 468.925, 468.930, 468.935, 468.940, 468.945, 468.950, 468.955, 468.960 and 468.965; and repealing sections 1 and 6, chapter_____, Oregon Laws 1989 (Enrolled House Bill 2050).

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

SECTION 1. ORS 468.925 is amended to read:

468.925. As used in ORS 468.925 to 468.965:

(1) "[*Capital*] Investment" means the amount of money a person invests to acquire or construct equipment, **personal property** or machinery necessary to **collect, transport or process reclaimed plastic or** manufacture a reclaimed plastic product.

(2) "Qualifying business" means a [*manufacturing*] business **in Oregon** that **collects, transports, processes, reclaims plastic or** manufactures a reclaimed plastic product [*in Oregon*].

(3) "Reclaimed plastic" means plastic [*that originates within Oregon*] from industrial consumers, **commercial users** or post-consumer waste. **"Reclaimed plastic" includes shredded plastics, regrind, pellets or any similar product manufactured from Oregon industrial consumer, commercial user or post-consumer waste that is sold for the purpose of making an end product out of reclaimed plastic** and is intended to be used to manufacture a nonmedical or nonfood plastic product.

(4) "Reclaimed plastic product" means a plastic product for which the majority of the plastic used in the product is reclaimed plastic.

SECTION 2. ORS 468.930 is amended to read:

468.930. In the interest of the public peace, health and safety, it is the policy of the State of Oregon to assist in the prevention, control and reduction of solid waste in this state by providing tax relief to Oregon businesses that make [*capital*] investments in order to **collect, transport or process reclaimed plastic or** manufacture a reclaimed plastic product.

SECTION 3. ORS 468.935 is amended to read:

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

468.935. (1) Any person may apply to the commission for certification under ORS 468.940 of [*a capital*] **an** investment made by the person in Oregon to allow the person to **collect, transport or process reclaimed plastic or** manufacture a reclaimed plastic product if the investment was made on or after January 1, 1986, and before [*January 1, 1989*] **July 1, 1995.**

(2) The application shall be made in writing in a form prescribed by the department and shall contain information on the actual [*capital*] investment including a description of the materials incorporated therein, all machinery, **personal property** and equipment made a part thereof, the existing or proposed operational procedure thereof, and a statement of the [*purpose of manufacturing a*] **proposed use of the** reclaimed plastic product and the portion of the actual cost properly allocable to **collecting, transporting or processing reclaimed plastic or to** the process of manufacturing such reclaimed plastic product as set forth in ORS 468.960.

(3) The director may require any further information the director considers necessary before a certificate is issued.

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

(5) By rule and after hearing the commission may adopt a schedule of reasonable fees which the department may require of applicants for certificates issued under ORS 468.940. Before the adoption or revision of any such fees the commission shall estimate the total cost of the program to the department. The fees shall be based on the anticipated cost of filing, investigating, granting and rejecting the applications and shall be designed not to exceed the total cost estimated by the commission. Any excess fees shall be held by the department and shall be used by the commission to reduce any future fee increases. The fee may vary according to the size and complexity of the [*capital*] investment. The fees shall not be considered by the commission as part of the cost of the [*capital*] investment to be certified.

(6) Any person applying for certification of investment costs shall submit an application between January 1, 1986, and [*December 31, 1988*] **June 30, 1995.** Failure to file a timely application shall make the investment cost ineligible for tax credit certification. An application shall not be considered filed until it is complete and ready for processing. The commission may grant an extension of time to file an application for circumstances beyond the control of the applicant that would make a timely filing unreasonable.

SECTION 4. ORS 468.940 is amended to read:

468.940. (1) The commission shall act on an application for certification before the 120th day after the filing of the application under ORS 468.935. The action of the commission shall include certification of the actual cost of the [*capital*] investment and the portion of the actual cost properly allocable to **collecting, transporting or processing reclaimed plastic or to** the manufacture of a reclaimed plastic product as set forth in ORS 468.960. Each certificate shall bear a separate serial number for each such facility.

(2) If the commission rejects an application for certification, or certifies a lesser actual cost of the [*capital*] investment or a lesser portion of the actual cost properly allocable to **collecting, transporting or processing reclaimed plastic or to** the manufacture of a reclaimed plastic product than was claimed in the application for certification, the commission shall cause written notice of its action, and a concise statement of the findings and reasons therefor, to be sent by registered or certified mail to the applicant before the 120th day after the filing of the application. Failure of the commission to act constitutes approval of the application.

(3) If the application is rejected for any reason, including the information furnished by the applicant as to the cost of the [*capital*] investment, or if the applicant is dissatisfied with the certification of actual cost or portion of the actual cost properly allocable to **collecting, transporting or processing reclaimed plastic or to** the manufacture of a reclaimed plastic product, the applicant may appeal from the rejection as provided in ORS 468.110. The rejection or the certification is final and conclusive on all parties unless the applicant takes an appeal therefrom as provided in ORS 468.110 before the 30th day after notice was mailed by the commission.

(4)(a) The commission shall certify [*a capital*] **an** investment, for which an application has been made under ORS 468.935, if the commission finds that the [*capital*] investment was made in accordance with the requirements of ORS 468.935 and 468.945.

(b) No determination of the proportion of the actual cost of the [*capital*] investment to be certified shall be made until receipt of the application.

(5) A person receiving a certificate under this section may take tax relief only under ORS 316.103 or 317.106, depending upon the tax status of the person's trade or business.

(6) If the person receiving the certificate is an electing small business corporation as defined in section 1361 of the Internal Revenue Code, each shareholder shall be entitled to take tax credit relief as provided in ORS 316.103, based on that shareholder's pro rata share of the certified cost of the [*capital*] investment.

(7) If the person receiving the certificate is a partnership, each partner shall be entitled to take tax credit relief as provided in ORS 316.103, based on that partner's pro rata share of the certified cost of the [*capital*] investment.

(8) Certification under this section of [*a capital*] **an** investment qualifying under ORS 468.935 shall be granted for a period of five consecutive years which five-year period shall begin with the tax year of the person in which the [*capital*] investment is certified under this section.

SECTION 5. ORS 468.945 is amended to read:

468.945. (1) Any person proposing to apply for certification of [*a capital*] **an** investment under ORS 468.935, before making the investment, shall file a request for preliminary certification with the Department of Environmental Quality. The request shall be in a form prescribed by the department. For [*capital*] investments made, the commission may waive the filing of the application if it finds the filing inappropriate because special circumstances render the filing unreasonable and if it finds such [*capital*] investment would otherwise qualify for tax credit certification pursuant to ORS 468.925 to 468.965.

(2) Within 30 days of the receipt of a request for preliminary certification, the department may require, as a condition precedent to issuance of a preliminary certificate of approval, the submission of plans and specifications. After examination thereof, the department may request corrections and revisions to the plans and specifications. The department may also require any other information necessary to determine whether the proposed [*capital*] investment is in accordance with the provisions of this chapter and ORS chapter 459 and applicable rules and standards adopted pursuant thereto.

(3) If the department determines that the proposed [*capital*] investment is in accordance with the provisions of this chapter and ORS chapter 459 and applicable rules or standards adopted pursuant thereto, it shall issue a preliminary certificate approving the [*capital*] investment. If the department determines that the [*capital*] investment does not comply with the provisions of this chapter and ORS chapter 459 and applicable rules or standards adopted pursuant thereto, the commission shall issue

an order denying certification.

(4) If within 60 days of the receipt of plans, specifications or any subsequently requested revisions or corrections to the plans and specifications or any other information required pursuant to this section, the department fails to issue a preliminary certificate of approval and the commission fails to issue an order denying certification, the preliminary certificate shall be considered to have been issued. The [*capital*] investment must comply with the plans, specifications and any corrections or revisions thereto, if any, previously submitted.

(5) Within 20 days from the date of mailing of the order, any person against whom an order is directed pursuant to subsection (3) of this section may demand a hearing. The demand shall be in writing, shall state the grounds for hearing and shall be mailed to the director of the department. The hearing shall be conducted in accordance with the applicable provisions of ORS 183.310 to 183.550.

SECTION 6. ORS 468.950 is amended to read:

468.950. Except if the commission, under ORS 468.945 (1), waives the requirement for preliminary certification, no final certification shall be issued by the commission under ORS 468.940 unless the [*capital*] investment was made in accordance with the requirements of ORS 468.945 and in accordance with the applicable provisions of this chapter and ORS chapter 459 and the applicable rules or standards adopted pursuant thereto.

SECTION 7. ORS 468.955 is amended to read:

468.955. (1) Pursuant to the procedures for a contested case under ORS 183.310 to 183.550, the commission may order the revocation of the certification issued under ORS 468.940 of any [*capital*] investment, if it finds that:

(a) The certification was obtained by fraud or misrepresentation; or

(b) The holder of the certificate has failed substantially to operate the qualifying business [*to manufacture a reclaimed plastic product*] as specified in such certificate.

(2) As soon as the order of revocation under this section has become final, the commission shall notify the Department of Revenue of such order.

(3) If the certification of [*a capital*] **an** investment is ordered revoked pursuant to paragraph (a) of subsection (1) of this section, all prior tax relief provided to the holder of such certificate by virtue of such certificate shall be forfeited and the Department of Revenue shall proceed to collect those taxes not paid by the certificate holder as a result of the tax relief provided to the holder under any provision of ORS 316.103 and 317.106.

(4) If the certification of [*a capital*] **an** investment is ordered revoked pursuant to paragraph (b) of subsection (1) of this section, the certificate holder shall be denied any further relief provided under ORS 316.103 or 317.106 in connection with such [*capital*] investment, as the case may be, from and after the date that the order of revocation becomes final.

SECTION 8. ORS 468.960 is amended to read:

468.960. (1) In establishing the portion of costs properly allocable to the investment costs incurred to allow a person to **collect, transport or process reclaimed plastic or to** manufacture a reclaimed plastic product qualifying for certification under ORS 468.940, the commission shall consider the following factors:

(a) If applicable, the extent to which the **collection, transportation, processing or** manufacturing process for which the [*capital*] investment is made is used to convert reclaimed plastic into a salable or usable commodity.

(b) Any other factors which are relevant in establishing the portion of the actual cost of the [*capital*] investment except return on the [*capital*] investment properly allocable to the process that allows a person to **collect, transport or process reclaimed plastic or to** manufacture a reclaimed plastic product.

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

(3) The commission may adopt rules establishing methods to be used to determine the portion of costs properly allocable to the **collection, transportation or processing of reclaimed plastic or to the** manufacture of a reclaimed plastic product.

SECTION 9. ORS 468.965 is amended to read:

468.965. (1) The total of all costs of [*capital*] investments that receive a preliminary certification from the commission for tax credits in any calendar year shall not exceed $1,500,000. If the applications exceed the $1,500,000 limit, the commission, in the commission's discretion, shall determine the dollar amount certified for any [*capital*] investments and the priority between applications for certification based upon the criteria contained in ORS 468.925 to 468.965.

(2) Not less than $500,000 of the $1,500,000 annual certification limit shall be allocated to [*capital*] investments having a certified cost of $100,000 or less for any qualifying business.

(3) With respect to the balance of the annual certification limit, the maximum cost certified for any [*capital*] investments shall not exceed $500,000. However, if the applications certified in any calendar year do not total $1,000,000, the commission may increase the certified costs above the $500,000 maximum for previously certified [*capital*] investments. The increases shall be allocated according to the commission's determination of how the previously certified [*capital*] investments meet the criteria of ORS 468.925 to 468.965. The increased allocation to previously certified [*capital*] investments under this subsection shall not include any of the $500,000 reserved under subsection (2) of this section.

SECTION 10. ORS 316.103 is amended to read:

316.103. (1) A credit against taxes imposed by this chapter for the [*capital*] investments certified under ORS 468.940 shall be allowed if the taxpayer qualifies under subsection (4) of this section.

(2) A taxpayer shall be allowed a tax credit under this section each year for five years beginning in the year the [*capital*] investment receives final certification under ORS 468.940. The maximum credit allowed in any one tax year shall be the lesser of the tax liability of the taxpayer or 10 percent of the certified cost of the taxpayer's investment.

(3) To qualify for the credit the [*capital*] investment must be made in accordance with the provisions of ORS 468.935.

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

(A) The owner of the business that **collects, transports or processes reclaimed plastic or** manufactures a reclaimed plastic product;

(B) A person who, as a lessee or pursuant to an agreement, conducts the business that **collects, transports or processes reclaimed plastic or** manufactures a reclaimed plastic product; or

(C) A person who, as an owner, lessee or pursuant to an agreement, owns, leases or has a beneficial interest in a business that **collects, transports or processes reclaimed plastic or** manufactures a reclaimed plastic product. Such person may, but need not, operate or conduct such a business that **collects, transports or processes reclaimed plastic or** manufactures a reclaimed plastic product. If more than one person has an interest under this subparagraph in a qualifying

business and one or more persons receive a certificate, such person or persons may allocate all or any part of the certified investment cost among any persons and their successors or assigns having an interest under this subparagraph. Such allocation shall be evidenced by a written statement signed by the person or persons receiving the certificate and designating the persons to whom the certified investment costs have been allocated and the amount of certified investment cost allocated to each. This statement shall be filed with the Department of Revenue not later than the final day of the first tax year for which a tax credit is claimed pursuant to such agreement. In no event shall the aggregate certified investment costs allocated between or among more than one person exceed the amount of the total certified cost of the [*capital*] investment. As used in this paragraph, "owner" includes a contract purchaser;

(b) The business must be owned or leased during the tax year by the taxpayer claiming the credit, except as otherwise provided in subparagraph (C) of paragraph (a) of this subsection, and must have been **collecting, transporting or processing reclaimed plastic or** manufacturing a reclaimed plastic product during the tax year for which the credit is claimed; and

(c) The reclaimed plastic **collected, transported, processed or** used to manufacture the reclaimed plastic product must not be an industrial waste generated by the person claiming the tax credit, but must be purchased from a plastic recycler other than the person claiming the tax credit.

(5) A credit under this section may be claimed by a taxpayer for a [*manufacturing*] business receiving final certification of [*a capital*] **an** investment under ORS 468.940 only if the investment is made on or after January 1, 1986, but before [*January 1, 1989*] **July 1, 1995.**

(6) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the [*capital*] investment to which the taxpayer otherwise may be entitled under this chapter for such year.

(7) Upon any sale, exchange, or other disposition of a qualifying business, notice thereof shall be given to the Environmental Quality Commission who shall revoke the certification covering the [*capital*] investment of such business as of the date of such disposition. The transferee may apply for a new certificate under ORS 468.940, but the tax credit available to such transferee shall be limited to the amount of credit not claimed by the transferor. The sale, exchange or other disposition of shares in an electing small business corporation as defined in section 1361 of the Internal Revenue Code or of a partner's interest in a partnership shall not be deemed a sale, exchange or other disposition of a business for purposes of this subsection.

(8) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise, any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter. Credits may be carried forward to and used in a tax year beyond the years specified in ORS 468.935.

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

(10) If the taxpayer is a shareholder of an electing small business corporation, the credit shall

be computed using the shareholder's pro rata share of the corporation's certified cost of investing in equipment necessary to **collect, transport or process reclaimed plastic or** manufacture a reclaimed plastic product. In all other respects, the allowance and effect of the tax credit shall apply to the corporation as otherwise provided by law.

(11) A nonresident shall be allowed the credit under this section in the proportion provided in ORS 316.117.

(12) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(13) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed under this section shall be prorated or computed in a manner consistent with ORS 314.085.

(14) No credit shall be allowed under this section and under ORS 468.925 to 468.965 for any portion of a facility for which the taxpayer claims a tax credit or ad valorem tax relief under ORS 307.405, 316.097, 316.116 or 316.140 to 316.142 and 469.185 to 469.225.

SECTION 11. ORS 317.106 is amended to read:

317.106. (1) A credit against taxes imposed by this chapter for the [*capital*] investments certified under ORS 468.940 shall be allowed if the taxpayer qualifies under subsection (4) of this section.

(2) A taxpayer shall be allowed a tax credit under this section each year for five years beginning in the year the [*capital*] investment receives final certification under ORS 468.940. The maximum credit allowed in any one taxable year shall be the lesser of the tax liability of the taxpayer or 10 percent of the certified cost of the taxpayer's investment.

(3) To qualify for the credit the [*capital*] investment must be made in accordance with the provisions of ORS 468.935.

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

(A) The owner of the business that **collects, transports or processes reclaimed plastic or** manufactures a reclaimed plastic product;

(B) A person who, as a lessee or pursuant to an agreement, conducts the business that **collects, transports or processes reclaimed plastic or** manufactures a reclaimed plastic product; or

(C) A person who, as an owner, lessee or pursuant to an agreement, owns, leases or has a beneficial interest in a business that **collects, transports or processes reclaimed plastic or** manufactures a reclaimed plastic product. Such person may, but need not, operate or conduct such a business that **collects, transports or processes reclaimed plastic or** manufactures a reclaimed plastic product. If more than one person has an interest under this subparagraph in a qualifying business, and one or more persons receive a certificate, such person or persons may allocate all or any part of the certified investment cost among any persons and their successors or assigns having an interest under this subparagraph. Such allocation shall be evidenced by a written statement signed by the person or persons receiving certification and designating the persons to whom the certified investment costs have been allocated and the amount of certified investment cost allocated to each. This statement shall be filed with the Department of Revenue not later than the final day of the first tax year for which a tax credit is claimed pursuant to such agreement. In no event shall the aggregate certified investment costs allocated between or among more than one person exceed the amount of the total certified cost of the [*capital*] investment. As used in this paragraph,

"owner" includes a contract purchaser;

(b) The business must be owned or leased during the tax year by the taxpayer claiming the credit except as provided in subparagraph (C) of paragraph (a) of this subsection, and must have been **collecting, transporting or processing reclaimed plastic or** manufacturing a reclaimed plastic product during the tax year for which the credit is claimed; and

(c) The reclaimed plastic **collected, transported, processed or** used to manufacture the reclaimed plastic product must not be an industrial waste generated by the person claiming the tax credit, but must be purchased from a plastic recycler other than the person claiming the tax credit.

(5) A credit under this section may be claimed by a taxpayer for a [*manufacturing*] business receiving final certification of [*a capital*] **an** investment under ORS 468.940, only if the investment is made on or after January 1, 1986, but before [*January 1, 1989*] **July 1, 1995.**

(6) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the [*capital*] investment to which the taxpayer otherwise may be entitled under this chapter for such year.

(7) Upon any sale, exchange, or other disposition of qualifying business, notice thereof shall be given to the Environmental Quality Commission who shall revoke the certification covering the [*capital*] investment of such business as of the date of such disposition. The transferee may apply for a new certificate under ORS 468.940, but the tax credit available to such transferee shall be limited to the amount of credit not claimed by the transferor. The sale, exchange or other disposition of a partner's interest in a partnership shall not be deemed a sale, exchange or other disposition of a business for purposes of this subsection.

(8) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise, any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter. Credits may be carried forward to and used in a tax year beyond the years specified in ORS 468.935.

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

(10) No credit shall be allowed under this section and under ORS 468.925 to 468.965 for any portion of a facility for which the taxpayer claims a tax credit or ad valorem tax relief under ORS 307.405, 317.104 and 469.185 to 469.225 or 317.116.

SECTION 12. If House bill 2050 becomes law, sections 1 and 6, chapter _____, Oregon Laws 1989 (Enrolled House Bill 2050), amending ORS 316.103 and 317.106, are repealed.

Senate Bill 1097

Sponsored by Senator OTTO (at the request of Association of Oregon Sewerage Agencies)

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.**

Allows public agency to borrow directly from Water Pollution Control Revolving Fund. Allows public agency to waive notice of sale, official statement and other procedures if borrowing directly from Department of Environmental Quality.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to pollution control; creating new provisions; amending ORS 468.437; and declaring an emergency.

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

SECTION 1. Section 2 of this Act is added to and made a part of ORS 468.423 to 468.440.

SECTION 2. Notwithstanding any limitation contained in any other provision of law or local charter, a public agency may:

(1) Borrow money from the Water Pollution Control Revolving Fund through the department;

(2) Enter into loan agreements and make related agreements with the department in which the public agency agrees to repay the borrowed money in accordance with the terms of the loan agreement;

(3) Covenant with the department regarding the operation of treatment works and the imposition and collection of rates, fees and charges for the treatment works; and

(4) Pledge all or part of the revenues of the treatment works to pay the amount due under the loan agreement and notes in accordance with ORS 288.594.

SECTION 3. ORS 468.437 is amended to read:

468.437. (1) Any public agency desiring a loan from the Water Pollution Control Revolving Fund shall submit an application to the department on the form provided by the department. [*Each applicant shall demonstrate to the satisfaction of*] **The department may require an opinion from** the State of Oregon bond counsel that the applicant has the legal authority to [*incur the debt*] **borrow from the Water Pollution Control Revolving Fund.** [*To the extent that a public agency relies on the authority granted by law or charter to issue revenue bonds pursuant to the Uniform Revenue Bonding Act, the department may waive the requirements for the findings required for a private negotiated sale and for the preliminary official statement.*] **If a public agency relies on borrowing authority granted by charter or law other than section 2 of this 1989 Act, then with the consent of the department and notwithstanding any limitation or requirement of the charter or law, the public agency may borrow directly from the Water Pollution Control Revolving Fund without publishing a notice of sale, providing an official statement or following any other procedures designed to provide notice or information to potential lenders. The requirements of ORS 288.845 shall not apply to revenue bonds that are sold to the department.**

(2) Any public agency receiving a loan from the Water Pollution Control Revolving Fund shall

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

establish and maintain a dedicated source of revenue or other acceptable source of revenue for the repayment of the loan.

(3) If a public agency defaults on payments due to the Water Pollution Control Revolving Fund, the state may withhold any amounts otherwise due to the public agency and direct that such funds be applied to [*the indebtedness*] **the payments** and deposited into the fund. **If the department finds that the loan to the public agency is otherwise adequately secured, the department may waive this right in the loan agreement or other loan documentation.**

SECTION 4. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect on its passage.

B-Engrossed
Senate Bill 1100

Ordered by the House June 22
Including Senate Amendments dated May 1
and House Amendments dated June 22

Sponsored by Senators KERANS, BRADBURY, CEASE, COHEN, DUKES, FAWBUSH, GOLD, HANNON, J. HILL, L. HILL, JOLIN, McCOY, ROBERTS, SHOEMAKER, SPRINGER, TROW, Representatives BAUMAN, BURTON, CALHOON, CALOURI, CARTER, CEASE, DIX, DOMINY, DWYER, EDMUNSON, FORD, HANLON, HOSTICKA, HUGO, KEISLING, KOTULSKI, MANNIX, MASON, McTEAGUE, PETERSON, RIJKEN, SOWA, STEIN, VAN VLIET, WHITTY (at the request of Oregon State Public Interest Research Group)

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.

Declares policy of reducing and recycling chlorofluorocarbons (CFCs) and halons with encouragement of substitution of less dangerous substances.

Prohibits wholesale, after July 1, 1990, and retail selling, after January 1, 1991, of certain products that contain CFCs and halons, such as packaging, fire extinguishers, coolants and cleaners. Prohibits, one year after recycling becomes affordable and available, engaging in business of installing, servicing or otherwise handling auto air conditioners without recycling. Gives smaller repair shops additional year to comply. Requires Environmental Quality Commission to set standards. Allows Department of Environmental Quality, **subject to available funding,** to establish program [*whereby CFCs are recycled in automobile air conditioners and CFCs and halons are phased out in coolant, fire extinguishers and polystyrene foam food containers by January 1, 1991*] **to carry out purposes of Act, including enforcement.**

Requires State Fire Marshal to provide guidelines to minimize unnecessary release of halons in testing fire extinguishing systems. Requires fire marshal to report to Sixty-sixth Legislative Assembly regarding implementation of guidelines.

A BILL FOR AN ACT

Relating to pollution control.

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

SECTION 1. Sections 2 to 6 of this Act are added to and made a part of ORS chapter 468.

SECTION 2. As used in sections 3 to 6 of this 1989 Act:

(1) "Chlorofluorocarbons" includes:

(a) CFC-11 (trichlorofluoromethane);

(b) CFC-12 (dichlorodifluoromethane);

(c) CFC-113 (trichlorotrifluoroethane);

(d) CFC-114 (dichlorotetrafluoroethane); and

(e) CFC-115 ((mono)chloropentafluoroethane).

(2) "Halon" includes:

(a) Halon-1211 (bromochlorodifluoroethane);

(b) Halon-1301 (bromotrifluoroethane); and

(c) Halon-2402 (dibromotetrafluoroethane).

SECTION 3. (1) The Legislative Assembly finds and declares that chlorofluorocarbons and halons are being unnecessarily released into the atmosphere, destroying the Earth's protective ozone layer and causing damage to all life.

(2) It is therefore declared to be the policy of the State of Oregon to:

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

(a) Reduce the use of these compounds;

(b) Recycle these compounds in use; and

(c) Encourage the substitution of less dangerous substances.

SECTION 4. (1) After July 1, 1990, no person shall sell at wholesale, and after January 1, 1991, no person shall sell any of the following:

(a) Chlorofluorocarbon coolant for motor vehicles in containers with a total weight of less than 15 pounds.

(b) Hand-held halon fire extinguishers for residential use.

(c) Party streamers and noisemakers that contain chlorofluorocarbons.

(d) Electronic equipment cleaners, photographic equipment cleaners and disposable containers of chilling agents that contain chlorofluorocarbons and that are used for noncommercial or non-medical purposes.

(e) Food containers or other food packaging that is made of polystyrene foam that contains chlorofluorocarbons.

(2)(a) One year after the Environmental Quality Commission determines that equipment for the recovery and recycling of chlorofluorocarbons used in automobile air conditioners is affordable and available, no person shall engage in the business of installing, servicing, repairing, disposing of or otherwise treating automobile air conditioners without recovering and recycling chlorofluorocarbons with approved recovery and recycling equipment.

(b) Until one year after the operative date of paragraph (a) of this subsection, the provisions of paragraph (a) of this subsection shall not apply to:

(A) Any automobile repair shop that has fewer than four employes; or

(B) Any automobile repair shop that has fewer than three covered bays.

(3) The Environmental Quality Commission shall establish by rule standards for approved equipment for use in recovering and recycling chlorofluorocarbons in automobile air conditioners.

SECTION 5. Subject to available funding, the Department of Environmental Quality may establish a program to carry out the purposes of this 1989 Act, including enforcement of the provisions of section 4 of this 1989 Act.

SECTION 6. The State Fire Marshal shall establish a program to minimize the unnecessary release of halons into the environment by providing guidelines for alternatives to full-scale dump testing procedures for industrial halon-based fire extinguishing systems.

SECTION 7. The State Fire Marshal shall report to the Sixty-sixth Legislative Assembly on implementation of the guidelines to be established under section 6 of this Act.

Senate Bill 1192

Sponsored by Senators GOLD, BRADBURY, BRENNEMAN, BUNN, FAWBUSH, KERANS, KINTIGH, KITZHABER, SPRINGER, Representatives AGRONS, CEASE, DIX, HOSTICKA, KATZ, KEISLING, PARKINSON, PICKARD, WEHAGE

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.**

Creates Oregon Solid Waste Regional Policy Commission. Prescribes membership and duties. Directs commission to report regional solid waste issues to Governor and Legislative Assembly. Repeals Act June 30, 1991.

A BILL FOR AN ACT

Relating to solid waste control.

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

SECTION 1. Sections 2 to 8 of this Act are added to and made a part of ORS 459.005 to 459.385.

SECTION 2. (1) There is created an Oregon Solid Waste Regional Policy Commission consisting of nine members, one of whom the Governor shall designate as chairperson.

(2) The commission shall consist of the following:

(a) Four legislators, two appointed by the President of the Senate and two appointed by the Speaker of the House of Representatives.

(b) The Director of the Department of Environmental Quality or designee.

(c) Two representatives of local government appointed by the Governor.

(d) Two citizens appointed by the Governor.

(3) In case of a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective for the unexpired term.

SECTION 3. (1) Five members of the Oregon Solid Waste Regional Policy Commission shall constitute a quorum for the transaction of business.

(2) The commission shall meet at a time and place determined by the chairperson.

SECTION 4. (1) The Oregon Solid Waste Regional Policy Commission shall determine regional solid waste issues and report these issues to the Legislative Assembly and the Governor.

(2) In reporting regional solid waste issues, the commission's report shall include but need not be limited to the following:

(a) The transportation of solid waste to regional disposal sites;

(b) Waste reduction and recycling of solid waste before shipment to a disposal site;

(c) The positive and negative environmental, economic and other impacts on communities that provide solid waste disposal sites for the region; and

(d) The positive and negative environmental, economic and other impacts on the State of Oregon of regional disposal sites.

SECTION 5. (1) The region on which the commission shall focus includes the states of Oregon, Washington and, as appropriate, northern California, Idaho and Nevada.

(2) In addition, the commission may look beyond the above designated region if the commission

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determines that solid waste could originate in other states.

SECTION 6. The commission's work plan shall include but need not be limited to the following:

(1) A review of probable import levels of solid waste which addresses:

(a) Where the waste is coming from;

(b) Who is importing the waste;

(c) When and in what amounts the waste may be imported; and

(d) Why Oregon is being considered as the location for disposal;

(2) A review of information from Gilliam and Morrow Counties and the disposal site operators concerning the two large regional disposal sites now permitted in those counties;

(3) A review of existing statutes, administrative rules, ordinances and regulations of Oregon, cities and counties in Oregon, other states and the Federal Government which pertain to regional solid waste issues;

(4) Opportunities for public hearings on regional solid waste issues; and

(5) Communications with appropriate officials in Oregon and other states relative to the need for or preparation of regional agreements.

SECTION 7. The Department of Environmental Quality shall provide administrative support staff for the commission.

SECTION 8. The Oregon Solid Waste Regional Policy Commission shall prepare an interim and a final report. The reports shall contain recommendations for establishing or modifying state and regional policy toward regional solid waste issues, including any proposed changes in state statutes or administrative rules. The interim report shall be submitted to the Governor and the appropriate legislative interim committee on or before July 1, 1990. The final report shall be submitted to the Governor and Legislative Assembly on or before January 15, 1991.

SECTION 9. This Act is repealed on June 30, 1991.

A-Engrossed
Senate Joint Resolution 41

Ordered by the Senate June 12
Including Senate Amendments dated June 12

Sponsored by COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

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.

Amends Oregon Constitution, upon voter approval at next regular state-wide primary election, to allow pollution control bonds to be sold to provide funds for activities or facilities related to hazardous substance remedial actions.

JOINT RESOLUTION

Be It Resolved by the Legislative Assembly of the State of Oregon:

PARAGRAPH 1. Sections 1 and 2, Article XI-H of the Constitution of the State of Oregon, are amended to read:

Sec. 1. In the manner provided by law and notwithstanding the limitations contained in sections 7 and 8, Article XI, of this Constitution, the credit of the State of Oregon may be loaned and indebtedness incurred in an amount not to exceed, at any one time, one percent of the true cash value of all taxable property in the state:

(1) To provide funds to be advanced, by contract, grant, loan or otherwise, to any municipal corporation, city, county or agency of the State of Oregon, or combinations thereof, for the purpose of planning, acquisition, construction, alteration or improvement of facilities for **or activities related to,** the collection, treatment, dilution and disposal of all forms of waste in or upon the air, water and lands of this state; and

(2) To provide funds for the acquisition, by purchase, loan or otherwise, of bonds, notes or other obligations of any municipal corporation, city, county or agency of the State of Oregon, or combinations thereof, issued or made for the purposes of subsection (1) of this section.

Sec. 2. The facilities for which funds are advanced and for which bonds, notes or other obligations are issued or made and acquired pursuant to this Article shall be only such facilities as conservatively appear to the agency designated by law to make the determination to be not less than 70 percent self-supporting and self-liquidating from revenues, gifts, grants from the Federal Government, user charges, assessments and other fees. **This section shall not apply to any activities for which funds are advanced and shall not apply to facilities for the collection, treatment, dilution, removal and disposal of hazardous substances.**

PARAGRAPH 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at a special election held throughout this state on the same date as the next regular primary election.

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.