Chapter 465 — Hazardous Waste and Hazardous Materials I

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HAZARDOUS WASTE AND HAZARDOUS MATERIALS I

PUBLIC HEALTH AND SAFETY

REDUCTION OF USE OF TOXIC SUBSTANCES AND HAZARDOUS WASTE GENERATION

BULK PETROLEUM PRODUCT WITHDRAWAL REGULATION

REMOVAL OR REMEDIAL ACTION

(Generally)

465.003 Definitions for ORS 465.003 to 465.034. As used in ORS 465.003 to 465.034:

(1) "Conditionally exempt generator" means a generator that generates less than 2.2 pounds of acute hazardous waste as defined by 40 C.F.R. 261 and that generates less than 220 pounds of hazardous waste in one calendar month.

(2) "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 that controls, is controlled by or under common control with any person.

(3) "Fully regulated generator" means a generator that 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.

(4) "Generator" means a person that, by virtue of ownership, management or control, is responsible for causing or allowing to be caused the creation of hazardous waste.

(5) "Hazardous waste" has the meaning given that term in ORS 466.005.

(6) "Large user" means a facility required to submit a uniform toxic chemical release form under 42 U.S.C. 11023.

(7) "Person" includes person, public body, as defined in ORS 174.109, the federal government or any other legal entity.

(8) "Small-quantity generator" means a generator that generates between 220 and 2,200 pounds of hazardous waste in one calendar month.

(9) "Toxic substance" or "toxics" means any substance, other than a substance used as a pesticide in routine commercial agricultural applications, in a gaseous, liquid or solid state specified on the list of toxic chemicals generated pursuant to 42 U.S.C. 11023, or any substance added by the Environmental Quality Commission under ORS 465.009.

(10) "Toxics use" means use or production of a toxic substance.

(11) "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, achieved by 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, achieved by substituting for an existing end product, an end product that 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, achieved by 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, achieved by 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.

(12) "Toxics user" means a large user, a fully regulated generator or a small-quantity generator.

(13) "Waste reduction" means:

(a) Any activity conducted 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) On-site or off-site treatment where the 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. [1989 c.833 §2; 2005 c.206 §3]

465.006 Policy. (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. [1989 c.833 §3]

465.009 Rules. The Environmental Quality Commission by rule may:

(1) Add or remove any toxic substance or hazardous waste from the provisions of ORS 465.003 to 465.034; and

(2) Modify the definition of "large user" to coincide with the amounts specified in federal regulations for the reporting of toxic chemical releases. [1989 c.833 §4; 2005 c.206 §4]

465.010 [Amended by 1971 c.743 §371; repealed by 1989 c.846 §15]

465.012 Technical assistance to users and generators; priority; restrictions on enforcement resulting from technical assistance; rules. (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 completing and implementing an adequate toxics use reduction and hazardous waste reduction plan under ORS 465.015. 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 that complete and implement successful toxics use reduction and hazardous waste reduction plans; and

(g) Direct on-site assistance to toxics users and conditionally exempt generators in completing the plans.

(3) The department shall:

(a) Coordinate its technical assistance efforts with industry trade associations and local colleges and universities as appropriate.

(b) Follow up with toxics users that receive technical assistance to determine whether the user or generator implemented a toxics use reduction and hazardous waste reduction plan.

(c) Coordinate and work with local agencies to provide technical assistance to businesses involved in the crushing of motor vehicles concerning the safe removal and proper disposal of mercury light switches from motor vehicles.

(4) Technical assistance services provided under this section shall not result in inspections or other enforcement actions unless there is reasonable cause to believe there exists a clear and immediate danger to the public health and safety or to the environment. The Environmental Quality Commission may develop rules to carry out the intent of this subsection. [1989 c.833 §5; 2001 c.924 §9; 2005 c.206 §5]

465.015 Toxics use and hazardous waste reduction plan required; composition; exemption; retention at facility. (1) Except as provided in subsection (2) of this section, a person shall, within 120 days after notification in writing by the Department of Environmental Quality that the person meets the definition of a toxics user, complete a toxics use reduction and hazardous waste reduction plan. At a minimum, a plan shall include:

(a) A written policy articulating organizational support for the toxics use reduction and hazardous waste

reduction plan and a commitment by the organization to implement plan goals.

(b) A description of its scope and objectives, including the evaluation of technologies, procedures and personnel training programs to ensure unnecessary toxic substances are not used and unnecessary waste is not generated.

(c) Internal analysis and periodic assessment of individual processes for toxics use and hazardous waste generation.

(d) Identification of opportunities to reduce or eliminate toxics use and hazardous waste generation.

(e) Employee awareness and training programs that involve employees in toxics use reduction and hazardous waste reduction planning and implementation.

(f) Institutionalization of the plan by incorporating the plan into management practices and procedures.

(2) A person is not required to complete a plan if the person has implemented an environmental management system, as defined in ORS 468.172.

(3) A toxics user shall incorporate into the plan and associated decision-making process, the costs of using toxic substances and generating hazardous waste. The costs may represent, among other things, the costs of management, liability insurance, regulatory compliance and oversight.

(4) As part of each plan, a toxics user shall evaluate technically and economically practicable toxics use reduction and hazardous waste reduction opportunities for:

(a) Any toxic substance for which the toxics user reports as a large user; and

(b) Any hazardous waste representing 10 percent or more by weight of the cumulative hazardous waste stream generated per year.

(5) A toxics user shall explain the rationale for each toxics use reduction and waste reduction opportunity specified in the plan, including any impediments, such as technical or economic barriers, to toxics use reduction and hazardous waste reduction.

(6) A toxics use reduction and hazardous waste reduction plan developed under this section or the documentation for an environmental management system shall be retained at the facility. To the extent that a plan or system may be considered a public record under ORS 192.410, the information contained in the plan or system is confidential and is exempt from public disclosure pursuant to ORS 192.502.

(7) It is the policy of this state that plans developed under this section be kept current and that the plans reflect changes in toxics use over time. In furtherance of this policy, a toxics user may update its plan or modify its environmental management system to reflect any changes. [1989 c.833 §7; 1997 c.384 §1; 2005 c.206 §6]

465.018 Notification of Department of Environmental Quality upon completion of plan or system; implementation summary required; inspection of plan or system. (1) Following completion of a toxics use reduction and hazardous waste reduction plan under ORS 465.015 or implementation of an environmental management system, a toxics user shall notify the Department of Environmental Quality in a form determined by the department that the plan or system is in place.

(2) Twelve months after notifying the department under subsection (1) of this section, the toxics user shall provide an implementation summary to the department.

(3) Twenty-four months after notifying the department under subsection (1) of this section, the toxics user shall provide a second implementation summary to the department.

(4) A toxics user shall permit the Director of the Department of Environmental Quality or the director's designee to inspect a plan or system to allow the department to:

(a) Determine the adequacy of the plan or system under ORS 465.021;

(b) Assess the implementation of the plan or system; and

(c) Provide technical assistance under ORS 465.012.

(5) The department shall make implementation summaries submitted to the department under this section available to the public, including making the summaries available in a commonly used, electronic format on the World Wide Web. [1989 c.833 §8; 2005 c.206 §7]

465.020 [Amended by 1979 c.284 §151; repealed by 1989 c.846 §15]

465.021 Review of plan or system; notification of inadequacies in plan, system or summary; revisions; penalty. (1) The Department of Environmental Quality may review and determine the adequacy of a toxics use reduction and hazardous waste reduction plan or an environmental management system.

(2) If a toxics user fails to complete an adequate plan, implement an adequate system or submit an adequate implementation summary, the department may notify the toxics 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 toxics user shall modify the plan, system or implementation summary to address the specified deficiencies. The department also may make technical assistance available to aid the toxics user in modifying its plan, system or implementation summary.

(3) If the department determines that a modified plan, system or implementation summary is inadequate, the department may require that further modifications be made within a time frame specified by the department.

(4) If after having received notice of specified deficiencies from the department, a toxics user fails to develop an adequate plan, system or summary within a time frame specified pursuant to subsection (2) or (3) of this section, the department may assess a civil penalty in the manner provided by ORS 183.745 in an amount not to exceed $500 for each day that the toxics user fails to develop an adequate plan, system or summary.

(5) In reviewing the adequacy of any plan, system or summary, the department shall base its determination solely on whether the plan, system or summary is complete and prepared in accordance with ORS 465.015 or 465.032. [1989 c.833 §9; 2005 c.206 §8]

465.024 [1989 c.833 §10; 1997 c.384 §2; repealed by 2005 c.206 §11]

465.027 Contract for assistance with higher education institution. 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 ORS 465.003 to 465.034. The assistance shall emphasize strategies to encourage toxics use reduction and hazardous waste reduction and shall provide assistance to facilities under ORS 465.003 to 465.034. 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. [1989 c.833 §12]

465.030 [Repealed by 1989 c.846 §15]

465.031 [1989 c.833 §14; repealed by 2005 c.206 §11]

465.032 Form of implementation summary; information required. An implementation summary submitted to the Department of Environmental Quality under ORS 465.018 shall be in a form determined by the department and shall include, but not be limited to:

(1) A summary of how the toxics use reduction and hazardous waste reduction plan or environmental management system has been implemented;

(2) A description of specific successes that the toxics user has had in reducing the use of toxic substances or the generation of hazardous wastes;

(3) An estimate of the challenges and impediments to implementing and evaluating toxics use reduction and hazardous waste reduction opportunities; and

(4) A description of future plans for toxics use reduction and hazardous waste reduction. [2005 c.206 §2]

465.034 Application of ORS 465.003 to 465.034. Notwithstanding any provision of ORS 465.003 to 465.034, nothing in ORS 465.003 to 465.034 applies to:

(1) Hazardous wastes generated from a removal, as defined in ORS 465.200, or from a one-time event.

(2) A raw material that contains a naturally occurring toxic substance and that is used in a process for which there is no substitute. [1989 c.833 §16; 2005 c.206 §9]

465.037 Short title. ORS 465.003 to 465.034 shall be known as the Toxics Use Reduction and Hazardous Waste Reduction Act. [1989 c.833 §1]

465.040 [Amended by 1971 c.743 §372; repealed by 1989 c.846 §15]

465.050 [Amended by 1971 c.743 §373; repealed by 1989 c.846 §15]

465.060 [Repealed by 1989 c.846 §15]

465.070 [Repealed by 1989 c.846 §15]

465.090 [Amended by 1971 c.743 §374; repealed by 1989 c.846 §15]

465.100 [1977 c.850 §2; 1985 c.728 §83; 1987 c.914 §26; renumbered 464.430 in 1987]

BULK PETROLEUM PRODUCT WITHDRAWAL REGULATION

465.101 Definitions for ORS 465.101 to 465.131. As used in ORS 465.101 to 465.131:

(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. [1989 c.833 §139]

465.104 Fees for petroleum product delivery or withdrawals; exceptions; registration of facility operators. (1) 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) 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 payment on a quarterly basis on January 1, April 1, July 1 and October 1.

(5) Each operator of a bulk facility and each person who imports petroleum products shall register with the Department of Revenue at least 30 days prior to operating a bulk facility or importing a cargo tank of petroleum products. [1989 c.833 §140; 2005 c.22 §340]

465.106 Amount of fee to be set by State Fire Marshal; rules. The State Fire Marshal shall establish by rule the amount of the fee required under ORS 465.104 necessary to provide funding for the state's oil, hazardous material and hazardous substance emergency response program, as described in ORS 465.127. [1993 c.707 §3]

465.110 [Amended by 1953 c.540 §5; 1967 c.470 §62; 1969 c.684 §16; 1983 c.470 §6; repealed by 1989 c.846 §15]

465.111 Department of Revenue to collect fee; exemption from fee of protected petroleum products. (1) The Department of Revenue shall collect the fee imposed under ORS 465.104.

(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 ORS 465.104. [1989 c.833 §142]

465.114 Extension of time for paying fee; interest on extended payment. The Department of Revenue for good cause may extend, for not to exceed one month, the time for payment of the fee due under ORS 465.101 to 465.131. 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. [1989 c.833 §143]

465.117 Records of petroleum products transactions; inspection by Department of Revenue. (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 ORS 465.101 to 465.131. [1989 c.833 §144]

465.120 [Amended by 1979 c.284 §152; repealed by 1989 c.846 §15]

465.121 Rules. The Department of Revenue is authorized to establish those rules and procedures for the implementation and enforcement of ORS 465.101 to 465.131 that are consistent with its provisions and are considered necessary and appropriate. [1989 c.833 §145]

465.124 Application of ORS chapters 305 and 314 to fee collection. The provisions of ORS chapters 305 and 314 as to liens, delinquencies, claims for refund, issuance of refunds, conferences, appeals to the Oregon Tax Court, stay of collection pending appeal, cancellation, waiver, reduction or compromise of fees, penalties or interest, subpoenaing 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 ORS 465.101 to 465.131, except where the context requires otherwise. [1989 c.833 §146; 1995 c.650 §61]

465.127 Disposition of fees; administrative expenses; other uses. All moneys received by the Department of Revenue under ORS 465.101 to 465.131 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 ORS 465.101 to 465.131 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 as it relates to the maintenance, operation and use of the public highways, roads, streets and roadside rest areas in this state as allowed by section 3a, Article IX of the Oregon Constitution. [1989 c.833 §147; 1989 c.935 §4; 1993 c.707 §1]

465.130 [Repealed by 1989 c.846 §15]

465.131 Fee imposed by ORS 465.104 in addition to fees established by local government. The fee imposed by ORS 465.104 is in addition to all other state, county or municipal fees on a petroleum product. [1989 c.833 §148]

465.140 [Amended by 1989 c.846 §12; renumbered 105.570 in 1989]

465.150 [Amended by 1953 c.540 §5; repealed by 1989 c.846 §15]

465.155 [1953 c.540 §4; repealed by 1989 c.846 §15]

465.160 [Repealed by 1989 c.846 §15]

465.170 [Repealed by 1989 c.846 §15]

465.180 [Repealed by 1989 c.846 §15]

REMOVAL OR REMEDIAL ACTION

(Generally)

465.200 Definitions for ORS 465.200 to 465.545. As used in ORS 465.200 to 465.545 and 465.900:

(1) "Claim" means a demand in writing for a sum certain.

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

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

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

(5) "Dry Cleaner Environmental Response Account" means the account established under ORS 465.510.

(6) "Dry cleaning facility" means any active or inactive facility located in this state that is or was engaged in dry cleaning apparel and household fabrics for the general public, and dry stores, other than a:

(a) Facility located on a United States military base;

(b) Uniform service or linen supply facility; or

(c) Prison or other penal institution.

(7) "Dry cleaning operator" means a person who has, or had, a business license to operate a dry cleaning facility or a business operation that a dry cleaning facility is a part of. If a dry cleaning facility is operated without a business license, both the dry cleaning owner and any person directing the operations shall be considered the dry cleaning operator and shall be jointly and severally liable for the fees and duties imposed on dry cleaning operators.

(8) "Dry cleaning owner" means a person who owns or owned the real property underlying a dry cleaning facility.

(9) "Dry cleaning service" means:

(a) The cleaning of garments or fabrics at a dry cleaning facility using a dry cleaning solvent and the pressing or alteration of garments or fabrics if those services are not charged for separately from cleaning; and

(b) The services of a dry store.

(10) "Dry cleaning solvent" means any nonaqueous solvent for use in the cleaning of garments or other fabrics at a dry cleaning facility, including but not limited to perchloroethylene and petroleum based solvents and the products into which dry cleaning solvents degrade.

(11) "Dry store" means a facility that does not include machinery using dry cleaning solvents, including but not limited to a pickup store, dropoff store, call station, agency for dry cleaning, press shop, and pickup and delivery service not otherwise operated by a dry cleaning facility.

(12) "Environment" includes the waters of the state, any drinking water supply, any land surface and subsurface strata and ambient air.

(13) "Facility" means any building, structure, installation, equipment, pipe or pipeline including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, above ground tank, underground storage tank, motor vehicle, rolling stock, aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located and where a release has occurred or where there is a threat of a release, but does not include any consumer product in consumer use or any vessel.

(14) "Fund" means the Hazardous Substance Remedial Action Fund established by ORS 465.381.

(15) "Guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under ORS 465.200 to 465.545 and 465.900.

(16) "Hazardous substance" means:

(a) Hazardous waste as defined in ORS 466.005.

(b) Any substance defined as a hazardous substance pursuant to section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510, as amended, and P.L. 99-499.

(c) Oil.

(d) Any substance designated by the commission under ORS 465.400.

(17) "Inactive dry cleaning facility" means property formerly used, but not currently used, for providing dry cleaning services.

(18) "Natural resources" includes but is not limited to land, fish, wildlife, biota, air, surface water, ground water, drinking water supplies and any other resource owned, managed, held in trust or otherwise controlled by the State of Oregon or a political subdivision of the state.

(19) "Oil" includes gasoline, crude oil, fuel oil, diesel oil, lubricating oil, oil sludge or refuse and any other petroleum-related product, or waste or fraction thereof that is liquid at a temperature of 60 degrees Fahrenheit

and pressure of 14.7 pounds per square inch absolute.

(20) "Owner or operator" means any person who owned, leased, operated, controlled or exercised significant control over the operation of a facility. "Owner or operator" does not include a person, who, without participating in the management of a facility, holds indicia of ownership primarily to protect a security interest in the facility.

(21) "Person" means an individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, partnership, association, corporation, commission, state and any agency thereof, political subdivision of the state, interstate body or the federal government including any agency thereof.

(22) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment including the abandonment or discarding of barrels, containers and other closed receptacles containing any hazardous substance, or threat thereof, but excludes:

(a) Any release that results in exposure to a person solely within a workplace, with respect to a claim that the person may assert against the person's employer under ORS chapter 656;

(b) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel or pipeline pumping station engine;

(c) Any release of source, by-product or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, as amended, if the release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of the Atomic Energy Act of 1954, as amended, or, for the purposes of ORS 465.260 or any other removal or remedial action, any release of source by-product or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978; and

(d) The normal application of fertilizer.

(23) "Remedial action" means those actions consistent with a permanent remedial action taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of a hazardous substance 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 hazardous substances and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternative drinking and household water supplies, and any monitoring reasonably required to assure that the actions protect the public health, safety, welfare and the environment.

(b) Offsite transport and offsite storage, treatment, destruction or secure disposition of hazardous substances and associated, contaminated materials.

(c) Such actions as may be necessary to monitor, assess, evaluate or investigate a release or threat of release.

(24) "Remedial action costs" means reasonable costs which are attributable to or associated with a removal or remedial action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts and health studies.

(25) "Removal" means the cleanup or removal of a released hazardous substance from the environment, such actions as may be necessary taken in the event of the threat of release of a hazardous substance into the environment, such actions as may be necessary to monitor, assess and evaluate the release or threat of release of a hazardous substance, the disposal of removed material, or 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, that may otherwise result from a release or threat of release. "Removal" also includes but is not limited to security fencing or other measures to limit access, provision of alternative drinking and household water supplies, temporary evacuation and housing of threatened individuals and action taken under ORS 465.260.

(26) "Retail sale or transfer" means a transfer of title or possession, exchange or barter, conditional or otherwise, for a purpose other than resale in the ordinary course of business.

(27) "Transport" means the movement of a hazardous substance by any mode, including pipeline and in the case of a hazardous substance that has been accepted for transportation by a common or contract carrier, the term "transport" shall include any stoppage in transit that is temporary, incidental to the transportation movement, and at the ordinary operating convenience of a common or contract carrier, and any such stoppage shall be considered as a continuity of movement and not as the storage of a hazardous substance.

(28) "Underground storage tank" has the meaning given that term in ORS 466.706.

(29) "Waters of the state" has the meaning given that term in ORS 468B.005. [Formerly 466.540; 1995

c.427 §1; 2001 c.495 §19; 2003 c.407 §§23,24]

465.205 Legislative findings. (1) The Legislative Assembly finds that:

(a) The release of a hazardous substance into the environment may present an imminent and substantial threat to the public health, safety, welfare and the environment; and

(b) The threats posed by the release of a hazardous substance can be minimized by prompt identification of facilities and implementation of removal or remedial action.

(2) Therefore, the Legislative Assembly declares that:

(a) It is in the interest of the public health, safety, welfare and the environment to provide the means to minimize the hazards of and damages from facilities.

(b) It is the purpose of ORS 465.200 to 465.545 and 465.900 to:

(A) Protect the public health, safety, welfare and the environment; and

(B) Provide sufficient and reliable funding for the Department of Environmental Quality to expediently and effectively authorize, require or undertake removal or remedial action to abate hazards to the public health, safety, welfare and the environment. [Formerly 466.547]

465.210 Authority of department for removal or remedial action. (1) In addition to any other authority granted by law, the Department of Environmental Quality may:

(a) Undertake independently, in cooperation with others or by contract, investigations, studies, sampling, monitoring, assessments, surveying, testing, analyzing, planning, inspecting, training, engineering, design, construction, operation, maintenance and any other activity necessary to conduct removal or remedial action and to carry out the provisions of ORS 465.200 to 465.545 and 465.900; and

(b) Recover the state's remedial action costs.

(2) The Environmental Quality Commission and the department may participate in or conduct activities pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, P.L. 96-510 and P.L. 99-499, and the corrective action provisions of Subtitle I of the federal Solid Waste Disposal Act, as amended, P.L. 96-482 and P.L. 98-616. Such participation may include, but need not be limited to, entering into a cooperative agreement with the United States Environmental Protection Agency.

(3) Nothing in ORS 465.200 to 465.545 and 465.900 shall restrict the State of Oregon from participating in or conducting activities pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, P.L. 96-510 and P.L. 99-499. [Formerly 466.550]

465.215 List of facilities with confirmed release. (1) For the purposes of providing public information, the Director of the Department of Environmental Quality shall develop and maintain a list of all facilities with a confirmed release as defined by the Environmental Quality Commission under ORS 465.405.

(2) The director shall make the list available for the public at the offices of the Department of Environmental Quality.

(3) The 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

(i) Other items the director determines necessary.

(4) At least 60 days before a facility is added to the 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 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 to the list is not appealable to the Environmental Quality Commission or subject to judicial review under ORS chapter 183. [Formerly 466.557]

465.220 Comprehensive statewide identification program; notice. (1) The Department of Environmental Quality shall develop and implement a comprehensive statewide 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 465.235. [Formerly 466.560]

465.225 Inventory of facilities needing environmental controls; preliminary assessment; notice to operator; criteria for adding facilities to inventory. (1) For the purpose of providing public information, the Director of the Department of Environmental Quality 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 chapter 183.

(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. [1989 c.485 §3]

465.230 Removal of facilities from inventory; criteria. (1) According to rules adopted by the Environmental Quality Commission, the Director of the Department of Environmental Quality 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 cleanup 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. [1989 c.485 §4]

465.235 Public inspection of inventory; information included in inventory; organization; report; action plan. (1) The Director of the Department of Environmental Quality 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 judgment under ORS 465.200 to 465.545; 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, including but not limited to each of the following areas:

(a) Facilities with a suspected release added to the department's database;

(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 subsection (4)(e) to (h) of this section. The four-year plan shall include projections of funding and staffing levels necessary to implement the four-year plan. [1989 c.485 §5; 2003 c.576 §459]

465.240 Inventory listing not prerequisite to other remedial action. Nothing in ORS 465.225 to 465.240, 465.405 and 465.410 or placement of a facility on the list under ORS 465.215 shall be construed to be a prerequisite to or otherwise affect the authority of the Director of the Department of Environmental Quality to undertake, order or authorize a removal or remedial action under ORS 465.200 to 465.545 and 465.900. [1989 c.485 §6]

465.245 Preliminary assessment of potential facility. When the Department of Environmental Quality receives information about a release or a threat of release from a potential facility, the department shall 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 Environmental Quality Commission. The preliminary assessment shall be conducted as expeditiously as possible within the budgetary constraints of the department. [Formerly 466.563]

465.250 Accessibility of information about hazardous substances; entering property or facility; samples; confidentiality. (1) Any person who has or may have information, documents or records relevant to the identification, nature and volume of a hazardous substance generated, treated, stored, transported to, disposed of or released at a facility and the dates thereof, or to the identity or financial resources of a potentially responsible person, shall, upon request by the Department of Environmental Quality or its authorized representative, disclose or make available for inspection and copying such information, documents or records.

(2) Upon reasonable basis to believe that there may be a release of a hazardous substance at or upon any

property or facility, the department or its authorized representative may enter any property or facility at any reasonable time to:

(a) Sample, inspect, examine and investigate;

(b) Examine and copy records and other information; or

(c) Carry out removal or remedial action or any other action authorized by ORS 465.200 to 465.545 and 465.900.

(3) If any person refuses to provide information, documents, records or to allow entry under subsections (1) and (2) of this section, the department may request the Attorney General to seek from a court of competent jurisdiction an order requiring the person to provide such information, documents, records or to allow entry.

(4)(a) Except as provided in paragraphs (b) and (c) of this subsection, the department or its authorized representative shall, upon request by the current owner or operator of the facility or property, provide a portion of any sample obtained from the property or facility to the owner or operator.

(b) The department may decline to give a portion of any sample to the owner or operator if, in the judgment of the department or its authorized representative, apportioning a sample:

(A) May alter the physical or chemical properties of the sample such that the portion of the sample retained by the department would not be representative of the material sampled; or

(B) Would not provide adequate volume to perform the laboratory analysis.

(c) Nothing in this subsection shall prevent or unreasonably hinder or delay the department or its authorized representative in obtaining a sample at any facility or property.

(5) Persons subject to the requirements of this section may make a claim of confidentiality regarding any information, documents or records, in accordance with ORS 466.090. [Formerly 466.565]

465.255 Strict liability for remedial action costs for injury or destruction of natural resource; limited exclusions. (1) The following persons shall be strictly liable for those remedial action costs incurred by the state or any other person that are attributable to or associated with a facility and for damages for injury to or destruction of any natural resources caused by a release:

(a) Any owner or operator at or during the time of the acts or omissions that resulted in the release.

(b) Any owner or operator who became the owner or operator after the time of the acts or omissions that resulted in the release, and who knew or reasonably should have known of the release when the person first became the owner or operator.

(c) Any owner or operator who obtained actual knowledge of the release at the facility during the time the person was the owner or operator of the facility and then subsequently transferred ownership or operation of the facility to another person without disclosing such knowledge.

(d) Any person who, by any acts or omissions, caused, contributed to or exacerbated the release, unless the acts or omissions were in material compliance with applicable laws, standards, regulations, licenses or permits.

(e) Any person who unlawfully hinders or delays entry to, investigation of or removal or remedial action at a facility.

(2) Except as provided in subsection (1)(c) to (e) of this section and subsection (4) of this section, the following persons shall not be liable for remedial action costs incurred by the state or any other person that are attributable to or associated with a facility, or for damages for injury to or destruction of any natural resources caused by a release:

(a) Any owner or operator who became the owner or operator after the time of the acts or omissions that resulted in a release, and who did not know and reasonably should not have known of the release when the person first became the owner or operator.

(b) Any owner or operator if the release at the facility was caused solely by one or a combination of the following:

(A) An act of God. “Act of God” means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(B) An act of war.

(C) Acts or omissions of a third party, other than an employee or agent of the person asserting this defense, or other than a person whose acts or omissions occur in connection with a contractual relationship, existing directly or indirectly, with the person asserting this defense. As used in this subparagraph, “contractual relationship” includes but is not limited to land contracts, deeds or other instruments transferring title or possession.

(3) Except as provided in subsection (1)(c) to (e) of this section or subsection (4) of this section, the following persons shall not be liable for remedial action costs incurred by the state or any other person that are attributable to or associated with a facility, or for damages for injury to or destruction of any natural resources

caused by a release:

(a) A unit of state or local government that acquired ownership or control of a facility in the following ways:

(A) Involuntarily by virtue of its function as sovereign, including but not limited to escheat, bankruptcy, tax delinquency or abandonment; or

(B) Through the exercise of eminent domain authority by purchase or condemnation.

(b) A person who acquired a facility by inheritance or bequest.

(c) Any fiduciary exempted from liability in accordance with rules adopted by the Environmental Quality Commission under ORS 465.440.

(4) Notwithstanding the exclusions from liability provided for specified persons in subsections (2) and (3) of this section such persons shall be liable for remedial action costs incurred by the state or any other person that are attributable to or associated with a facility, and for damages for injury to or destruction of any natural resources caused by a release, to the extent that the person's acts or omissions contribute to such costs or damages, if the person:

(a) Obtained actual knowledge of the release and then failed to promptly notify the Department of Environmental Quality and exercise due care with respect to the hazardous substance concerned, taking into consideration the characteristics of the hazardous substance in light of all relevant facts and circumstances; or

(b) Failed to take reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the reasonably foreseeable consequences of such acts or omissions.

(5)(a) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from any person who may be liable under this section, to any other person, the liability imposed under this section. Nothing in this section shall bar any agreement to insure, hold harmless or indemnify a party to such agreement for any liability under this section.

(b) A person who is liable under this section shall not be barred from seeking contribution from any other person for liability under ORS 465.200 to 465.545 and 465.900.

(c) Nothing in ORS 465.200 to 465.545 and 465.900 shall bar a cause of action that a person liable under this section or a guarantor has or would have by reason of subrogation or otherwise against any person.

(d) Nothing in this section shall restrict any right that the state or any person might have under federal statute, common law or other state statute to recover remedial action costs or to seek any other relief related to a release.

(6) To establish, for purposes of subsection (1)(b) of this section or subsection (2)(a) of this section, that the person did or did not have reason to know, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability.

(7)(a) Except as provided in paragraph (b) of this subsection, no person shall be liable under ORS 465.200 to 465.545 and 465.900 for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance or advice in accordance with rules adopted under ORS 465.400 or at the direction of the department or its authorized representative, with respect to an incident creating a danger to public health, safety, welfare or the environment as a result of any release of a hazardous substance. This paragraph shall not preclude liability for costs or damages as the result of negligence on the part of such person.

(b) No state or local government shall be liable under ORS 465.200 to 465.545 and 465.900 for costs or damages as a result of actions taken in response to an emergency created by the release of a hazardous substance generated by or from a facility owned by another person. This paragraph shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the state or local government. For the purpose of this paragraph, reckless, willful or wanton misconduct shall constitute gross negligence.

(c) This subsection shall not alter the liability of any person covered by subsection (1) of this section. [Formerly 466.567; 1991 c.680 §9; 1991 c.692 §1]

465.257 Right of contribution from other person liable for remedial action costs; allocation of orphan share. (1) Any person who is liable or potentially liable under ORS 465.255 may seek contribution from any other person who is liable or potentially liable under ORS 465.255. When such a claim for contribution is at trial and the court determines that apportionment of recoverable costs among the liable parties is appropriate, the share of the remedial action costs that is to be borne by each party shall be determined by the court, using such equitable factors as the court deems appropriate, including but not limited to the following:

(a) The amount of hazardous substances contributed to the facility;

(b) The degree of toxicity or hazard posed by the hazardous substances to public health, safety and welfare, and to the environment;

(c) The degree of involvement in the release of the hazardous substance by the liable persons;

(d) The relative culpability or negligence of the liable persons;

(e) The degree of cooperation by the liable persons with the government or with persons who have a financial interest in the facility;

(f) The extent of the participation by the liable person in response actions at the facility;

(g) The length of time the facility was owned or operated by the liable person during the time the release occurred;

(h) Whether the acts or omissions that resulted in a release were in material compliance with applicable laws, standards, regulations, licenses or permits;

(i) The economic benefit derived from the facility or from the acts or omissions that resulted in a release;

(j) The circumstances and conditions involved in the facility's conveyance, including the price paid and any discounts granted; and

(k) The quality of evidence concerning liability and equitable shares.

(2) At the time of trial, if a person who is otherwise liable under ORS 465.255 is no longer subject to a judgment due to bankruptcy, dissolution or death (an orphan share), the court may, in its discretion, allocate that person's equitable share to the other liable persons in proportion to their equitable shares or on any other equitable basis taking into consideration any relationship between the orphan share's liable person and each other liable person. [1995 c.662 §5]

Note: 465.257 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 465 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

465.260 Removal or remedial action; reimbursement of costs; liability; damages. (1) The Director of the Department of Environmental Quality may undertake any removal or remedial action necessary to protect the public health, safety, welfare and the environment.

(2) The director may authorize any person to carry out any removal or remedial action in accordance with any requirements of or directions from the director, if the director determines that the person will commence and complete removal or remedial action properly and in a timely manner.

(3) Nothing in ORS 465.200 to 465.545 and 465.900 shall prevent the director from taking any emergency removal or remedial action necessary to protect public health, safety, welfare or the environment.

(4) The director may require a person liable under ORS 465.255 to conduct any removal or remedial action or related actions necessary to protect the public health, safety, welfare and the environment. The director's action under this subsection may include but need not be limited to issuing an order specifying the removal or remedial action the person must take.

(5) The director may request the Attorney General to bring an action or proceeding for legal or equitable relief, in the circuit court of the county in which the facility is located or in Marion County, as may be necessary:

(a) To enforce an order issued under subsection (4) of this section; or

(b) To abate any imminent and substantial danger to the public health, safety, welfare or the environment related to a release.

(6) Notwithstanding any provision of ORS chapter 183, and except as provided in subsection (7) of this section, any order issued by the director under subsection (4) of this section shall not be appealable to the Environmental Quality Commission or subject to judicial review.

(7)(a) Any person who receives and complies with the terms of an order issued under subsection (4) of this section may, within 60 days after completion of the required action, petition the director for reimbursement from the fund for the reasonable costs of such action.

(b) If the director refuses to grant all or part of the reimbursement, the petitioner may, within 30 days of receipt of the director's refusal, file an action against the director seeking reimbursement from the fund in the circuit court of the county in which the facility is located or in the Circuit Court of Marion County. To obtain reimbursement, the petitioner must establish by a preponderance of the evidence that the petitioner is not liable under ORS 465.255 and that costs for which the petitioner seeks reimbursement are reasonable in light of the action required by the relevant order. A petitioner who is liable under ORS 465.255 may also recover reasonable remedial action costs to the extent that the petitioner can demonstrate that the director's decision in selecting the removal or remedial action ordered was arbitrary and capricious or otherwise not in accordance with law.

(8) If any person who is liable under ORS 465.255 fails without sufficient cause to conduct a removal or remedial action as required by an order of the director, the person shall be liable to the department for the

state's remedial action costs and for punitive damages not to exceed three times the amount of the state's remedial action costs.

(9) Nothing in this section is intended to interfere with, limit or abridge the authority of the State Fire Marshal or any other state agency or local unit of government relating to an emergency that presents a combustion or explosion hazard. [Formerly 466.570]

465.265 "Person" defined for ORS 465.265 to 465.310. As used in ORS 465.265 to 465.310, "person" includes but need not be limited to a person liable under ORS 465.255. Except as provided in ORS 465.275 (2), "person" does not include the state or any state agency or the federal government or any agency of the federal government. [1989 c.833 §103]

465.270 Legislative findings and intent. (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 ORS 465.265 to 465.310:

(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 465.200 to 465.545 or, at the discretion of the department, under other applicable authorities. [1989 c.833 §102]

465.275 Remedial action and financial assistance program; contracts for implementation. (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 465.381, 468.220, 468.230 and 465.265 to 465.310, 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 ORS 465.285.

(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. [1989 c.833 §104]

465.280 Rules; insuring tax deductibility of interest on bonds. In accordance with the applicable provisions of ORS chapter 183, the Environmental Quality Commission may adopt rules necessary to carry out the provisions of ORS 465.381, 468.220, 468.230 and 465.265 to 465.310 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. [1989 c.833 §105]

465.285 Requirements for financial assistance; contents of agreements. (1) The Department of Environmental Quality 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. [1989 c.833 §106]

465.290 Financial assistance agreement not General Fund obligation; cost estimates; security; recovery of costs; compromise of obligations. (1) The obligation of the Department of Environmental Quality to provide financial assistance or to advance money under a financial assistance agreement made under ORS 465.285 shall not constitute an obligation against the General Fund or any other state fund except against the Hazardous Substance Remedial Action Fund to the extent moneys in the Hazardous Substance Remedial Action Fund are expressly designated by the department for such financial assistance purposes.

(2) The department may provide a remedial action cost estimate for use by the department, a lender or a guarantor in determining the amount of financial assistance, evaluating the creditworthiness of a borrower, providing loan guarantees or as the department considers appropriate.

(3) When financial assistance is provided to a local governmental unit, the agreement may be secured as the department requires for adequate security.

(4) The department may take any action under ORS 465.260, 465.330 or 465.335 or other applicable authority to recover costs incurred or moneys advanced under a financial assistance agreement. Costs incurred or money advanced under a financial assistance agreement entered into under ORS 465.285 shall be remedial action costs. At the department's discretion, the department may file a claim of lien for such remedial action costs in accordance with the procedures set forth in ORS 465.335 (1), (2)(a) to (c), (3) and (4).

(5) The department may settle, compromise or release all or part of any obligation arising under a financial assistance agreement so long as the department's action is consistent with the purposes of ORS 465.265 to 465.310. [1989 c.833 §107]

465.295 Decision regarding financial assistance not subject to judicial review. Notwithstanding any provision of ORS chapter 183, the decision of the Department of Environmental Quality to approve or deny financial assistance under ORS 465.265 to 465.310 or the department's determination of the amount or use of a remedial action cost estimate under ORS 465.290 shall not be subject to appeal to the Environmental Quality Commission or subject to judicial review. [1989 c.833 §108]

465.300 Records and financial assistance applications exempt from disclosure as public record. Financial records and other information that are submitted to the Department of Environmental Quality as part of an application for financial assistance under ORS 465.265 to 465.310 shall be exempt from disclosure under ORS 192.410 to 192.505, unless the public interest requires disclosure in a particular instance. [1989 c.833 §109]

465.305 Application fees; rules. The Environmental Quality Commission may establish by rule reasonable fees for applicants for financial assistance sufficient to pay for the costs of the Department of Environmental Quality of carrying out the provisions of ORS 465.265 to 465.310. [1989 c.833 §110]

465.310 Accounting procedure for financial assistance moneys. For the purposes of ORS 465.265 to 465.310, the Department of Environmental Quality may place moneys for the purpose of providing financial assistance in reserve status or subaccounts within the Hazardous Substance Remedial Action Fund. Moneys placed in reserve status or subaccounts under this section in connection with a financial assistance agreement shall not be subject to claims under ORS 465.260 or otherwise except as provided in the financial assistance agreement. [1989 c.833 §111]

465.315 Standards for degree of cleanup required; Hazard Index; risk protocol; hot spots of contamination; exemption; rules. (1)(a) Any removal or remedial action performed under the provisions of ORS 465.200 to 465.545 and 465.900 shall attain a degree of cleanup of the hazardous substance and control of further release of the hazardous substance that assures protection of present and future public health, safety and welfare and of the environment.

(b) The Director of the Department of Environmental Quality shall select or approve remedial actions that are protective of human health and the environment. The protectiveness of a remedial action shall be determined based on application of both of the following:

(A) The acceptable risk level for exposures. For protection of humans, the acceptable risk level for exposure to individual carcinogens shall be a lifetime excess cancer risk of one per one million people exposed, and the acceptable risk level for exposure to noncarcinogens shall be the exposure that results in a Hazard Index number equal to or less than one. "Hazard Index number" means a number equal to the sum of the noncarcinogenic risks (hazard quotient) attributable to systemic toxicants with similar toxic endpoints. For protection of ecological receptors, if a release of hazardous substances causes or is reasonably likely to cause significant adverse impacts to the health or viability of a species listed as threatened or endangered pursuant to 16 U.S.C. 1531 et seq. or ORS 496.172, or a population of plants or animals in the locality of the facility, the acceptable risk level shall be the point before such significant adverse impacts occur.

(B) A risk assessment undertaken in accordance with the risk protocol established by the Environmental Quality Commission in accordance with subsection (2)(a) of this section.

(c) A remedial action may achieve protection of human health and the environment through:

(A) Treatment that eliminates or reduces the toxicity, mobility or volume of hazardous substances;

(B) Excavation and off-site disposal;

(C) Containment or other engineering controls;

(D) Institutional controls;

(E) Any other method of protection; or

(F) A combination of the above.

(d) The method of remediation appropriate for a specific facility shall be determined through an evaluation of remedial alternatives and a selection process to be established pursuant to rules adopted by the commission. The director shall select or approve a protective alternative that balances the following factors:

(A) The effectiveness of the remedy in achieving protection;

(B) The technical and practical implementability of the remedy;

(C) The long term reliability of the remedy;

(D) Any short term risk from implementing the remedy posed to the community, to those engaged in the implementation of the remedy and to the environment; and

(E) The reasonableness of the cost of the remedy. The cost of a remedial action shall not be considered reasonable if the costs are disproportionate to the benefits created through risk reduction or risk management. Subject to the preference for treatment of hot spots, when two or more remedial action alternatives are protective as provided in paragraph (b) of this subsection, the least expensive remedial action shall be preferred unless the additional cost of a more expensive alternative is justified by proportionately greater benefits within one or more of the factors set forth in subparagraphs (A) to (D) of this paragraph. The director shall use a higher threshold for evaluating the reasonableness of the costs for treating hot spots than for remediation of areas other than hot spots.

(e) For contamination constituting a hot spot as defined by the commission pursuant to subsection (2)(b) of this section, the director shall select or approve a remedial action requiring treatment of the hot spot contamination unless treatment is not feasible considering the factors set forth in paragraph (d) of this subsection. For contamination constituting a hot spot under subsection (2)(b)(A) of this section, the director shall evaluate, with the same preference as treatment, the excavation and off-site disposal of the contamination at a facility authorized for such disposal under state or federal law. For excavation and off-site disposal of contamination that is a hazardous waste as described in ORS 466.005, the director shall consider the method and distance for transportation of the contamination to available disposal facilities in selecting or approving a remedial action that is protective under subsection (1)(d) of this section. If requested by the responsible party or recommended by the Department of Environmental Quality, the director may select or approve excavation and off-site disposal as the remedial action for contamination constituting a hot spot under subsection (2)(b)(A) of this section.

(f) The Department of Environmental Quality shall develop or identify generic remedies for common categories of facilities considering the balancing factors set forth in paragraph (d) of this subsection. The department's development of generic remedies shall take into consideration demonstrated remedial actions and technologies and scientific and engineering evaluation of performance data. Where a generic remedy would be protective and satisfy the balancing factors under paragraph (d) of this subsection at a specific facility, the director may select or approve the generic remedy for that site on a streamlined basis with a limited evaluation of other remedial alternatives.

(g) Subject to paragraphs (b) and (d) of this subsection, in selecting or approving a remedial action, the director shall consider current and reasonably anticipated future land uses at the facility and surrounding properties, taking into account current land use zoning, other land use designations, land use plans as established in local comprehensive plans and land use implementing regulations of any governmental body having land use jurisdiction, and concerns of the facility owner, neighboring owners and the community.

(2) The commission shall adopt rules:

(a) Establishing a risk protocol for conducting risk assessments. The risk protocol shall:

(A) Require consideration of existing and reasonably likely future human exposures and significant adverse effects to ecological receptor health and viability, both in a baseline risk assessment and in an assessment of residual risk after a remedial action;

(B) Require risk assessments to include reasonable estimates of plausible upper-bound exposures that neither grossly underestimate nor grossly overestimate risks;

(C) Require risk assessments to consider, to the extent practicable, the range of probabilities of risks actually occurring, the range of size of the populations likely to be exposed to the risk, current and reasonably likely future land uses, and quantitative and qualitative descriptions of uncertainties;

(D) Identify appropriate sources of toxicity information;

(E) Define the use of probabilistic modeling;

(F) Identify criteria for the selection and application of fate and transport models;

(G) Define the use of high-end and central-tendency exposure cases and assumptions;

(H) Define the use of population risk estimates in addition to individual risk estimates;

(I) To the extent deemed appropriate and feasible by the commission considering available scientific information, define appropriate approaches for addressing cumulative risks posed by multiple contaminants or multiple exposure pathways, including how the acceptable risk levels set forth in subsection (1)(b)(A) of this section shall be applied in relation to cumulative risks; and

(J) Establish appropriate sampling approaches and data quality requirements.

(b) Defining hot spots of contamination. The definition of hot spots shall include:

(A) Hazardous substances that are present in high concentrations, are highly mobile or cannot be reliably contained, and that would present a risk to human health or the environment exceeding the acceptable risk level if exposure occurs.

(B) Concentrations of hazardous substances in ground water or surface water that have a significant adverse effect on existing or reasonably likely future beneficial uses of the water and for which treatment is reasonably likely to restore or protect such beneficial use within a reasonable time.

(3) Except as provided in subsection (4) of this section, the director may exempt the on-site portion of any removal or remedial action conducted under ORS 465.200 to 465.545 and 465.900 from any requirement of ORS 466.005 to 466.385 and ORS chapters 459, 468, 468A and 468B. Without affecting substantive requirements, no state or local permit, license or other authorization shall be required for, and no procedural requirements shall apply to, the portion of any removal or remedial action conducted on-site where such removal or remedial action has been selected or approved by the director under this section, unless the permit, license, authorization or procedural requirement is necessary to preserve or obtain federal authorization of a state program or the person performing a removal or remedial action elects to obtain the permit, license or authorization or comply with the procedural requirement. The person performing a removal or remedial action shall notify the appropriate state or local governmental body of the permits, licenses, authorizations or procedural requirements waived under this subsection and, at the request of the governmental body, pay applicable fees. Any costs paid as a fee to a governmental body under this subsection shall not also be recoverable by the governmental body as remedial action costs.

(4) Notwithstanding any provision of subsection (3) of this section, any on-site treatment, storage or disposal of a hazardous substance shall comply with the standard established under subsection (1)(a) of this section and any activities conducted in a public right of way under a removal or remedial action pursuant to this section shall comply with the requirements of the applicable jurisdiction.

(5) Nothing in this section shall affect the authority of the director to undertake, order or authorize an interim or emergency removal action.

(6) Nothing in this section or in rules adopted pursuant to this section shall prohibit the application of rules in effect on July 18, 1995, that use numeric soil cleanup standards to govern remediation of motor fuel and heating oil releases from underground storage tanks. [Formerly 466.573; 1993 c.560 §102; 1995 c.662 §1; 1999 c.740 §1; 2003 c.14 §298]

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

(1) Publish a notice and brief description of the proposed action in a local paper of general circulation and

in the Secretary of State's Bulletin, and make copies of the proposal available to the public.

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

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

(4) Upon final approval of the remedial action or providing a release from liability under ORS 465.327 to a party in a judicial consent judgment or an administrative consent order, publish notice, as provided under subsection (1) of this section, and make copies of the approved action available to the public. [Formerly 466.575; 2011 c.487 §2]

465.325 Agreement to perform removal or remedial action; reimbursement; agreement as order and consent judgment; effect on liability. (1)(a) The Director of the Department of Environmental Quality, in the director's discretion, may enter into an agreement with any person including the owner or operator of the facility from which a release emanates, or any other potentially responsible person to perform any removal or remedial action if the director determines that the actions will be properly done by the person. Whenever practicable and in the public interest, as determined by the director, the director, in order to expedite effective removal or remedial actions and minimize litigation, shall act to facilitate agreements under this section that are in the public interest and consistent with the rules adopted under ORS 465.400. If the director decides not to use the procedures in this section, the director shall notify in writing potentially responsible parties at the facility of such decision. Notwithstanding ORS chapter 183, a decision of the director to use or not to use the procedures described in this section shall not be appealable to the Environmental Quality Commission or subject to judicial review.

(b)(A) At least 30 days before an agreement is entered into under this section, the director shall provide written notice to any person who has entered into an agreement with the Department of Environmental Quality under ORS 465.327 related to the facility and who is in substantial compliance with the agreement entered into under ORS 465.327. A person receiving notice under this paragraph shall be provided with an opportunity to participate in any negotiations under this section related to an agreement concerning the facility, and the person may provide written comments related to the proposed agreement.

(B) At the conclusion of any negotiations described in this paragraph and at least 30 days before submittal to the appropriate circuit court as a proposed consent judgment, the director shall provide written notice of the proposed agreement to any person who has entered into an agreement with the department under ORS 465.327 related to the facility.

(2)(a) An agreement under this section may provide that the director will reimburse the parties to the agreement from the fund, with interest, for certain costs of actions under the agreement that the parties have agreed to perform and the director has agreed to finance. In any case in which the director provides such reimbursement and, in the judgment of the director, cost recovery is in the public interest, the director shall make reasonable efforts to recover the amount of such reimbursement under ORS 465.200 to 465.545 and 465.900 or under other relevant authority.

(b) Notwithstanding ORS chapter 183, the director's decision regarding fund financing under this subsection shall not be appealable to the commission or subject to judicial review.

(c) When a remedial action is completed under an agreement described in paragraph (a) of this subsection, the fund shall be subject to an obligation for any subsequent remedial action at the same facility but only to the extent that such subsequent remedial action is necessary by reason of the failure of the original remedial action. Such obligation shall be in a proportion equal to, but not exceeding, the proportion contributed by the fund for the original remedial action. The fund's obligation for such future remedial action may be met through fund expenditures or through payment, following settlement or enforcement action, by persons who were not signatories to the original agreement.

(3) If an agreement has been entered into under this section, the director may take any action under ORS 465.260 against any person who is not a party to the agreement, once the period for submitting a proposal under subsection (5)(c) of this section has expired. Nothing in this section shall be construed to affect either of the following:

(a) The liability of any person under ORS 465.255 or 465.260 with respect to any costs or damages which are not included in the agreement.

(b) The authority of the director to maintain an action under ORS 465.200 to 465.545 and 465.900 against any person who is not a party to the agreement.

(4)(a)(A) Whenever the director enters into an agreement under this section with any potentially

responsible person with respect to remedial action, following approval of the agreement by the Attorney General and except as otherwise provided in the case of certain administrative settlements referred to in subsection (8) of this section, the agreement shall be entered in the appropriate circuit court as a consent judgment. The director need not make any finding regarding an imminent and substantial endangerment to the public health, safety, welfare or the environment in connection with any such agreement or consent judgment.

(B)(i) A person described in subsection (1)(b) of this section who submits written comments to the director regarding the proposed agreement may intervene as a party in the proceedings related to the entry of a consent judgment.

(ii) If a person described in subsection (1)(b) of this section intervenes in the proceedings, the circuit court shall review the proposed agreement, and the circuit court may not enter the proposed agreement as a consent judgment, unless the circuit court determines that the proposed agreement is fair, reasonable and consistent with the provisions of ORS 465.200 to 465.545 and that any contribution protections provided under subsection (6)(b) of this section are supported by substantial evidence as being in the public interest.

(b) The entry of any consent judgment under this subsection shall not be construed to be an acknowledgment by the parties that the release concerned constitutes an imminent and substantial endangerment to the public health, safety, welfare or the environment. Except as otherwise provided in the Oregon Evidence Code, the participation by any party in the process under this section shall not be considered an admission of liability for any purpose, and the fact of such participation shall not be admissible in any judicial or administrative proceeding, including a subsequent proceeding under this section.

(c) The director may fashion a consent judgment so that the entering of the judgment and compliance with the judgment or with any determination or agreement made under this section shall not be considered an admission of liability for any purpose.

(d) The director shall provide notice and opportunity to the public and to persons not named as parties to the agreement to comment on the proposed agreement before its submittal to the court as a proposed consent judgment, as provided under ORS 465.320. The director shall consider any written comments, views or allegations relating to the proposed agreement. The director or any party may withdraw, withhold or modify its consent to the proposed agreement if the comments, views and allegations concerning the agreement disclose facts or considerations which indicate that the proposed agreement is inappropriate, improper or inadequate.

(5)(a) If the director determines that a period of negotiation under this subsection would facilitate an agreement with potentially responsible persons for taking removal or remedial action and would expedite removal or remedial action, the director shall so notify all such parties and shall provide them with the following information to the extent the information is available:

(A) The names and addresses of potentially responsible persons including owners and operators and other persons referred to in ORS 465.255.

(B) The volume and nature of substances contributed by each potentially responsible person identified at the facility.

(C) A ranking by volume of the substances at the facility.

(b) The director shall make the information referred to in paragraph (a) of this subsection available in advance of notice under this subsection upon the request of a potentially responsible person in accordance with procedures provided by the director. The provisions of ORS 465.250 (5) regarding confidential information apply to information provided under paragraph (a) of this subsection.

(c) Any person receiving notice under paragraph (a) of this subsection shall have 60 days from the date of receipt of the notice to submit to the director a proposal for undertaking or financing the action under ORS 465.260. The director may grant extensions for up to an additional 60 days.

(6)(a) Any person may seek contribution from any other person who is liable or potentially liable under ORS 465.255. In resolving contribution claims, the court shall allocate remedial action costs among liable parties in accordance with ORS 465.257.

(b) A person who has resolved its liability to the state in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially responsible persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(c)(A) If the state has obtained less than complete relief from a person who has resolved its liability to the state in an administrative or judicially approved settlement, the director may bring an action against any person who has not so resolved its liability.

(B) A person who has resolved its liability to the state for some or all of a removal or remedial action or for some or all of the costs of such action in an administrative or judicially approved settlement may seek contribution from any person who is not party to a settlement referred to in paragraph (b) of this subsection.

(C) In any action under this paragraph, the rights of any person who has resolved its liability to the state

shall be subordinate to the rights of the state.

(7)(a) In entering an agreement under this section, the director may provide any person subject to the agreement with a covenant not to sue concerning any liability to the State of Oregon under ORS 465.200 to 465.545 and 465.900, including future liability, resulting from a release of a hazardous substance addressed by the agreement if each of the following conditions is met:

(A) The covenant not to sue is in the public interest.

(B) The covenant not to sue would expedite removal or remedial action consistent with rules adopted by the commission under ORS 465.400 (2).

(C) The person is in full compliance with a consent judgment under subsection (4)(a) of this section for response to the release concerned.

(D) The removal or remedial action has been approved by the director.

(b) The director shall provide a person with a covenant not to sue with respect to future liability to the State of Oregon under ORS 465.200 to 465.545 and 465.900 for a future release of a hazardous substance from a facility, and a person provided such covenant not to sue shall not be liable to the State of Oregon under ORS 465.255 with respect to such release at a future time, for the portion of the remedial action:

(A) That involves the transport and secure disposition offsite of a hazardous substance in a treatment, storage or disposal facility meeting the requirements of section 3004(c) to (g), (m), (o), (p), (u) and (v) and 3005(c) of the federal Solid Waste Disposal Act, as amended, P.L. 96-482 and P.L. 98-616, if the director has rejected a proposed remedial action that is consistent with rules adopted by the commission under ORS 465.400 that does not include such offsite disposition and has thereafter required offsite disposition; or

(B) That involves the treatment of a hazardous substance so as to destroy, eliminate or permanently immobilize the hazardous constituents of the substance, so that, in the judgment of the director, the substance no longer presents any current or currently foreseeable future significant risk to public health, safety, welfare or the environment, no by-product of the treatment or destruction process presents any significant hazard to public health, safety, welfare or the environment, and all by-products are themselves treated, destroyed or contained in a manner that assures that the by-products do not present any current or currently foreseeable future significant risk to public health, safety, welfare or the environment.

(c) A covenant not to sue concerning future liability to the State of Oregon shall not take effect until the director certifies that the removal or remedial action has been completed in accordance with the requirements of subsection (10) of this section at the facility that is the subject of the covenant.

(d) In assessing the appropriateness of a covenant not to sue under paragraph (a) of this subsection and any condition to be included in a covenant not to sue under paragraph (a) or (b) of this subsection, the director shall consider whether the covenant or conditions are in the public interest on the basis of factors such as the following:

(A) The effectiveness and reliability of the remedial action, in light of the other alternative remedial actions considered for the facility concerned.

(B) The nature of the risks remaining at the facility.

(C) The extent to which performance standards are included in the order or judgment.

(D) The extent to which the removal or remedial action provides a complete remedy for the facility, including a reduction in the hazardous nature of the substances at the facility.

(E) The extent to which the technology used in the removal or remedial action is demonstrated to be effective.

(F) Whether the fund or other sources of funding would be available for any additional removal or remedial action that might eventually be necessary at the facility.

(G) Whether the removal or remedial action will be carried out, in whole or in significant part, by the responsible parties themselves.

(e) Any covenant not to sue under this subsection shall be subject to the satisfactory performance by such party of its obligations under the agreement concerned.

(f)(A) Except for the portion of the removal or remedial action that is subject to a covenant not to sue under paragraph (b) of this subsection or de minimis settlement under subsection (8) of this section, a covenant not to sue a person concerning future liability to the State of Oregon:

(i) Shall include an exception to the covenant that allows the director to sue the person concerning future liability resulting from the release or threatened release that is the subject of the covenant if the liability arises out of conditions unknown at the time the director certifies under subsection (10) of this section that the removal or remedial action has been completed at the facility concerned; and

(ii) May include an exception to the covenant that allows the director to sue the person concerning future liability resulting from failure of the remedial action.

(B) In extraordinary circumstances, the director may determine, after assessment of relevant factors such as

those referred to in paragraph (d) of this subsection and volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value and the inequities and aggravating factors, not to include the exception referred to in paragraph (f)(A) of this subsection if other terms, conditions or requirements of the agreement containing the covenant not to sue are sufficient to provide all reasonable assurances that public health, safety, welfare and the environment will be protected from any future release at or from the facility.

(C) The director may include any provisions allowing future enforcement action under ORS 465.260 that in the discretion of the director are necessary and appropriate to assure protection of public health, safety, welfare and the environment.

(8)(a) Whenever practicable and in the public interest, as determined by the director, the director shall as promptly as possible reach a final settlement with a potentially responsible person in an administrative or civil action under ORS 465.255 if such settlement involves only a minor portion of the remedial action costs at the facility concerned and, in the judgment of the director, both of the following are minimal in comparison to any other hazardous substance at the facility:

(A) The amount of the hazardous substance contributed by that person to the facility; and

(B) The toxic or other hazardous effects of the substance contributed by that person to the facility.

(b) The director may provide a covenant not to sue with respect to the facility concerned to any party who has entered into a settlement under this subsection unless such a covenant would be inconsistent with the public interest as determined under subsection (7) of this section.

(c) The director shall reach any such settlement or grant a covenant not to sue as soon as possible after the director has available the information necessary to reach a settlement or grant a covenant not to sue.

(d) A settlement under this subsection shall be entered as a consent judgment or embodied in an administrative order setting forth the terms of the settlement. The circuit court for the county in which the release or threatened release occurs or the Circuit Court of Marion County may enforce any such administrative order.

(e) A party who has resolved its liability to the state under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other potentially responsible persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(f) Nothing in this subsection shall be construed to affect the authority of the director to reach settlements with other potentially responsible persons under ORS 465.200 to 465.545 and 465.900.

(9)(a) Notwithstanding ORS chapter 183, except for those covenants required under subsection (7)(b)(A) and (B) of this section, a decision by the director to agree or not to agree to inclusion of any covenant not to sue in an agreement under this section shall not be appealable to the commission or subject to judicial review.

(b) Nothing in this section shall limit or otherwise affect the authority of any court to review, in the consent judgment process under subsection (4) of this section, any covenant not to sue contained in an agreement under this section.

(10)(a) Upon completion of any removal or remedial action under an agreement under this section, or pursuant to an order under ORS 465.260, the party undertaking the removal or remedial action shall notify the department and request certification of completion. Within 90 days after receiving notice, the director shall determine by certification whether the removal or remedial action is completed in accordance with the applicable agreement or order.

(b) Before submitting a final certification decision to the court that approved the consent judgment, or before entering a final administrative order, the director shall provide to the public and to persons not named as parties to the agreement or order notice and opportunity to comment on the director's proposed certification decision, as provided under ORS 465.320.

(c) Any person aggrieved by the director's certification decision may seek judicial review of the certification decision by the court that approved the relevant consent judgment or, in the case of an administrative order, in the circuit court for the county in which the facility is located or in Marion County. The decision of the director shall be upheld unless the person challenging the certification decision demonstrates that the decision was arbitrary and capricious, contrary to the provisions of ORS 465.200 to 465.545 and 465.900 or not supported by substantial evidence. The court shall apply a presumption in favor of the director's decision. The court may award attorney fees and costs to the prevailing party if the court finds the challenge or defense of the director's decision to have been frivolous. The court may assess against a party and award to the state, in addition to attorney fees and costs, an amount equal to the economic gain realized by the party if the court finds the only purpose of the party's challenge to the director's decision was delay for economic gain. [Formerly 466.577; 1995 c.662 §2; 2003 c.576 §460; 2013 c.412 §1]

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

(a) The party is not currently liable under:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) A legal description of the property.

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

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

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

468B.300 to 468B.500 occurred before the date of acquisition of ownership or operation of the facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Under ORS 468B.310 for the entry of oil into the waters of the state from a facility that is subject to ORS 465.200 to 465.545 and 468B.300 to 468B.500 that occurred before the date of acquisition of ownership or operation of the facility and who assume and are bound by terms of the agreement applicable to the facility as of the date of acquisition of ownership or operation. [1995 c.662 §4; 2003 c.576 §461; 2011 c.487 §1]

465.330 State remedial action costs; payment; effect of failure to pay. (1) The Department of Environmental Quality shall keep a record of the state's remedial action costs.

(2) Based on the record compiled by the department under subsection (1) of this section, the department shall require any person liable under ORS 465.255 or 465.260 to pay the amount of the state's remedial action costs and, if applicable, punitive damages.

(3) If the state's remedial action costs and punitive damages are not paid by the liable person to the department within 45 days after receipt of notice that such costs and damages are due and owing, the Attorney General, at the request of the Director of the Department of Environmental Quality, shall bring an action in the name of the State of Oregon in a court of competent jurisdiction to recover the amount owed, plus reasonable legal expenses.

(4) All moneys received by the department under this section shall be deposited in the Hazardous Substance Remedial Action Fund established under ORS 465.381 if the moneys received pertain to a removal or remedial action taken at any facility. [Formerly 466.580]

465.333 Recovery of costs of program development, rulemaking and administrative actions as remedial action costs; determination of allocable costs. Notwithstanding ORS 291.050 to 291.060, the Department of Environmental Quality may recover, as remedial action costs, the costs of program development, rulemaking and other administrative actions required by the provisions of ORS 465.315, 465.325

and 465.327. After July 18, 1995, the department may recover such costs by requiring any person liable under ORS 465.255 or 465.260 or any person otherwise undertaking removal or remedial action under the department's oversight to pay such costs. Each person shall pay that portion of costs under ORS 465.315, 465.325 and 465.327 that the department determines to be allocable to removal or remedial action at the person's facility, using generally accepted accounting principles and as necessary to be charged per facility to recover the department's costs of implementing ORS 465.315, 465.325 and 465.327. [1995 c.662 §8]

465.335 Costs, penalties and damages as lien; enforcement of lien. (1) All of the state's remedial action costs, penalties and punitive damages for which a person is liable to the state under ORS 465.255, 465.260 or 465.900 shall constitute a lien upon any real and personal property owned by the person.

(2) At the discretion of the Department of Environmental Quality, the department may file a claim of lien on real property or a claim of lien on personal property. The department shall file a claim of lien on real property to be charged with a lien under this section with the recording officer of each county in which the real property is located and shall file a claim of lien on personal property to be charged with a lien under this section with the Secretary of State. The lien shall attach and become enforceable on the day of such filing. The lien claim shall contain:

(a) A statement of the demand;

(b) The name of the person against whose property the lien attaches;

(c) A description of the property charged with the lien sufficient for identification; and

(d) A statement of the failure of the person to conduct removal or remedial action and pay penalties and damages as required.

(3) The lien created by this section may be foreclosed by a suit on real and personal property in the circuit court in the manner provided by law for the foreclosure of other liens.

(4) Nothing in this section shall affect the right of the state to bring an action against any person to recover all costs and damages for which the person is liable under ORS 465.255, 465.260 or 465.900. [Formerly 466.583]

465.340 Contractor liability; indemnification. (1)(a) A person who is a contractor with respect to any release of a hazardous substance from a facility shall not be liable under ORS 465.200 to 465.545 and 465.900 or under any other state law to any person for injuries, costs, damages, expenses or other liability including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness or loss of or damage to property or economic loss that result from such release.

(b) Paragraph (a) of this subsection shall not apply if the release is caused by conduct of the contractor that is negligent, reckless, willful or wanton misconduct or that constitutes intentional misconduct.

(c) Nothing in this subsection shall affect the liability of any other person under any warranty under federal, state or common law. Nothing in this subsection shall affect the liability of an employer who is a contractor to any employee of such employer under any provision of law, including any provision of any law relating to workers' compensation.

(d) A state employee or an employee of a political subdivision who provides services relating to a removal or remedial action while acting within the scope of the person's authority as a governmental employee shall have the same exemption from liability subject to the other provisions of this section, as is provided to the contractor under this section.

(2)(a) The exclusion provided by ORS 465.255 (2)(b)(C) shall not be available to any potentially responsible party with respect to any costs or damages caused by any act or omission of a contractor.

(b) Except as provided in subsection (1)(d) of this section and paragraph (a) of this subsection, nothing in this section shall affect the liability under ORS 465.200 to 465.545 and 465.900 or under any other federal or state law of any person, other than a contractor.

(c) Nothing in this section shall affect the plaintiff's burden of establishing liability under ORS 465.200 to 465.545 and 465.900.

(3)(a) The Director of the Department of Environmental Quality may agree to hold harmless and indemnify any contractor meeting the requirements of this subsection against any liability, including the expenses of litigation or settlement, for negligence arising out of the contractor's performance in carrying out removal or remedial action activities under ORS 465.200 to 465.545 and 465.900, unless such liability was caused by conduct of the contractor which was grossly negligent, reckless, willful or wanton misconduct, or which constituted intentional misconduct.

(b) This subsection shall apply only to a removal or remedial action carried out under written agreement with:

(A) The director;

(B) Any state agency; or

(C) Any potentially responsible party carrying out any agreement under ORS 465.260 or 465.325.

(c) For purposes of ORS 465.200 to 465.545 and 465.900, amounts expended from the fund for indemnification of any contractor shall be considered remedial action costs.

(d) An indemnification agreement may be provided under this subsection only if the director determines that each of the following requirements are met:

(A) The liability covered by the indemnification agreement exceeds or is not covered by insurance available, at a fair and reasonable price, to the contractor at the time the contractor enters into the contract to provide removal or remedial action, and adequate insurance to cover such liability is not generally available at the time the contract is entered into.

(B) The contractor has made diligent efforts to obtain insurance coverage.

(C) In the case of a contract covering more than one facility, the contractor agrees to continue to make diligent efforts to obtain insurance coverage each time the contractor begins work under the contract at a new facility.

(4)(a) Indemnification under this subsection shall apply only to a contractor liability which results from a release of any hazardous substance if the release arises out of removal or remedial action activities.

(b) An indemnification agreement under this subsection shall include deductibles and shall place limits on the amount of indemnification to be made available.

(c)(A) In deciding whether to enter into an indemnification agreement with a contractor carrying out a written contract or agreement with any potentially responsible party, the director shall determine an amount which the potentially responsible party is able to indemnify the contractor. The director may enter into an indemnification agreement only if the director determines that the amount of indemnification available from the potentially responsible party is inadequate to cover any reasonable potential liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with the party. In making the determinations required under this subparagraph related to the amount and the adequacy of the amount, the director shall take into account the total net assets and resources of the potentially responsible party with respect to the facility at the time the director makes the determinations.

(B) The director may pay a claim under an indemnification agreement referred to in subparagraph (A) of this paragraph for the amount determined under subparagraph (A) of this paragraph only if the contractor has exhausted all administrative, judicial and common law claims for indemnification against all potentially responsible parties participating in the cleanup of the facility with respect to the liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with the parties. The indemnification agreement shall require the contractor to pay any deductible established under paragraph (b) of this subsection before the contractor may recover any amount from the potentially responsible party or under the indemnification agreement.

(d) No owner or operator of a facility regulated under the federal Solid Waste Disposal Act, as amended, P.L. 96-482 and P.L. 98-616, may be indemnified under this subsection with respect to such facility.

(e) For the purposes of ORS 465.255, any amounts expended under this section for indemnification of any person who is a contractor with respect to any release shall be considered a remedial action cost incurred by the state with respect to the release.

(5) The exemption provided under subsection (1) of this section and the authority of the director to offer indemnification under subsection (3) of this section shall not apply to any person liable under ORS 465.255 with respect to the release or threatened release concerned if the person would be covered by the provisions even if the person had not carried out any actions referred to in subsection (6) of this section.

(6) As used in this section:

(a) "Contract" means any written contract or agreement to provide any removal or remedial action under ORS 465.200 to 465.545 and 465.900 at a facility, or any removal under ORS 465.200 to 465.545 and 465.900, with respect to any release of a hazardous substance from the facility or to provide any evaluation, planning, engineering, surveying and mapping, design, construction, equipment or any ancillary services thereto for such facility, that is entered into by a contractor as defined in paragraph (b)(A) of this subsection with:

(A) The director;

(B) Any state agency; or

(C) Any potentially responsible party carrying out an agreement under ORS 465.260 or 465.325.

(b) "Contractor" means:

(A) Any person who enters into a removal or remedial action contract with respect to any release of a hazardous substance from a facility and is carrying out such contract; and

(B) Any person who is retained or hired by a person described in subparagraph (A) of this paragraph to

provide any services relating to a removal or remedial action.

(c) "Insurance" means liability insurance that is fair and reasonably priced, as determined by the director, and that is made available at the time the contractor enters into the removal or remedial action contract to provide removal or remedial action. [Formerly 466.585; 1991 c.692 §2]

465.375 Monthly fee of operators; amount; use of moneys. (1) Every person who operates a facility for the purpose of disposing of hazardous waste or PCB that is subject to interim status or a permit issued under ORS 466.005 to 466.385 and 466.992 shall pay a hazardous waste management fee by the 45th day after the last day of each month for all waste brought into the facility during that month for treatment by incinerator or for disposal by landfill at the facility. The operator of the facility shall provide to every person who disposes of waste at the facility a statement showing the amount of the hazardous waste management fee paid by the person to the facility.

(2) The hazardous waste management fee under subsection (1) of this section shall be $20 a ton.

(3) In addition to the fee required under subsection (2) of this section, $10 per ton shall be included as part of the hazardous waste management fee for waste described in subsection (1) of this section.

(4) The additional amounts collected under subsection (3) of 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 be used to carry out the department's duties under ORS 466.005 to 466.385 related to the management of hazardous waste.

(5) At least 50 percent of the fees collected under subsection (3) of this section shall be used by the department to implement ORS 466.068. [Formerly 466.587; 1991 c.721 §1; 1995 c.552 §1; 2005 c.622 §1]

465.376 Special hazardous waste management fees; use of fees. (1) Notwithstanding ORS 465.375 (2) and (3), the hazardous waste management fee shall be:

(a) $7.50 per ton for waste from the primary production of steel in electric furnaces that is emission control dust or emission control sludge identified as United States Environmental Protection Agency hazardous waste number K061 in 40 C.F.R. 261.32. The facility that accepts the waste must have a plan and a schedule approved by the Department of Environmental Quality to develop and evaluate a treatment process for the waste. The department may withdraw approval of the plan if the facility does not implement the plan in accordance with the approved schedule. The approved treatment process shall be designed to achieve treatment levels similar to the treatment levels that would be required for the hazardous waste if the waste were delisted in Alaska, Idaho or Washington under 40 C.F.R. 260.22, adopted under:

(A) The federal Resource Conservation and Recovery Act of 1976 (P.L. 94-580) and the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616), as amended; or

(B) A state-authorized Resource Conservation and Recovery Act program.

(b) For waste received by the facility from the same site, property or hazardous waste management unit, if the total waste received is:

(A) Up to 2,500 tons, $20 per ton for all waste received;

(B) More than 2,500 tons and less than or equal to 12,500 tons, $10 per ton for all waste received;

(C) More than 12,500 tons and less than or equal to 25,000 tons, $5 per ton for all waste received; or

(D) More than 25,000 tons, $2.50 per ton for all waste received.

(c) $15 per ton for waste that is hazardous waste when received and treated at the facility so that the waste is no longer a solid waste as defined in ORS 459.005.

(d) $2 per ton for waste that is:

(A) A characteristic hazardous waste at the point of generation and that has been treated at the facility or at an off-site location so that the waste no longer exhibits the characteristics of hazardous waste and so that the waste complies with any applicable land disposal requirements;

(B) Liquid waste when the waste is received and treated at a wastewater treatment unit at the facility so that the waste does not exhibit any characteristics of hazardous waste and so that the resulting liquid is managed at a permitted unit at the facility;

(C) Solid waste that results from cleanup activities and that must be disposed of in a facility for the disposal of hazardous waste as a result of restrictions imposed under ORS 459.055 (8) or 459.305 (7); or

(D) Solid waste that is not hazardous waste or PCB under a state or federal law at the point of generation and that is not a hazardous waste under Oregon law.

(2) Upon the request of the department, a facility shall allow the department to review the information relating to waste received by the facility that the facility used to determine the hazardous waste management fee for the types of waste described in subsection (1)(b) of this section.

(3) One-third of the amount collected under subsection (1) of this section shall be deposited in the State

Treasury to the credit of an account of the department. Such moneys are continuously appropriated to the department to be used to carry out the department's duties under ORS 466.005 to 466.385 related to the management of hazardous waste.

(4) Two-thirds of the amount collected under subsection (1) of this section shall be deposited in the State Treasury to the credit of the Hazardous Substance Remedial Action Fund created under ORS 465.381 to be used for the purposes described in ORS 465.381 (5).

(5) For purposes of subsection (1)(b) of this section, "waste" means waste that is:

(a) PCB under Oregon or federal law;

(b) Hazardous debris;

(c) Hazardous waste that becomes subject to regulation solely as a result of removal or remedial action taken in response to environmental contamination; or

(d) Hazardous waste that results from corrective action or closure of a regulated or nonregulated waste management unit. [2005 c.622 §3]

465.378 Department to work with other states to avoid disruption of waste flows. The Department of Environmental Quality shall work cooperatively with other states to avoid disrupting or changing waste flows between states that may be caused by the establishment or adjustment of state disposal fees. [1995 c.552 §4]

465.380 [Formerly 466.590; 1991 c.703 §47; 1991 c.721 §2; repealed by 1993 c.707 §4 (465.381 enacted in lieu of 465.380)]

465.381 Hazardous Substance Remedial Action Fund; sources; uses; Orphan Site Account; uses. (1) The Hazardous Substance Remedial Action Fund is established separate and distinct from the General Fund in the State Treasury. Interest earned by the fund shall be credited to the fund.

(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 of Environmental Quality under ORS 465.375.

(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 ORS 453.402 (2)(c) and 459.236 for the purpose 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 465.255, 465.260, 465.335 or 465.900.

(e) Fees received by the department under ORS 465.305.

(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 465.200 to 465.545 and 465.900, including but not limited to providing financial assistance pursuant to an agreement entered into under ORS 465.285; 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 or is 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. However, this paragraph does not prohibit the use of Orphan Site Account moneys for remedial action on submerged or submersible lands as those terms are defined in ORS 274.005 and tidal submerged lands as defined in ORS 274.705.

(c) The Orphan Site Account may be used to pay claims for reimbursement filed and approved under ORS 465.260 (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 ORS 453.402 (2)(c) and under ORS 459.236 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 ORS 453.402 (2)(c) and under ORS 459.236, for the purpose of providing funds for the Orphan Site Account, and of the proceeds of any bond sale under ORS 468.195 supported by the fees collected pursuant to ORS 453.402 (2)(c) and under ORS 459.236, 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.

(b) Before the department obligates money from the Orphan Site Account derived from the fees collected pursuant to ORS 453.402 (2)(c) and under ORS 459.236 for the purpose of providing funds for the Orphan Site Account, or the proceeds of any bond sale under ORS 468.195 supported by fees collected pursuant to ORS 453.402 (2)(c) and under ORS 459.236, 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. [1993 c.707 §5 (enacted in lieu of 465.380); 1999 c.534 §1]

465.385 [1989 c.833 §§132,171; 1991 c.703 §13; repealed by 1993 c.707 §6 (465.386 enacted in lieu of 465.385)]

465.386 Commission authorized to increase fees; rules; basis of increase; amount of increase. (1) Notwithstanding the totals established in ORS 459.236, 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 ORS 459.236. 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 of Environmental Quality determines the responsible party is unknown or is 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 subject to prior approval by the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting the fees and shall be within the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency Board during the interim period between sessions. [1993 c.707 §7 (enacted in lieu of 465.385); 1999 c.534 §2; 2007 c.71 §146]

465.390 [1989 c.833 §§133,172; repealed by 1993 c.707 §8 (465.391 enacted in lieu of 465.390)]

465.391 Effect of certain laws on liability of person. Nothing in ORS 453.396 to 453.408, 453.414, 459.236 and 459.311, including the limitation on the amount a local government unit must contribute under ORS 459.236 and 459.311, shall be construed to affect or limit the liability of any person. [1993 c.707 §9 (enacted in lieu of 465.390)]

465.400 Rules; designation of hazardous substance. (1) In accordance with the applicable provisions of ORS chapter 183, the Environmental Quality Commission may adopt rules necessary to carry out the provisions of ORS 465.200 to 465.545 and 465.900.

(2)(a) Within one year after July 16, 1987, the commission shall adopt rules establishing the levels, factors, criteria or other provisions for the degree of cleanup including the control of further releases of a hazardous substance, and the selection of remedial actions necessary to assure protection of the public health, safety, welfare and the environment.

(b) In developing rules pertaining to the degree of cleanup and the selection of remedial actions under paragraph (a) of this subsection, the commission may, as appropriate, take into account:

(A) The long-term uncertainties associated with land disposal;

(B) The goals, objectives and requirements of ORS 466.005 to 466.385;

(C) The persistence, toxicity, mobility and propensity to bioaccumulate of such hazardous substances and their constituents;

(D) The short-term and long-term potential for adverse health effects from human exposure to the hazardous substance;

(E) Long-term maintenance costs;

(F) The potential for future remedial action costs if the alternative remedial action in question were to fail;

(G) The potential threat to human health and the environment associated with excavation, transport and redisposal or containment; and

(H) The cost effectiveness.

(3)(a) By rule, the commission may designate as a hazardous substance any element, compound, mixture, solution or substance or any class of substances that, should a release occur, may present a substantial danger to the public health, safety, welfare or the environment.

(b) Before designating a substance or class of substances as a hazardous substance, the commission must find that the substance, because of its quantity, concentration, or physical, chemical or toxic characteristics, may pose a present or future hazard to human health, safety, welfare or the environment should a release occur. [Formerly 466.553]

465.405 Rules; "confirmed release"; "preliminary assessment." (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 of the Department of Environmental Quality in determining whether to remove a facility from the list and inventory under ORS 465.230.

(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 of Environmental Quality 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 465.400; or

(b) Poses no significant threat to present or future public health, safety, welfare or the environment. [1989 c.485 §7]

465.410 Ranking of inventory according to risk; rules. In addition to the rules adopted under ORS 465.405, 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. [1989 c.485 §8]

465.420 Remedial Action Advisory Committee. The Director of the Department of Environmental Quality shall appoint a Remedial Action Advisory Committee in order to advise the Department of Environmental Quality in the development of rules for the implementation of ORS 465.200 to 465.545 and 465.900. The committee shall be comprised of members representing at least the following interests:

(1) Citizens;
(2) Local governments;
(3) Environmental organizations; and
(4) Industry. [Formerly 466.555]

465.425 "Security interest holder" defined for ORS 465.430 to 465.455. As used in ORS 465.430 to 465.455, "security interest holder" means a person who, without participating in the management of a facility, holds indicia of ownership primarily to protect a security interest in a facility. [1991 c.680 §2]

465.430 Legislative findings. (1)(a) The Legislative Assembly finds that existing federal and state law related to liability of a security interest holder for environmental contamination is unclear, and that such lack of clarity has created uncertainty on the part of security interest holders as to whether security interest holders are liable for environmental contamination caused by their borrowers or other third parties.

(b) The Legislative Assembly therefore declares that clarification regarding such potential liability in a manner consistent with federal statutes and regulations is desirable in order to provide certainty for security interest holders and to encourage responsible practices by security interest holders and borrowers to protect the public health and the environment.

(2)(a) The Legislative Assembly also finds that uncertainty exists in state law as to potential liability of certain fiduciaries for environmental contamination at property held in their fiduciary capacity.

(b) The Legislative Assembly therefore declares that it is in the public interest to provide an exemption from such potential liability in certain circumstances. [1991 c.680 §3]

465.435 Rules relating to exemption from liability for security interest holder. (1) The Environmental Quality Commission may adopt rules necessary to clarify the scope and meaning of the exemption from liability under ORS 465.255 of a security interest holder. The rules shall:

(a) Identify activities that are consistent with holding and protecting a security interest in a facility and therefore exempt from liability under ORS 465.255;

(b) Identify the extent to which a security interest holder may undertake activities to oversee the affairs of a borrower for purposes of protecting a security interest in a facility and continue to be exempt from the liability imposed under ORS 465.255;

(c) Identify the activities a security interest holder may undertake in connection with foreclosure on a security interest in a facility and continue to be exempt from the liability imposed under ORS 465.255; and

(d) Allow a security interest holder to encourage and require responsible environmental management by borrowers.

(2) In adopting rules under subsection (1) of this section, the commission shall:

(a) Exclude the mere capacity or unexercised right to influence a facility's management of hazardous substance from activities that might void a security interest holder's exemption from liability; and

(b) Distinguish activities that are consistent with holding, protecting and foreclosing of a security interest, and that are therefore exempt from liability, from activities that constitute actual participation in the management of a facility that may be grounds for liability under ORS 465.255.

(3) In adopting rules under subsection (1) of this section, the commission shall consider and, to the extent consistent with subsections (1) and (2) of this section, adopt rules parallel in effect to any federal statute or regulation, adopted and effective on or after May 1, 1991, pertaining to the scope and meaning of the exemption from liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (P.L. 96-510 and 99-499), of a security interest holder. [1991 c.680 §4]

465.440 Rules relating to exemption from liability for fiduciary. In accordance with the purposes of ORS 465.425 to 465.455, the Environmental Quality Commission by rule shall define the instances in which a person acting under ORS chapter 709 and in a fiduciary capacity shall be exempt from liability for environmental contamination at property the fiduciary holds in a fiduciary capacity. In adopting the rules, the commission shall consider and, to the extent appropriate, provide exemptions from liability for the fiduciaries that are similar in purpose and effect to those exemptions provided for security interest holders under rules adopted under ORS 465.435. [1991 c.680 §5]

465.445 Advisory committee. The Director of the Department of Environmental Quality shall appoint an advisory committee to advise the Department of Environmental Quality and the Environmental Quality Commission in the development of rules under ORS 465.435 and 465.440. [1991 c.680 §6]

465.450 Limitation on commission's discretion to adopt rules. Notwithstanding the discretion otherwise allowed under ORS 465.435, if federal law is enacted or regulations are adopted and become effective after May 1, 1991, the Environmental Quality Commission shall adopt rules under ORS 465.435. [1991 c.680 §7]

465.455 Construction of ORS 465.425 to 465.455. Nothing in ORS 465.425 to 465.455 or any rule adopted under ORS 465.435 or 465.440 shall be construed to impose liability on a security interest holder or fiduciary or to expand the liability of a security interest holder or fiduciary beyond that which might otherwise exist. [1991 c.680 §8]

(Oregon Environmental Cleanup Assistance)

465.475 Definitions for ORS 465.475 to 465.484. For the purposes of ORS 465.475 to 465.484:

(1) "Environmental claim" means a claim for defense or indemnity submitted under a general liability insurance policy by an insured facing, or allegedly facing, potential liability for bodily injury or property damage arising from a release of pollutants onto or into land, air or water.

(2) "General liability insurance policy" means any contract of insurance that provides coverage for the obligations at law or in equity of an insured for bodily injury, property damage or personal injury to others. "General liability insurance policy" includes but is not limited to a pollution liability insurance policy, a commercial general liability insurance policy, a comprehensive general liability policy, an excess liability policy, an umbrella liability insurance policy or any other kind of policy covering the liability of an insured for the claims of third parties. "General liability insurance policy" does not include homeowner or motor vehicle policies or portions of other policies relating to homeowner or motor vehicle coverages, claims-made policies or portions of other policies relating to claims-made policies or specialty line liability coverage such as directors and officers insurance, errors and omissions insurance or other similar policies.

(3) "Insured" means any person included as a named insured on a general liability insurance policy who has or had a property interest in a site in Oregon that involves an environmental claim.

(4) "Lost policy" means any part or all of a general liability insurance policy that is alleged to be ruined, destroyed, misplaced or otherwise no longer possessed by the insured.

(5) "Policy" means the written contract or agreement, and all clauses, riders, endorsements and papers that are a part of the contract or agreement, for or effecting insurance. [1999 c.783 §2; 2003 c.799 §1]

465.478 Legislative findings. The Legislative Assembly finds that there are many insurance coverage disputes involving insureds who face potential liability for their ownership of or roles at polluted sites in this state. The State of Oregon has a substantial public interest in promoting the fair and efficient resolution of environmental claims while encouraging voluntary compliance and regulatory cooperation. [1999 c.783 §3]

465.479 Lost policies; investigation by insurer required; minimum standards for investigation. (1) If, after a diligent investigation by an insured of the insured's own records, including computer records and the records of past and present agents of the insured, the insured is unable to reconstruct a lost policy, the insured may provide a notice of a lost policy to an insurer.

(2) An insurer must investigate thoroughly and promptly a notice of a lost policy. An insurer fails to investigate thoroughly and promptly if the insurer fails to provide all facts known or discovered during an investigation concerning the issuance and terms of a policy, including copies of documents establishing the issuance and terms of a policy, to the insured claiming coverage under a lost policy.

(3) An insurer and an insured must comply with the following minimum standards for facilitating reconstruction of a lost policy and determining the terms of a lost policy as provided in this section:

(a) Within 30 business days after receipt by the insurer of notice of a lost policy, the insurer shall commence an investigation into the insurer's records, including computer records, to determine whether the insurer issued the lost policy. If the insurer determines that it issued the policy, the insurer shall commence an investigation into the terms and conditions relevant to any environmental claim made under the policy.

(b) The insurer and the insured shall cooperate with each other in determining the terms of a lost policy. The insurer and the insured:

(A) Shall provide to each other the facts known or discovered during an investigation, including the identity of any witnesses with knowledge of facts related to the issuance or existence of a lost policy.

(B) Shall provide each other with copies of documents establishing facts related to the lost policy.

(C) Are not required to produce material subject to a legal privilege or confidential claims documents provided to the insurer by another policyholder.

(c) If the insurer or the insured discovers information tending to show the existence of an insurance policy

applicable to the claim, the insurer or the insured shall provide an accurate copy of the terms of the policy or a reconstruction of the policy, upon the request of the insurer or the insured.

(d) If the insurer is not able to locate portions of the policy or determine its terms, conditions or exclusions, the insurer shall provide copies of all insurance policy forms issued by the insurer during the applicable policy period that are potentially applicable to the environmental claim. The insurer shall state which of the potentially applicable forms, if any, is most likely to have been issued by the insurer, or the insurer shall state why it is unable to identify the forms after a good faith search.

(4) Following the minimum standards established in this section does not create a presumption of coverage for an environmental claim once the lost policy has been reconstructed.

(5) Following the minimum standards established in this section does not constitute:

(a) An admission by an insurer that a policy was issued or effective; or

(b) An affirmation that if the policy was issued, it was necessarily in the form produced, unless so stated by the insurer.

(6) If, based on the information discovered in an investigation of a lost policy, the insured can show by a preponderance of the evidence that a general liability insurance policy was issued to the insured by the insurer, then if:

(a) The insured cannot produce evidence that tends to show the policy limits applicable to the policy, it shall be assumed that the minimum limits of coverage, including any exclusions to coverage, offered by the insurer during the period in question were purchased by the insured.

(b) The insured can produce evidence that tends to show the policy limits applicable to the policy, then the insurer has the burden of proof to show that a different policy limit, including any exclusions to coverage, should apply.

(7) An insurer may claim an affirmative defense to a claim that the insurer failed to follow the minimum standards established under this section if the insured fails to cooperate with the insurer in the reconstruction of a lost policy under this section.

(8) The Director of the Department of Consumer and Business Services shall enforce this section and any rules adopted by the director to implement this section.

(9) Violation by an insurer of any provision of this section or any rule adopted under this section is an:

(a) Unfair environmental claims settlement practice under ORS 465.484; and

(b) Unfair claim settlement practice under ORS 746.230.

(10) As used in this section, "notice of a lost policy" means written notice of the lost policy in sufficient detail to identify the person or entity claiming coverage, including information concerning the name of the alleged policyholder, if known, and material facts concerning the lost policy known to the alleged policyholder. [2003 c.799 §4; 2013 c.350 §3]

465.480 Insurance for environmental claims; rules of construction; duty to pay defense or indemnity costs; contribution; allocation. (1) As used in this section:

(a) "Long-tail environmental claim" means an environmental claim covered by multiple general liability insurance policies.

(b) "Suit" or "lawsuit" includes but is not limited to formal judicial proceedings, administrative proceedings and actions taken under Oregon or federal law, including actions taken under administrative oversight of the Department of Environmental Quality or the United States Environmental Protection Agency pursuant to written voluntary agreements, consent decrees and consent orders.

(c) "Uninsured" means an insured who, for any period of time after January 1, 1971, that is included in an environmental claim, failed to purchase and maintain an occurrence-based general liability insurance policy that would have provided coverage for the environmental claim, provided that such insurance was commercially available at such time. A general liability insurance policy is "commercially available" if the policy can be purchased under the Insurance Code on reasonable commercial terms.

(2) Except as provided in subsection (8) of this section, in any action between an insured and an insurer to determine the existence of coverage for the costs of investigating and remediating environmental contamination, whether in response to governmental demand or pursuant to a written voluntary agreement, consent decree or consent order, including the existence of coverage for the costs of defending a suit against the insured for such costs, the following rules of construction shall apply in the interpretation of general liability insurance policies involving environmental claims:

(a) Oregon law shall be applied in all cases where the contaminated property to which the action relates is located within the State of Oregon. Nothing in this section shall be interpreted to modify common law rules governing choice of law determinations for sites located outside the State of Oregon.

(b) Any action or agreement by the Department of Environmental Quality or the United States

Environmental Protection Agency against or with an insured in which the Department of Environmental Quality or the United States Environmental Protection Agency in writing directs, requests or agrees that an insured take action with respect to contamination within the State of Oregon is equivalent to a suit or lawsuit as those terms are used in any general liability insurance policy.

(c) Insurance coverage for any reasonable and necessary fees, costs and expenses, including remedial investigations, feasibility study costs and expenses, incurred by the insured pursuant to a written voluntary agreement, consent decree or consent order between the insured and either the Department of Environmental Quality or the United States Environmental Protection Agency, when incurred as a result of a written direction, request or agreement by the Department of Environmental Quality or the United States Environmental Protection Agency to take action with respect to contamination within the State of Oregon, shall not be denied the insured on the ground that such expenses constitute voluntary payments by the insured.

(d) A general liability insurance policy that provides that any loss covered under the policy must be reduced by any amounts due to the insured on account of such loss under prior insurance may not be construed to reduce the policy limits available to an insured that has filed a long-tail environmental claim, or to reduce those policies from which an insurer that has paid an environmental claim may seek contribution. Such provisions may be a factor considered in the allocation of contribution claims between insurers under subsection (4) of this section.

(e) The release of a hazardous substance into the waters of this state, as defined in ORS 196.800, or onto real property owned by a party other than the insured constitutes damage, destruction or injury to property. Any remedial action costs, as defined in ORS 465.200, that an insured incurs as a result of any action taken to cut off a pathway by which a hazardous substance threatens to, or has, migrated, leached or otherwise been released into the waters of this state, as defined in ORS 196.800, or onto real property owned by a party other than the insured are remedial action costs that the insured is legally obligated to pay as damages because of the damage, destruction or injury to such property even though such action also involves the property of the insured.

(3)(a) An insurer with a duty to pay defense or indemnity costs, or both, to an insured for an environmental claim under a general liability insurance policy that provides that the insurer has a duty to pay all sums arising out of a risk covered by the policy, must pay all defense or indemnity costs, or both, proximately arising out of the risk pursuant to the applicable terms of its policy, including its limit of liability, independent and unaffected by other insurance that may provide coverage for the same claim.

(b) If an insured who makes an environmental claim under one or more general liability insurance policies that provide that an insurer has a duty to pay all sums arising out of a risk covered by the policies has more than one such general liability insurance policy that is triggered with one or more insurers, the insured shall provide notice of the claim to all such insurers for whom the insured has current addresses. If the insured's claim is not fully satisfied and the insured files suit on the claim against less than all the insurers, the insured may choose which of the general liability insurance policies respond to the loss if not all are required to satisfy the insured's claim. The insured or the insurers have a right to contribution as specified in subsection (4) of this section from all other insurers whose policies are triggered, and an insurer that has an obligation to pay may not fail to make payment to the insured on the grounds that another insurer has not made payment, unless the insurer has no obligation to respond to a claim until the limits of the underlying policy have been paid. The insured must choose that insurer based on the following factors:

(A) The total period of time that an insurer issued a general liability insurance policy to the insured applicable to the environmental claim;

(B) The policy limits, including any exclusions to coverage, of each of the general liability insurance policies that provide coverage or payment for the environmental claim; or

(C) The policy that provides the most appropriate type of coverage for the type of environmental claim for which the insured is liable or potentially liable.

(c) If requested by an insurer chosen by an insured under paragraph (b) of this subsection, the insured shall provide information regarding other general liability insurance policies held by the insured that would potentially provide coverage for the same environmental claim.

(d) An insurer chosen by an insured under paragraph (b) of this subsection may not be required to pay defense or indemnity costs in excess of the applicable policy limits, if any, on such defense or indemnity costs, including any exclusions to coverage.

(4)(a) An insurer that has paid all or part of an environmental claim may seek contribution from any other insurer that is liable or potentially liable to the insured and that has not entered into a good-faith settlement agreement with the insured regarding the environmental claim.

(b) There is a rebuttable presumption that all binding settlement agreements entered into between an insured and an insurer are good-faith settlements. A settlement agreement between an insured and insurer that

has been approved by a court of competent jurisdiction after 30 days' notice to other insurers is a good-faith settlement agreement with respect to all such insurers to whom such notice was provided.

(c) For purposes of ascertaining whether a right of contribution exists between insurers, an insurer that seeks to avoid or minimize payment of contribution may not assert a defense that the insurer is not liable or potentially liable because another insurer has fully satisfied the environmental claim of the insured and damages or coverage obligations are no longer owed to the insured.

(d) Contribution rights by and among insurers under this section preempt all common law contribution rights, if any, by and between insurers for environmental claims.

(5) If a court determines that the apportionment of recoverable costs between insurers is appropriate, the court shall allocate the covered damages between the insurers before the court, based on the following factors:

(a) The total period of time that each solvent insurer issued a general liability insurance policy to the insured applicable to the environmental claim;

(b) The policy limits, including any exclusions to coverage, of each of the general liability insurance policies that provide coverage or payment for the environmental claim for which the insured is liable or potentially liable;

(c) The policy that provides the most appropriate type of coverage for the type of environmental claim;

(d) The terms of the policies that related to the equitable allocation between insurers; and

(e) If the insured is an uninsured for any part of the time period included in the environmental claim, the insured shall be considered an insurer for purposes of allocation.

(6) If an insured is an uninsured for any part of the time period included in the environmental claim, an insurer who otherwise has an obligation to pay defense costs may deny that portion of defense costs that would be allocated to the insured under subsection (5) of this section.

(7)(a) There is a rebuttable presumption that the costs of preliminary assessments, remedial investigations, risk assessments or other necessary investigation, as those terms are defined by rule by the Department of Environmental Quality, are defense costs payable by the insurer, subject to the provisions of the applicable general liability insurance policy or policies.

(b) There is a rebuttable presumption that payment of the costs of removal actions or feasibility studies, as those terms are defined by rule by the Department of Environmental Quality, are indemnity costs and reduce the insurer's applicable limit of liability on the insurer's indemnity obligations, subject to the provisions of the applicable general liability insurance policy or policies.

(8) The rules of construction set forth in this section and ORS 465.481 and 465.483 do not apply if the application of the rule results in an interpretation contrary to the intent of the parties to the general liability insurance policy. [1999 c.783 §4; 2003 c.799 §2; 2013 c.350 §4]

465.481 General liability insurance policies; assignment. (1) A general liability insurance policy that contains a provision that requires the consent of an insurance company before the rights under an insurance policy may be assigned may not prohibit the assignment without consent of an environmental claim for payment under the policy for losses or damages that commenced prior to the assignment. The assignment and any release or covenant given for the assignment may not extinguish the cause of action against the insurer unless the assignment specifically so provides.

(2) The provisions of this section apply without limitation to voluntary assignments, assignments made in settlement of an environmental claim against a policyholder, assignments made as a matter of law and assignments made in the course of a corporate insured reorganization, merger, acquisition or liquidation. [2013 c.350 §2]

465.482 [1999 c.783 §6; renumbered 465.485 in 2013]

465.483 General liability insurance policies; duty to defend; environmental consultants. (1) If the provisions of a general liability insurance policy impose a duty to defend upon an insurer, and the insurer has undertaken the defense of an environmental claim on behalf of an insured under a reservation of rights, or if the insured has potential liability for the environmental claim in excess of the limits of the general liability insurance policy, the insurer shall provide independent counsel to defend the insured who shall represent only the insured and not the insurer.

(2)(a)(A) Independent counsel retained by the insurer to defend the insured under the provisions of this section must be experienced in handling the type and complexity of the environmental claim at issue.

(B) If independent counsel who meet the requirements specified in this paragraph are not available within the insured's community, then independent counsel from outside the insured's community who meet the requirements of this paragraph must be considered.

(b)(A) An insurer may retain environmental consultants to assist an independent counsel described in subsection (1) of this section. Any environmental consultants retained by the insurer must be experienced in responding to the type and complexity of the environmental claim at issue.

(B) If environmental consultants who meet the requirements specified in this paragraph are not available within the insured's community, then environmental consultants from outside the insured's community who meet the requirements of this paragraph must be considered.

(c) As used in this subsection, "experienced" means an established environmental practice that includes substantial defense experience in the type and complexity of environmental claim at issue.

(3)(a) The obligation of the insurer to pay fees to independent counsel and environmental consultants is based on the regular and customary rates for the type and complexity of environmental claim at issue in the community where the underlying claim arose or is being defended.

(b) In the event of a dispute concerning the selection of independent counsel or environmental consultants, or the fees of the independent counsel or an environmental consultant, either party may request that the other party participate in nonbinding environmental claim mediation described in ORS 465.484 (2).

(4) The provisions of this section do not relieve the insured of its duty to cooperate with the insurer under the terms of the insurance contract. [2013 c.350 §7]

465.484 Unfair environmental claims settlement practices; environmental claim mediation; rules; fees; damages. (1) An insurer or any other person may not commit any of the following unfair environmental claims settlement practices:

(a) Failure to commence investigation of an environmental claim within 15 working days after receipt of a notice of an environmental claim or failure to diligently respond to tenders of environmental claims, provided that an excess insurer may rely on the investigation of a primary insurer.

(b) Failure to make timely payments for costs reasonably incurred in the defense of environmental claims or for reasonable costs for which indemnity is owed.

(c) Denial of a claim for any improper purpose, such as to harass or to cause unnecessary delay or to needlessly increase the cost of litigation.

(d) Require that the insured provide answers to repetitive questions and requests for information concerning matters or issues unnecessary for resolution of the environmental claim of the insured, provided that an insurer may reserve its rights as to information that is not available at the time of the correspondence.

(e) Failure to pay interest as specified in ORS 82.010:

(A) On payments that an insured has made and that the insurer is legally obligated to pay as costs of defense or indemnity, provided that interest begins to accrue only on the 31st day after the claim for payment or reimbursement is presented or payment is made by the insured, whichever is later; or

(B) On overdue payments that an insurer agreed to make pursuant to an agreed settlement with an insured, provided that interest begins to accrue on the 31st day after the date of the settlement or on the date by which the insurer agreed to make the payment, whichever is later.

(f) Violation by insurers as described in ORS 465.479 (9)(a).

(2)(a) In addition to the unfair environmental claims settlement practices specified in subsection (1) of this section, it is an unfair environmental claims settlement practice for an insurer to fail to participate in good faith in a nonbinding environmental claim mediation described under this subsection that is requested by an insured concerning the existence, terms or conditions of a lost policy or regarding coverage for an environmental claim.

(b) The insured may request in writing that the insurer participate in a nonbinding environmental claim mediation.

(c) Upon request from an insured to participate in a nonbinding environmental claim mediation, an insurer shall provide an insured with information concerning a nonbinding environmental claim mediation program. The information must include, but need not be limited to, a description of how an insured can efficiently commence the mediation with the insurer.

(d) The purposes of the nonbinding environmental claim mediation include, but are not limited to, the following:

(A) To assist the parties in resolving disputes concerning whether or not a general liability insurance policy applicable to the environmental claim was issued to the insured by the insurer and concerning the relevant terms, conditions and exclusions;

(B) To determine whether the entire claim, or a portion thereof, can be settled by agreement of the parties;

(C) To determine, if the claim cannot be settled, whether one or more issues can be resolved to the satisfaction of the parties; and

(D) To discuss any other methods of streamlining or reducing the cost of litigation.

(e) The Attorney General shall:

(A) Appoint a mediation service provider to operate a mediation program related to environmental claims;

(B) Prescribe by rule requirements related to qualification, training and experience for mediators who participate in the mediation program; and

(C) Establish by rule a schedule of fees related to the mediation program.

(f) Unless otherwise agreed, information provided and statements made by either party in a mediation shall be kept confidential by the parties and used only for purposes of the mediation in accordance with ORS 36.220.

(g) The insured and the insurer shall have representatives present, or available by telephone, with authority to settle the matter at all mediation sessions.

(3) The unfair environmental claims settlement practices specified in this section are in addition to any provisions relating to unfair claim settlement practices under ORS 746.230.

(4)(a) Any insured aggrieved by one or more unfair environmental claims settlement practices specified in this section may apply to the circuit court for the county in which the insured resides, or any other court of competent jurisdiction, to recover the actual damages sustained, together with the costs of the action, including reasonable attorney fees and litigation costs.

(b) Twenty days prior to filing an action based on this section, the insured must provide written notice of the basis for the cause of action to the insurer and office of the Director of the Department of Consumer and Business Services. Notice and proof of notice must be provided by regular mail, registered mail or certified mail with return receipt requested. The insurer and director are deemed to have received notice three business days after the notice is mailed.

(c) If the insurer fails to resolve the basis for the action within the 20-day period after the written notice by the insured, the insured may bring the action without any further notice.

(d) If a written notice of claim is served under paragraph (b) of this subsection within the time prescribed for the filing of an action under this subsection, the statute of limitations for the action is tolled during the period of time required to comply with paragraph (b) of this subsection.

(e) In any action brought pursuant to this subsection, the court may, after finding that an insurer has acted unreasonably, increase the total award of damages to an amount not to exceed three times the actual damages.

(f) An action under this subsection must be brought within two years from the date the alleged violation is, or should have been, discovered.

(5) The provisions of this section do not limit the ability of a court to provide for any other remedy that is available at law. [2013 c.350 §6]

465.485 Short title. ORS 465.475 to 465.484 shall be known and may be cited as the Oregon Environmental Cleanup Assistance Act. [Formerly 465.482]

(Cleanup of Contamination Resulting From Dry Cleaning Facilities)

465.500 Purpose. (1) The purposes of ORS 465.500 to 465.545 are:

(a) To create a $1 million cleanup fund paid for solely by the dry cleaning industry, and to otherwise exempt dry cleaning owners and dry cleaning operators from cleanup liability; and

(b) To ensure the cleanup of contamination resulting from dry cleaning facilities.

(2) The provisions of ORS 465.200 to 465.545 and 465.900, and rules and programs adopted thereto, shall continue to apply to the cleanup of releases of hazardous substances from dry cleaning facilities, including but not limited to provisions and programs for:

(a) Listing of facilities having a confirmed release of dry cleaning solvents;

(b) Prioritizing dry cleaning facilities with confirmed releases for removal or remedial action;

(c) Applying standards and methods for removal and remedial actions selected or approved by the Department of Environmental Quality; and

(d) Enforcing or undertaking removal and remedial actions. [1995 c.427 §3; 2001 c.495 §1; 2003 c.407 §21]

465.503 Exemption from administrative or judicial action to compel removal or remedial action; exemption from liability; exceptions; limitations. (1) Except as provided under subsections (3), (4) and (5) of this section, and except to the extent that property, liability or other insurance is available to pay remedial action costs, no dry cleaning owner or dry cleaning operator shall be subject to any administrative or judicial action to compel a removal or remedial action or to recover remedial action costs caused by the release or threatened release of dry cleaning solvent from an active or inactive dry cleaning facility, whether the action is

brought under ORS 465.200 to 465.545 and 465.900 or any other statute or regulation.

(2) Except as provided under subsections (3), (4) and (5) of this section, and except to the extent that property, liability or other insurance is available, no dry cleaning owner or dry cleaning operator shall be liable under statutory, common or administrative law for damage to real or personal property or to natural resources if the damage is caused by the release or threatened release of dry cleaning solvent from an active or inactive dry cleaning facility, except upon proof that the release of dry cleaning solvent was caused by the failure of the dry cleaning owner or dry cleaning operator to exercise due care. Compliance with applicable federal, state and local laws and regulations, including waste minimization requirements, is prima facie evidence that the dry cleaning owner or dry cleaning operator exercised due care.

(3) Notwithstanding the date on which the release occurred, the provisions of subsections (1) and (2) of this section do not apply to a dry cleaning operator if:

(a) The release was caused by gross negligence of the dry cleaning owner or dry cleaning operator;

(b) The release resulted from an action or omission that was a violation by the dry cleaning owner or dry cleaning operator of federal or state laws in effect at the time of the release, including but not limited to waste minimization requirements imposed under ORS 465.505;

(c) The dry cleaning owner or dry cleaning operator willfully concealed a release of dry cleaning solvent contrary to laws and regulations in effect at the time of the release or did not comply with release reporting requirements applicable at the time of the release;

(d) The dry cleaning owner or dry cleaning operator denies access or unreasonably hinders or delays removal or remedial action necessary at the facility; or

(e) The dry cleaning operator of the facility where the release occurred has failed to pay fees under ORS 465.517, 465.520 and 465.523 in relation to dry cleaning activity at any dry cleaning facility.

(4) Notwithstanding the date on which the release occurred, subsections (1) and (2) of this section do not apply to a dry cleaning owner if:

(a) The release was caused by gross negligence of the dry cleaning owner or dry cleaning operator;

(b) The release resulted from a violation by the dry cleaning owner or dry cleaning operator of federal or state laws in effect at the time of the release, including but not limited to waste minimization requirements imposed by ORS 465.505;

(c) The dry cleaning owner or dry cleaning operator willfully concealed a release of dry cleaning solvent contrary to laws and regulations in effect at the time of the release or did not comply with the release reporting requirements applicable at the time of release;

(d) The dry cleaning owner or dry cleaning operator denies access or unreasonably hinders or delays removal or remedial action necessary at the facility;

(e) The dry cleaning operator of the facility where the release occurred has failed to pay fees under ORS 465.517, 465.520 and 465.523 in relation to dry cleaning activity at the facility; or

(f) The dry cleaning facility has been an inactive dry cleaning facility for a period of 90 days or more immediately preceding June 30, 1995.

(5) If hazardous substances are released as a result of both the release of dry cleaning solvent from dry cleaning operations and other activities, the exemptions from liability provided under this section shall apply only to that portion of the removal or remedial action or damage caused by the release or threatened release of dry cleaning solvent from the dry cleaning facility. [1995 c.427 §4; 2001 c.495 §2; 2003 c.407 §1]

465.505 Waste minimization requirements for dry cleaning facilities; annual report; reportable release; rules. (1) In addition to any other applicable federal or state law and regulation, the following waste minimization requirements shall apply to dry cleaning facilities:

(a) All wastes meeting the state and federal criteria for hazardous waste, excluding wastewater, generated at any dry cleaning facility and containing dry cleaning solvents, including residues and filters, shall be managed and disposed of, regardless of quantity generated, as hazardous wastes in accordance with federal and state laws otherwise applicable to management of hazardous wastes, except that, as to the cleanup of releases of dry cleaning solvents, ORS 465.503 shall apply rather than ORS 466.205;

(b) Wastewater contaminated with dry cleaning solvents from the water separation process of dry cleaning machines may not be discharged into any sanitary sewer or septic tank or into the waters of this state;

(c) Dry cleaning operators shall manage solvent contaminated wastewater generated in the water separation process in accordance with rules adopted by the Environmental Quality Commission;

(d) A dry cleaning facility may not include operation of transfer-type dry cleaning equipment using perchloroethylene;

(e) All newly installed dry cleaning systems using perchloroethylene shall be of the dry-to-dry type and be equipped with integral refrigerated condensers with an outlet temperature sensor for the control of

perchloroethylene emissions;

(f) All existing dry cleaning systems using perchloroethylene shall install refrigerated condensers, or an equivalent;

(g) Every dry cleaning facility shall install secondary containment systems capable of containing dry cleaning solvent under and around each machine or item of equipment in which any dry cleaning solvent is used, treated or stored; and

(h) All perchloroethylene dry cleaning solvent shall be delivered to dry cleaning facilities by means of closed, direct-coupled delivery systems.

(2) The Department of Environmental Quality may authorize the use of alternative measures at a dry cleaning facility in lieu of one or more of the measures described under subsection (1) of this section upon proof satisfactory to the department that the alternative measures can provide equivalent protection for public health and the environment, can achieve equivalent waste minimization and are consistent with other applicable laws and regulations.

(3) Every dry cleaning and dry store operator shall provide annually to the department on forms to be supplied by the department, information regarding compliance with the waste minimization requirements set forth in subsection (1) of this section and any other information as the department considers necessary for carrying out the purposes of ORS 465.200 and 465.500 to 465.545.

(4) Notwithstanding any law to the contrary, a dry cleaning operator for a facility having a release of dry cleaning solvents shall immediately report any release exceeding one pound to the notification system managed by the Office of Emergency Management pursuant to ORS 401.094.

(5) The Environmental Quality Commission shall adopt rules necessary to implement ORS 465.200 and 465.500 to 465.545, including but not limited to rules implementing the recommendations of the advisory group established under ORS 465.507 or requiring the implementation of new waste minimization technologies. [1995 c.427 §5; 1999 c.59 §132; 2001 c.495 §3]

465.507 Dry cleaning advisory group. (1) The Director of the Department of Environmental Quality shall appoint an advisory group comprised of members representing a balance of at least the following interests:

(a) Dry cleaning operators;

(b) Dry cleaning owners;

(c) Dry cleaning industry members other than owners and operators;

(d) Citizens;

(e) Environmental organizations; and

(f) Local governments.

(2) The advisory group shall meet periodically to review and advise the Department of Environmental Quality regarding:

(a) Methods and standards for removal and remedial actions as applied by the department at dry cleaning facilities;

(b) Waste minimization rules, guidelines and requirements as applied to dry cleaning facilities, including new technologies and industry practices;

(c) The department's use of the Dry Cleaner Environmental Response Account, including use at multiple-source sites;

(d) The adequacy of revenue generated by fees assessed under ORS 465.517, 465.520 and 465.523 for meeting the costs of removal and remedial actions at dry cleaning facilities; and

(e) Any other matters pertinent to the purposes of ORS 465.200 and 465.500 to 465.545.

(3) The advisory group shall develop goals for the department that relate to the cleanup of contamination resulting from dry cleaning facilities. In developing the goals, the group may review and monitor the administrative costs of the department for implementing ORS 465.500 to 465.545 and shall include recommendations for:

(a) Reducing administrative costs;

(b) Prioritizing dry cleaning facilities that have confirmed releases for removal or remedial action;

(c) Determining and limiting the ultimate cost of removal or remedial actions at dry cleaning facilities paid from the Dry Cleaner Environmental Response Account; and

(d) Determining the ultimate cost of future liability to the state for removal or remedial actions at dry cleaning facilities not covered by the Dry Cleaner Environmental Response Account. [1995 c.427 §6; 1999 c.59 §133; 2001 c.495 §4; 2003 c.407 §3]

465.510 Dry Cleaner Environmental Response Account; use; deductible amounts for expenditures. (1) The Dry Cleaner Environmental Response Account is established separate and distinct from the General

Fund in the State Treasury. All moneys collected under ORS 465.517, 465.520 and 465.523, all account expenditures recovered or otherwise received, penalties assessed under ORS 465.992 and all interest earned on moneys in the account shall be credited to the account.

(2) All moneys in the Dry Cleaner Environmental Response Account are continuously appropriated to the Department of Environmental Quality and, except as provided under this section, may be expended solely for the following purposes:

(a) Remedial action costs incurred by the department as a result of a release at or from a dry cleaning facility;

(b) Preapproved remedial action costs incurred by a person performing removal or remedial action as a result of a release at or from a dry cleaning facility under a department order or agreement expressly authorizing reimbursement from the account;

(c) The department's costs of program development, administration, enforcement and cost recovery; and

(d) The department's indirect costs attributable to removal or remedial action due to a release at or from a dry cleaning facility.

(3) The department may expend Dry Cleaner Environmental Response Account moneys only for those remedial action costs defined in ORS 465.200 (24) that are reasonable in the department's judgment. The department shall consider at least the following factors, to the extent relevant information is available, in determining the order in which removals or remedial actions shall receive funding and the amount of funding:

(a) The dry cleaning facility's risk to public health and the environment. Each facility's risk shall be evaluated relative to the risk posed by other facilities.

(b) The need for removal or remedial action at the dry cleaning facility relative to account availability and the need for removal or remedial actions at other facilities.

(c) The nature of the activities for which expenditures are necessary, in the following order of preference:

(A) Direct cost of cleanup, provided that adequate technical investigation has been completed;

(B) Direct cost of technical investigation and remedy evaluation;

(C) Administrative and indirect costs; and

(D) Enforcement, cost recovery and legal costs.

(4) If the department takes action at a facility, location or area where hazardous substances have been released as a result of both dry cleaning operations and other activities, including but not limited to laundry operations, account moneys may be used only for that portion of the removal or remedial action determined by the department to be necessitated by the release of dry cleaning solvent by the dry cleaning facility.

(5) Moneys in the account expended for remedial action costs may be expended solely for costs in excess of the following deductible amounts:

(a) For a release from a dry cleaning facility employing five or fewer individuals at the time of release, including any dry cleaning owner, dry cleaning operator or full-time employee, $5,000;

(b) For a release from a dry cleaning facility employing more than five individuals at the time of release, including any dry cleaning owner, dry cleaning operator or full-time employee, $1,000 per owner, operator or full-time employee up to $10,000; and

(c) For a release from an inactive site, $10,000.

(6) The dry cleaning owner or dry cleaning operator of the facility shall be responsible for:

(a) Paying the deductible amount. The department may bring a civil action to recover any moneys expended from the account in payment of costs properly payable under this paragraph by the dry cleaning owner or dry cleaning operator.

(b) Investigating whether an insurance policy provides coverage for the costs arising from a release or threatened release and obtaining payment for those costs. In order to receive an exemption from administrative action, judicial action or liability under ORS 465.503, the dry cleaning owner or dry cleaning operator:

(A) Must initiate all actions reasonably necessary to obtain coverage from an insurance policy that may be available to pay costs associated with a release or threatened release; and

(B) May not take any action that may prejudice the owner's or operator's ability to obtain, under an insurance policy, coverage of or payment of costs associated with a release or threatened release.

(7) The department may not expend moneys out of the Dry Cleaner Environmental Response Account:

(a) For the payment of any claim or judgment against the state or its agencies for loss of business, damage or destruction of property or personal injury arising from removal or remedial action undertaken under ORS 465.260.

(b) For remedial action and other costs under this section if the dry cleaning owner or dry cleaning operator failed to comply with the waste minimization requirements under ORS 465.505, and the failure to comply with the requirements is determined by the department to be a contributing factor in the release. [1995 c.427 §7; 2001 c.495 §5; 2003 c.407 §4]

465.515 [1995 c.427 §8; 2001 c.495 §6; repealed by 2003 c.407 §29]

465.517 Annual fee and gross revenue fee for dry cleaning facilities. (1) In addition to any other tax or fee imposed by law, there is assessed on dry cleaning facilities the following annual fees:

(a) For any dry cleaning facility that utilized any solvent prior to January 1, 1998, $500.

(b) For any dry cleaning facility that, after January 1, 1998, has utilized or utilizes, during any part of the annual fee period, perchloroethylene, $500.

(2) Notwithstanding subsection (1) of this section, if the dry cleaning owner or dry cleaning operator has an expanded preliminary assessment, including field testing, conducted at the facility in a manner approved by the department and the assessment shows that no release of solvents has occurred, a dry cleaning facility may:

(a) Be permanently exempted from payment of the fee under subsection (1)(a) of this section; and

(b) Receive a credit of $1,000 for payments required by subsection (1) of this section.

(3) In addition to any other tax or fee imposed by law, there is assessed on an active dry cleaning facility an annual fee in the amount of one percent of the gross revenue of dry cleaning services that the facility generates in the annual fee period. Gross revenue does not include revenues of a dry cleaning facility received for services to a dry store not owned or operated by the dry cleaning facility.

(4) The fees assessed shall be due on the first day of each calendar year that the facility operates as a dry cleaning facility and shall be prorated for partial year operation.

(5) A dry cleaning owner or dry cleaning operator shall pay the fees imposed under this section in a single payment, payable on March 1. [1995 c.427 §9; 1999 c.1047 §1; 2001 c.495 §7; 2003 c.407 §5]

465.520 Fee on sale or transfer of dry cleaning solvent; exemption. (1) In addition to any other tax or fee imposed by law, a fee, payable by the seller or transferor, is imposed on:

(a) The retail sale or transfer within this state of dry cleaning solvent on or after January 1, 1996; and

(b) The transfer of dry cleaning solvent from an off-site reclamation facility.

(2) The fee on each gallon of dry cleaning solvent is the result obtained from multiplying the solvent factor of the dry cleaning solvent by $10.

(3) The solvent factor for each dry cleaning solvent is the amount listed in the following table:

Dry Cleaning Solvent	Solvent Factor
Perchloroethylene	1.00
Any other solvent	0.20

(4) Notwithstanding subsections (1) and (2) of this section, no fee shall be imposed on the retail sale or transfer of any dry cleaning solvent if, prior to the retail sale or transfer, the purchaser or transferee provides the seller or transferor with a certificate stating that:

(a) The dry cleaning solvent will not be used in a dry cleaning facility; or

(b) The purchaser or transferee does not operate a dry cleaning facility. [1995 c.427 §10; 1997 c.249 §161; 2001 c.495 §14; 2003 c.407 §6]

465.523 Fee on use of dry cleaning solvent. (1) In addition to any other tax or fee imposed by law, a fee is imposed on the use of dry cleaning solvent at a dry cleaning facility within this state if:

(a) The purchaser or transferee of the solvent did not receive a bill or invoice showing the correct fee imposed under ORS 465.520 on the retail sale or transfer; or

(b) No fee was paid with respect to the retail sale or transfer and the purchaser or transferee had reason to believe that no fee would be paid.

(2) The fee imposed by this section equals the fee that should have been imposed on the retail sale or transfer of the dry cleaning solvent by ORS 465.520 less the fee, if any, shown on the bill or invoice. [1995 c.427 §11; 1999 c.59 §134]

465.525 Calculation of fee for partial gallons; refund or credit. (1) For a fraction of a gallon, the fee imposed under ORS 465.520 and 465.523 shall be proportionate to the fee imposed on a whole gallon.

(2) If the fee is paid pursuant to ORS 465.520 and 465.523 on dry cleaning solvent that is subsequently

resold or exported from this state and not reimported for use in a dry cleaning facility, the reseller or exporter of the dry cleaning solvent is entitled to claim a refund or credit for the fee on the dry cleaning solvent that was paid by the reseller or exporter. The Department of Environmental Quality may require a fee payer claiming a refund to provide proof that the fee was paid with respect to the dry cleaning solvent and proof of its use or sale in a manner not subject to fee assessment. [1995 c.427 §13; 2003 c.407 §7]

465.527 Reporting of fees. The fees imposed by ORS 465.517, 465.520 and 465.523 shall be paid pursuant to information reported on forms supplied by the Department of Environmental Quality. [1995 c.427 §14; 2001 c.495 §8; 2003 c.407 §8]

465.530 [1995 c.427 §15; repealed by 2003 c.407 §29]

465.531 Department of Environmental Quality may contract for collection of fees. The Department of Environmental Quality, in consultation with the advisory group established under ORS 465.507, may contract with a private or public entity for the provision of services to implement the objectives of ORS 465.517 to 465.545. The department may contract for the collection of fees, charges or interest from dry cleaning owners or dry cleaning operators, but the department may not delegate its authority to determine the amount of the fees, charges or interest owed. [2003 c.407 §20]

465.533 [1995 c.427 §16; 2001 c.495 §9; repealed by 2003 c.407 §29]

465.535 [1995 c.427 §17; 2001 c.495 §10; repealed by 2003 c.407 §29]

465.536 Late charges; enforcement by Department of Revenue. (1) If a person fails to submit the fees imposed by ORS 465.517, 465.520 and 465.523 by the date shown on the form supplied under ORS 565.527, the Department of Environmental Quality shall assess a late charge equal to 10 percent of the unpaid amount. An additional late charge of 10 percent of the unpaid amount shall be assessed for each 30-day period that the fees remain unpaid. If the invoice remains unpaid after three additional late charges are incurred, the department may not assess further charges.

(2) If the department is unable to collect fees, charges or interest imposed by this section or ORS 465.517, 465.520 or 465.523, the department may authorize the Director of the Department of Revenue to collect the fees, charges or interest in the manner provided by ORS chapters 305 and 314.

(3) The Department of Environmental Quality may request tax information and financial records necessary to perform audits and examinations to verify fee-related information submitted by persons who pay fees under ORS 465.517, 465.520 and 465.523. All tax information and financial records obtained by the department pursuant to this subsection are exempt from public disclosure under ORS 192.410 to 192.505. [2003 c.407 §10]

Note: 465.536 was added to and made a part of 465.500 to 465.545 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

465.537 [1995 c.427 §18; 1999 c.1047 §2; 2001 c.495 §11; repealed by 2003 c.407 §29]

465.540 [1995 c.427 §19; repealed by 2003 c.407 §29]

465.543 [1995 c.427 §20; repealed by 2003 c.407 §29]

465.545 Suspension of dry cleaning fees; recommendation to Legislative Assembly. (1) Upon a determination by the Director of the Department of Environmental Quality that necessary removal and remedial action is completed and paid for at all dry cleaning facilities having a confirmed release of dry cleaning solvent, the director shall report to the next following session of the Legislative Assembly with a recommendation for the suspension of the fees, other than the annual license fee, imposed under ORS 465.517, 465.520 and 465.523.

(2) The Director of the Department of Environmental Quality shall give notice of the intent to make the recommendation described under subsection (1) of this section at least one year prior to the date recommended by the director as the date of suspension.

(3) The provisions of ORS 465.500, 465.503, 465.505 and 465.510 apply retroactively to releases of dry cleaning solvents occurring before June 30, 1995. [1995 c.427 §21; 2001 c.495 §12; 2003 c.407 §22]

465.546 [1999 c.1047 §4; repealed by 2003 c.407 §29]

465.548 [1999 c.1047 §5; 2001 c.495 §13; repealed by 2003 c.407 §29]

CHEMICAL AGENTS

465.550 Definitions for ORS 465.550 and 465.555. As used in ORS 465.550 and 465.555:

(1) "Chemical agents" means:

(a) Blister agents, such as mustard gas;

(b) Nerve agents, such as sarin and VX;

(c) Residues from demilitarization, treatment and testing of blister agents; and

(d) Residues from demilitarization, treatment and testing of nerve agents.

(2) "Major recovery action" means a recovery action that will take more than one year to complete and that will employ 200 or more individuals.

(3) "Major remedial action" means a remedial action that will take more than one year to complete and that will employ 200 or more individuals.

(4) "Owner" means a person or the State of Oregon, the United States of America or any agency, department or political subdivision thereof that owns, possesses or controls property upon which a remedial or recovery action involving stored chemical agents is conducted.

(5) "Recovery action" means any activity designed to mitigate the effects of an unintended release of chemical agents into the air, water or soil of this state.

(6) "Remedial action" means any activity intended to prevent the release of chemical agents into the air, water or soil of this state. "Remedial action" includes controlled destruction of chemical agents. [1997 c.554 §1]

Note: 465.550 and 465.555 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 465 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

465.555 County assessment of effects of major recovery or remedial action at storage or disposal site for chemical agents; annual fee. (1) If a site for the storage or disposal of chemical agents is located within a county and if a major recovery or major remedial action is anticipated to occur at the site, the governing body of the county may conduct an assessment of the social and economic effects on communities within the county that are likely to occur by reason of the major recovery or major remedial action.

(2) When assessing the effects on communities caused by the major recovery or major remedial action, the county governing body may consider, among other matters, the following:

(a) Effects upon roads and streets;

(b) Effects upon existing sewer and water systems;

(c) Effects upon schools;

(d) Effects upon medical facilities and services;

(e) Additional law enforcement requirements;

(f) Additional housing requirements; and

(g) Technical planning requirements.

(3) After completion of the assessment required under this section, the county governing body may impose upon the owner of the site an annual fee reasonably calculated to mitigate the social and economic effects on communities that are occurring or that are likely to occur by reason of the major recovery or major remedial action. The annual fee may be imposed during the first year in which the major recovery or major remedial action is conducted and in each succeeding year for the duration of the major recovery or major remedial action. When a fee is imposed under this section, the fee shall be reviewed in each year and may be adjusted when circumstances make an adjustment necessary or appropriate. The total aggregate fee imposed under this section shall not exceed five percent of the total aggregate cost of the major recovery or major remedial action.

(4) If the entity responsible for conducting the major recovery or major remedial action is different from the owner of the site at which the major recovery or major remedial action is conducted, the fee authorized by this section may be imposed upon either the owner or the entity or upon both jointly. [1997 c.554 §2]

Note: See note under 465.550.

CIVIL PENALTIES

465.900 Civil penalties for violation of removal or remedial actions. (1) In addition to any other penalty provided by law, any person who violates a provision of ORS 465.200 to 465.545, or any rule or order entered or adopted under ORS 465.200 to 465.545, shall incur a civil penalty not to exceed $25,000 a day for each day that such violation occurs or that failure to comply continues.

(2) The civil penalty authorized by subsection (1) of this section shall be imposed in the manner provided by ORS 468.135, except that a penalty collected under this section shall be deposited in the Hazardous Substance Remedial Action Fund established under ORS 465.381, if the penalty pertains to a release at any facility. [Formerly 466.900; 1991 c.734 §34; 2009 c.267 §3]

465.990 [Amended by 1953 c.540 §5; repealed by 1989 c.846 §15]

465.992 Civil penalty for failure to pay fees. (1) Any dry cleaning operator who fails to pay a fee required under ORS 465.517, 465.520 or 465.523 shall incur a civil penalty of not more than $5,000. The penalty shall be recovered as provided in subsection (2) of this section.

(2) Any person against whom a penalty is assessed under subsection (1) of this section may appeal to the tax court as provided in ORS 305.404 to 305.560. If the penalty is not paid within 10 days after the order of the tax court becomes final, the Department of Revenue may record the order and collect the amount assessed in the same manner as income tax deficiencies are recorded and collected under ORS 314.430. [1999 c.1047 §6]

Note: 465.992 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 465 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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