# ORS Chapters 465.200-550 & 465.900
# 1997 Edition
# Hazardous Waste and Hazardous Materials I

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**REMOVAL OR REMEDIAL ACTION**

**(Generally)**

**465.200 Definitions for ORS 465.200 to 465.510.** As used in ORS 465.200 to 465.510 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 created 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;
(c) Prison or other penal institution; or
(d) Facility engaged in dry cleaning operations only as a dry store and selling less than $50,000 per year of dry cleaning services.
(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 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.
(10) "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.
(11) "Environment" includes the waters of the state, any drinking water supply, any land surface and subsurface strata and ambient air.
(12) "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.
(13) "Fund" means the Hazardous Substance Remedial Action Fund established by ORS 465.381.
(14) "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 465.510 and 465.900.
(15) "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.
(16) "Inactive dry cleaning facility" means property formerly used, but not currently used, for providing dry cleaning services.
(17) "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.
(18) "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.
(19) "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.
(20) "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.
(21) "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.

(22) "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.
(23) "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.
(24) "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.
(25) "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.
(26) "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.
(27) "Underground storage tank" has the meaning given that term in ORS 466.706.
(28) "Waters of the state" has the meaning given that term in ORS 468B.005.
*[Formerly 466.540; 1995 c.427 s.1]*

**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 465.510 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 465.510 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 465.510 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 183.310 to 183.550.
*[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 183.310 to 183.550.
(5) The notice provided under subsection (4) of this section shall include the preliminary assessment and shall inform the owner or operator that the owner or operator may comment on the information contained in the preliminary assessment within 45 days after receiving the notice. For good cause shown, the department may grant an extension of time to comment. The extension shall not exceed 45 additional days.
(6) The director shall consider relevant and appropriate information submitted by the owner or operator in making the final decision about whether to add a facility to the inventory.
(7) The director shall review the information submitted and add the facility to inventory if the director determines that a confirmed release has occurred and that additional investigation, removal, remedial action, long-term environmental controls or institutional controls are needed to assure protection of present and future public health, safety, welfare or the environment.
*[1989 c.485 s.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 s.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 decree under ORS 465.200 to 465.510; 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 s.5]*

**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 465.510 and 465.900.
*[1989 c.485 s.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**.
(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 465.510 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 465.510 and 465.900.
(c) Nothing in ORS 465.200 to 465.510 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 465.510 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 465.510 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 s.9; 1991 c.692 s.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 s.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.**
(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 465.510 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 183.310 to 183.550, 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 s.103]*

**465.270 Policy.**
(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 465.510 or, at the discretion of the department, under other applicable authorities.
*[1989 c.833 s.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 s.104]*

**465.280 Rules; insuring tax deductibility of interest on bonds.** In accordance with the applicable provisions of ORS 183.310 to 183.550, the Environmental Quality Commission may adopt rules necessary to carry out the provisions of ORS 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 s.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 s.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 s.107]*

**465.295 Decision regarding financial assistance not subject to judicial review**. Notwithstanding any provision of ORS 183.310 to 183.550, 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 s.108]*

**465.300 Records and financial assistance applications not subject to judicial review**. 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 s.109]*

**465.305 Application fees.** 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 s.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 s.111]*

**465.315 Standards for degree of cleanup required; Hazard Index; risk protocol; hot spots of contamination; exemption.**
(1)(a) Any removal or remedial action performed under the provisions of ORS 465.200 to 465.510 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, where 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.
(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) Within 18 months after July 18, 1995, 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 465.510 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 s.102; 1995 c.662 s.1]*

**465.320 Notice of cleanup action; receipt and consideration of comment; notice of approval.** Except as provided in ORS 465.260 (3), before approval of any remedial action to be undertaken by the Department of Environmental Quality or any other person, or adoption of a certification decision under ORS 465.325, 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.
(4) Upon final approval of the remedial action, publish notice, as provided under subsection (1) of this section, and make copies of the approved action available to the public.
*[Formerly 466.575]*

**465.325 Agreement to perform removal or remedial action; reimbursement; agreement as order and consent decree; effect on liability.**

(1) 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 183.310 to 183.550, 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.

(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 465.510 and 465.900 or under other relevant authority.

(b) Notwithstanding ORS 183.310 to 183.550, 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 465.510 and 465.900 against any person who is not a party to the agreement.

(4)(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 decree. 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 decree.

(b) The entry of any consent decree 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 decree so that the entering of the decree and compliance with the decree 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 decree, 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 465.510 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 decree 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 465.510 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 decree.
(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 decree 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 465.510 and 465.900.
(9)(a) Notwithstanding ORS 183.310 to 183.550, 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 decree 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 decree, 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 decree 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 465.510 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 theparty's challenge to the director's decision was delay for economic gain.
*[Formerly 466.577; 1995 c.662 s.2]*

**465.327 Agreement to release party from potential liability to state to facilitate cleanup and reuse of property; eligible parties; terms 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 to the state under ORS 465.255, if:
(a) The party is not currently liable under ORS 465.255 for an existing release of hazardous substance at the facility;
(b) Removal or remedial action is necessary at the facility to protect human health or the environment;
(c) The proposed redevelopment or reuse of the facility will not contribute to or exacerbate existing contamination, increase health risks or interfere with remedial measures necessary at the facility; and
(d) A substantial public benefit will result from the agreement, including but not limited to:
(A) The generation of substantial funding or other resources facilitating remedial measures at the facility in accordance with this section;
(B) A commitment to perform substantial remedial measures at the facility in accordance with this section;
(C) Productive reuse of a vacant or abandoned industrial or commercial facility; or
(D) Development of a facility by a governmental entity or nonprofit organization to address an important public purpose.
(2) In determining whether to enter an agreement under this section, the department shall consult with affected land use planning jurisdictions and consider reasonably anticipated future land uses at the facility and surrounding properties.
(3) An agreement under this section may be set forth in an administrative consent order or other administrative agreement or in a judicial consent decree entered in accordance with ORS 465.325. 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) Subject to the satisfactory performance by the party of its obligations under the agreement, the party shall not be liable to the State of Oregon under ORS 465.200 to 465.510 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. The party shall bear the burden of proving that any hazardous substance release existed before the date of acquisition of ownership of the facility. This release from liability shall not affect a party's liability for claims arising from any:
(a) Release of a hazardous substance at the facility after the date of acquisition of ownership or operation;
(b) Contribution to or exacerbation of a release of a hazardous substance;
(c) Interference or failure to cooperate 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 with respect to any hazardous substance at the facility; and
(e) Violation of federal, state or local law.
(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 under ORS 465.255 for a release of a hazardous substance at the facility 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.
*[1995 c.662 s.4]*

**465.330 State 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 s.8]*

**465.335 Costs 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.**
(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 465.510 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 465.510 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 465.510 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 465.510 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 465.510 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 465.510 and 465.900 at a facility, or any removal under ORS 465.200 to 465.510 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 s.2]*

**465.375 Monthly fee of operators.**
(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 portion of the fee under subsection (2) of this section, $10 per ton shall be included as part of the hazardous waste management fee.
(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 s.1; 1995 c.552 s.1]*

**Note: Section 2, chapter 443, Oregon Laws 1997, provides:**
**Sec. 2. (1) Notwithstanding ORS 465.375 (2) and (3), for the period beginning July 1, 1997, and ending December 31, 1999, the hazardous waste management fee under ORS 465.375 shall be:**
**(a) $7.50 per ton for waste:**
**(A) That is a characteristic hazardous waste at the point of generation and that has been treated at the facility or off-site so that the waste no longer exhibits the characteristics of a hazardous waste and complies with any applicable land disposal restriction requirements; or**
**(B) That is liquid waste when received and treated at a wastewater treatment unit at the facility so that the waste does not exhibit any hazardous waste characteristic and the resulting liquid is managed at a permitted unit at the facility.**
**(b) $20 per ton for up to 37,500 tons from any single event at a facility, site or unit, and $10 per ton for 37,500 tons or more from any single event at a facility, site or unit for 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 hazardous waste management unit.**
**(c) $2 per ton for waste that is:**
**(A) Solid waste resulting from cleanup activities 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**
**(B) 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) 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 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.**
**(3) 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). [1997 c.443 s.2]**

**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 s.4]*

**465.380** [Formerly 466.590; 1991 c.703 s.47; 1991 c.721 s.2; repealed by 1993 c.707 s.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 465.510 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.
(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 s.5 (enacted in lieu of 465.380)]*

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

**465.386 Commission authorized to increase fees; basis of increase; amount of increase.**
(1) Notwithstanding the totals established in ORS 453.402 and 459.236, after July 1, 1993, 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 453.400 and 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 s.7 (enacted in lieu of 465.385)]*

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

**465.391 Effect of certain laws on personal liability.** 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 s.9 (enacted in lieu of 465.390)]

**465.400 Rules; designation of hazardous substance.**
(1) In accordance with the applicable provisions of ORS 183.310 to 183.550, the Environmental Quality Commission may adopt rules necessary to carry out the provisions of ORS 465.200 to 465.510 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 s.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 s.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 465.510 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 Definition of security interest holder**. 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 s.2]*

**465.430 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 s.3]*

**465.435 Rules.**
(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 s.4]*

**465.440 Exemption from liability for environmental contamination**. 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 s.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 s.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 s.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 s.8]*

**(Cleanup of Contamination Resulting from Dry Cleaning Facilities)**

**465.500 Purpose.**
(1) The purposes of ORS 465.503 to 465.540 are:
(a) To create a 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 465.510 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 s.3]*

**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, 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 465.510 and 465.900 or any other statute or regulation.
(2) Except as provided under subsections (3), (4) and (5) of this section, 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 shall be prima facie evidence that the dry cleaning owner or dry cleaning operator exercised due care.
(3) The provisions of subsections (1) and (2) of this section do not apply to a dry cleaning owner or 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 a violation 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 to 465.523 in relation to dry cleaning activity at any dry cleaning facility.
(4) The provisions of subsections (1) and (2) of this section do not apply to a dry cleaning owner if 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 s.4]*

**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 measures shall apply to dry cleaning facilities:
(a) All wastes, excluding wastewater, generated at any dry cleaning facility and containing dry cleaning solvents, including residues and filters, shall be managed, 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) Beginning three years after June 30, 1995, wastewater from dry cleaning machines shall not be discharged to any sanitary sewer or septic tank or to the waters of this state;
(c) Beginning three years after June 30, 1995, no dry cleaning facility shall include operation of transfer-type dry cleaning equipment using perchloroethylene;
(d) Beginning on June 30, 1995, all newly installed dry cleaning systems using perchloroethylene shall be of the dry-to-dry type and be equipped with integral refrigerated condensers for the control of perchloroethylene emissions;
(e) Within three years from June 30, 1995, all existing dry cleaning systems using perchloroethylene shall install refrigerated condensers or an equivalent;
(f) Within three years from June 30, 1995, every dry cleaning facility shall install containment tanks capable of containing any leak, spill or release of dry cleaning solvent under and around each machine or item of equipment in which any dry cleaning solvent is used; and
(g) Beginning three years after June 30, 1995, 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) Beginning March 1, 1997, and annually thereafter, every dry cleaning operator shall provide to the department, on forms to be supplied by the department, information regarding compliance with the waste minimization measures 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, upon June 30, 1995, any release of dry cleaning solvents exceeding one pound shall be immediately reported to the department by the dry cleaning operator for the facility having the release.
(5) The Environmental Quality Commission is authorized to 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 s.5]*

**465.507 Dry cleaning advisory group; report to Legislative Assembly.**
(1) Within 180 days after June 30, 1995, 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 industry members other than operators;
(c) Citizens;

(d) Environmental organizations; and
(e) 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 and other 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 to 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 department shall report to the Seventieth Legislative Assembly regarding implementation of ORS 465.200 and 465.500 to 465.545. The report shall include any recommendations for amendment of ORS 465.200 and 465.500 to 465.545 considered necessary by the department to ensure the adequate and timely cleanup of contamination at dry cleaning facilities. *[1995 c.427 s.6]*

**465.510 Dry Cleaner Environmental Response Account; use; increase of fees; 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 to 465.523, all account expenditures recovered or otherwise received 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, shall 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 (23) 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 shall 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) Beginning October 1, 1998, and annually thereafter, the retail sale or transfer fee otherwise applicable for that year under ORS 465.520 shall be increased by $4 if fees paid under ORS 465.517 to 465.523 fail to generate $1 million or more during the preceding 12-month period.
(6) Moneys in the account expended for remedial action costs shall be expended solely for costs in excess of the following deductible amounts:
(a) For release from a dry cleaning facility employing four or fewer individuals at the time of release, including any dry cleaning owner, dry cleaning operator or part-time employee, $5,000; and
(b) For a release from a dry cleaning facility employing more than four individuals at the time of release, including any dry cleaning owner, dry cleaning operator or part-time employee, $10,000.
(7) The dry cleaning owner or dry cleaning operator of the facility shall be responsible for 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 subsection by the dry cleaning owner or dry cleaning operator.
(8) No moneys shall be expended out of the Dry Cleaner Environmental Response Account 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 465.500 to 465.510.

*[1995 c.427 s.7]*

**465.515 Definitions. As used in ORS 465.517 to 465.545:**
(1) "Department" means the Department of Revenue.
(2) "Director" means the Director of the Department of Revenue.
(3) "Dry Cleaner Environmental Response Account" has the meaning given under ORS 465.200.
(4) "Dry cleaning facility" has the meaning given under ORS 465.200.
(5) "Dry cleaning operator" has the meaning given under ORS 465.200.
(6) "Dry cleaning solvent" has the meaning given in ORS 465.200.
(7) "Dry store" has the meaning given in ORS 465.200.
(8) "Facility" has the meaning given in ORS 465.200.
(9) "Person" has the meaning given in ORS 465.200.
(10) "Release" has the meaning given in ORS 465.200.
(11) "Remedial action" has the meaning given in ORS 465.200.
(12) "Retail sale or transfer" has the meaning given in ORS 465.200.
*[1995 c.427 s.8]*

Note: 465.515 to 465.545 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 465 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**465.517 Operating fee.**
(1) In addition to any other tax or fee imposed by law, there is imposed on the privilege of operating an active dry cleaning facility within this state an annual fee of:
(a) $500 for each dry store selling $50,000 or more of dry cleaning services annually; and
(b) $1,000 for each dry cleaning facility.
(2) The fee 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. The fee shall only apply to the operation of dry cleaning facilities on or after January 1, 1996.
*[1995 c.427 s.9]*

**Note: See note under 465.515.**

**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 is imposed on the retail sale or transfer within this state of dry cleaning solvent on or after January 1, 1996. The fee shall be paid by the seller or transferor.
(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 the following rate:
(a) $12 for any retail sale or transfer in 1996.
(b) For any retail sale or transfer after 1996, 103 percent of the sale or transfer fee rate applicable for the prior year, rounded to the nearest cent. However, if the rate applicable to the prior year was increased by $4 under ORS 465.510 (5), the 103 percent shall be calculated based upon the rate that would have applied without the $4 increase.
(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 s.10; 1997 c.249 s.161]*

**Note: See note under 465.515.**

**465.523 Fee on use of dry cleaning solvent; exemption.**

(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.
(3) This section shall not apply to dry cleaning solvent assessed a fee under section 12, chapter 427, Oregon Laws 1995.
*[1995 c.427 s.11]*

**Note: See note under 465.515.**

**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 Revenue 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 s.13]*

Note: See note under 465.515.

**465.527 Payment of fees; extension; interest.**
(1) The fees imposed by ORS 465.520 and 465.523 in any calendar quarter shall be due and payable on the 20th day of the month following the end of the calendar quarter. The fees imposed by ORS 465.517 to 465.523 shall be reported on forms supplied by the Department of Revenue.
(2) The department for good cause may extend for not to exceed 30 days the time for making any report or paying any fee required under ORS 465.517 to 465.523. The extension may be granted at any time if a request therefor is filed with the department on or before the due date of the report or fee payment.
(3) Any person to whom an extension is granted shall pay, in addition to the fee, interest at the rate established under ORS 305.220 for each month, or fraction thereof, from the date on which the fee would have been due without the extension to the date of payment.
*[1995 c.427 s.14]*

**Note: See note under 465.515.**

**465.530 Failure to comply with report requirements; determination of fee due.**
(1) If the Department of Revenue is dissatisfied with the report filed by any person, or if any person fails to file a report, the department shall contact the person required to file the report and request the immediate payment of the amount the department determines to be due. If the person makes immediate payment in full of the amount determined by the department to be due, the delay in payment shall not be considered to have caused any interruption in the application of ORS 465.503 (1) and (2).
(2) The department may compute and determine the amount to be paid under ORS 465.517 to 465.523 upon the basis of any information available to the department. One or more deficiency determinations of the fee due for one or more months shall be made.
(3) The amount of the determination, exclusive of penalties, shall bear interest at the rate established under ORS 305.220 for each month, or fraction thereof, from the 20th day after the close of the calendar quarter for which the fee, or any portion thereof, should have been reported until the date of payment.
(4) In making a determination, the department may offset overpayments for a calendar quarter or calendar quarters against underpayments for another month or months and against the interest and penalties on the underpayments.
*[1995 c.427 s.15]*

**Note: See note under 465.515.**

**465.533 Jeopardy determination; petition for redetermination.**

(1) If the Department of Revenue believes that the collection of any fee required to be paid by any person under ORS 465.517 to 465.523 will be jeopardized by delay, it shall thereupon make a determination of the fee, noting that fact in the determination. The amount determined is immediately due and payable, with interest and penalty as provided in ORS 465.527 and 465.530.
(2) If the fee, interest and penalty specified in the jeopardy determination is not paid within 20 days after service upon the person of notice of the determination, the determination becomes final, unless a petition for redetermination is filed within the 20 days.
(3) The person against whom a jeopardy determination is made may petition for the redetermination thereof. The person shall, however, file the petition for redetermination with the department within 20 days after the service upon the person of notice of the determination.
(4) The person shall at the time of filing the petition for redetermination deposit with the department any security as it may deem necessary to ensure compliance with this section and ORS 465.517 to 465.523, 465.527 and 465.530. The security may be sold by the department at public sale, if necessary, in order to recover any amount due. Notice of the sale may be served upon the person who deposited the security personally or by mail. Upon sale, the surplus, if any, above the amount due under this section and ORS 465.517 to 465.523, 465.527 and 465.530 shall be returned to the person who deposited the security.
*[1995 c.427 s.16]*

**Note: See note under 465.515.**

**465.535 Applicability of ORS chapters 305 and 314.** Unless the context requires otherwise, the provisions of ORS chapters 305 and 314 pertaining to the audit and examination of returns, periods of limitations, determination of and notices of deficiencies, assessments, warrants, liens, delinquencies, claims for refund and refunds, conferences, appeals to the Director of the Department of Revenue, appeals to the Oregon Tax Court, stay of collection pending appeal, confidentiality of returns and the penalties and procedures related thereto shall apply to the determinations of fees, penalties and interest under ORS 465.200 and 465.500 to 465.545.
*[1995 c.427 s.17]*

**Note: See note under 465.515.**

**465.537 Disposition of fees.** All moneys received by the Department of Revenue under ORS 465.200 and 465.500 to 465.545 shall be deposited in the State Treasury and credited to a suspense account established under ORS 293.445. After payment of administrative expenses incurred by the department in the administration of ORS 465.200 and 465.500 to 465.545 and of refunds or credits arising from erroneous overpayments, the balance of the moneys shall be credited to the Dry Cleaner Environmental Response Account.
*[1995 c.427 s.18]*

**Note: See note under 465.515.**

**465.540 Failure to comply with requirements to pay fee.**
(1) The failure to do any act required by or under the provisions of ORS 465.517 to 465.523, 465.527 or 465.533 shall be deemed an act committed in part at the office of the Department of Revenue in Salem, Oregon.
(2) The certificate of the department to the effect that a fee has not been paid, that a return has not been filed or that information has not been supplied as required by or under the provisions of ORS 465.517 to 465.523 or 465.527 to 465.533 shall be prima facie evidence that the fee has not been paid, that the return has not been filed or that the information has not been supplied.
*[1995 c.427 s.19]*

**Note: See note under 465.515.**

**465.543 Department of Revenue enforcement; authority.**
(1) The Department of Revenue shall enforce the provisions of ORS 465.517 to 465.540 and may prescribe, adopt and enforce rules relating to the administration and enforcement of ORS 465.517 to 465.540.
(2) The department may employ accountants, auditors, investigators, assistants and clerks necessary for the efficient administration of ORS 465.517 to 465.540 and may designate representatives to conduct hearings or perform any other duties imposed upon the department by ORS 465.517 to 465.540.
*[1995 c.427 s.20]*

**Note: See note under 465.515.**

**465.545 Repeal 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 repeal of the fees imposed under ORS 465.517 to 465.523 and for repeal of the immunity granted under ORS 465.503 for any release occurring or discovered after the date of repeal.
(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 repeal.
(3) The provisions of ORS 465.500 to 465.510 shall apply retroactively to releases of dry cleaning solvents occurring before June 30, 1995.
[1995 c.427 s.21]

**Note: See note under 465.515.**

**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 s.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 s.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 465.200 to 465.510, or any rule or order entered or adopted under ORS 465.200 to 465.510, shall incur a civil penalty not to exceed $10,000 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 s.34]*

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

# Oregon Administrative Rules
# 1999 Compilation

## DEPARTMENT OF ENVIRONMENTAL QUALITY

## DIVISION 122

## HAZARDOUS SUBSTANCE REMEDIAL ACTION RULES
## (Excerpts of Ch. 340)

**340-122-0010**

**Purpose**

(1) These rules establish the standards and procedures to be used under ORS 465.200 through 465.455 and 465.900 for the determination of removal and remedial action necessary to assure protection of the present and future public health, safety and welfare, and the environment in the event of a release or threat of a release of a hazardous substance.
(2) These rules also establish the standards and procedures to be used under ORS 465.200 to 465.455 and 465.900 and ORS 466.706 to 466.835 and 466.895 for the determination of remedial action or corrective action of releases of petroleum from underground storage tanks necessary to assure protection of the present and future public health, safety and welfare, and the environment in the event of a release or threat of a release of petroleum.
(3) These rules further establish the procedures for implementation of a site discovery program for hazardous substance releases pursuant to ORS 465.215 through 465.245 and 465.405, including a process for evaluation and preliminary assessment of releases of hazardous substances, and a process for developing and maintaining a statewide list of confirmed releases and an inventory of sites requiring investigation, removal, remedial action, or related long-term engineering or institutional controls.
Stat. Auth.: ORS 465.400(1), ORS 465.405, ORS 466 & ORS 468.020
Stats. Implemented: ORS 465.200 - ORS 465.455, ORS 465.900, ORS 466.706 - ORS 466.835 & ORS 466.895
Hist.: DEQ 26-1988, f. & cert. ef. 9-16-89; DEQ 29-1988, f. & cert. ef. 11-9-89; DEQ 29-1990, f. & cert. ef. 7-13-90; DEQ 2-1997, f. & cert. ef. 2-7-97

**340-122-0020**

**Definitions**

Terms not defined in this section have the meanings set forth in ORS 465.200. Additional terms are defined as follows unless the context requires otherwise:
(1) "Alternative Technology" means a system, process, or method that permanently alters the composition of a hazardous substance through chemical, biological, or physical means so as to significantly reduce the volume, toxicity, or mobility of the hazardous substance or contaminated materials treated. Such technology may include a system, process, or method during any of the following stages of development:
(a) Available technology that is fully developed and in routine or commercial or private use;
(b) Innovative technology where cost or performance information is incomplete and where full-scale field testing is required before the technology is considered proven and available for routine use; or
(c) Emerging technology that has not successfully passed laboratory or pilot-scale testing.
(2) "Background Level" means the concentration of hazardous substance, if any, existing in the environment at the site before the occurrence of any past or present release or releases.
(3) "Director" means the Director of the Department of Environmental Quality or the Director's authorized representative.
(4) "Environment" includes the waters of the state, any drinking water supply, any land surface and subsurface strata, sediments, saturated soils, subsurface gas, or ambient air or atmosphere.
(5) "Facility" or "Site" has the meaning set forth in ORS 465.200(6).
(6) "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 as defined in ORS 465.200(11); and
(d) Any substance designated by the commission under ORS 465.400.
(7) "Permitted or Authorized Release" means a release that is from an active facility and that is subject to and in substantial compliance with a current and legally enforceable permit issued by: the Department, the United States Environmental Protection Agency; or the Lane Regional Air Pollution Authority; is in conformance with Department rules; or is otherwise in conformance with the provisions of a State Implementation Plan.
(8) "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 any threat thereof, but excludes:
(a) Any release which 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 such release is subject to the 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 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.
Stat. Auth.: ORS 465.400(1), ORS 465.405, ORS 466 & ORS 468.020
Stats. Implemented: ORS 465.200 - ORS 465.455, ORS 465.900, ORS 466.706 - ORS 466.835 & ORS 466.895
Hist.: DEQ 26-1988, f. & cert. ef. 9-16-89; DEQ 29-1990, f. & cert. ef. 7-13-90; DEQ 12-1992, f. & cert. ef. 6-9-92

**340-122-0030**

**Scope and Applicability**

These rules apply to the release or threat of release of hazardous substances into the environment, except as provided below:
(1) Exempted Releases. These rules shall not apply to releases exempted pursuant to ORS 465.200(21)(a), (b), (c), and (d).
(2) Conditional Exemption of Permitted Releases. These rules do not apply to permitted or authorized releases of hazardous substances, unless the Director determines that application of these rules might be necessary in order to protect public health, safety or welfare, or the environment. These rules may be applied to the deposition, accumulation, or migration resulting from otherwise permitted or authorized releases.
(3) Relationship to Other Cleanup Actions:
(a) Except as provided under subsection (3)(b) of this rule, these rules do not apply to releases where one of the following actions has been completed:
(A) Spill response pursuant to ORS 466.605 to 466.680;
(B) Oil spill cleanup on surface waters pursuant to ORS 468B.300 to 468B.500;
(C) Corrective action of a release of a hazardous waste pursuant to ORS 466.005 to 466.357;
(D) Cleanup pursuant to ORS 468B.005 to 468B.095.
(b) Where hazardous substances remain after completion of one of the actions referred to in subsection (3)(a), these rules apply if the Director determines that a preliminary assessment or additional investigation or remediation may be necessary to protect public health, safety, or welfare, or the environment.
(4) Corrective Action for Petroleum Releases from Underground Storage Tanks. OAR 340-122-0205 to 340-122-0360 shall apply to corrective action for releases of petroleum from underground storage tanks that are subject to ORS 466.706 to 466.835 and 466.895, except as provided under OAR 340-122-0215(2), authorizing the Director to order the remedial action or corrective action under OAR 340-122-0010 to 340-122-0110.
(5) Nothing in these rules regarding listing on the Confirmed Release List or the Inventory, OAR 340-122-0073 through 340-122-0079, shall be construed to be a prerequisite to or otherwise affect the liability of any person or the authority of the Director to undertake, order, or authorize a removal, remedial action, or other activities under ORS Chapter 465 or other applicable law.
(6) Any determination of current or reasonably likely future land uses or beneficial uses of water pursuant to these rules shall apply only for the purpose of selecting or approving removal or remedial actions under these rules.
Stat. Auth.: ORS 465.400(1), ORS 465.405, ORS 466 & ORS 468.020
Stats. Implemented: ORS 465.200 - ORS 465.455 & ORS 465.900
Hist.: DEQ 26-1988, f. & cert. ef. 9-16-89; DEQ 29-1988, f. & cert. ef. 11-9-88; DEQ 15-1989, f. & cert. ef. 7-28-89 (and corrected 8-3-89); DEQ 29-1990, f. & cert. ef. 7-13-90; DEQ 12-1992, f. & cert. ef. 6-9-92; DEQ 2-1997, f. & cert. ef. 2-7-97

**340-122-0040**

**Standards**

(1) Any removal or remedial action shall address a release or threat of release of hazardous substances in a manner that assures protection of present and future public health, safety, and welfare, and the environment.
(2) In the event of a release of a hazardous substance, remedial actions shall be implemented to achieve:
(a) Acceptable risk levels defined in OAR 340-122-0115, as demonstrated by a residual risk assessment; or
(b) Numeric soil cleanup levels specified in OAR 340-122-0045, if applicable; or
(c) Numeric cleanup standards developed as part of an approved generic remedy identified or developed by the Department under OAR 340-122-0047, if applicable; or
(d) For areas where hazardous substances occur naturally, the background level of the hazardous substances, if higher than those levels specified in subsections (2)(a) through (2)(c) of this rule.
(3) In the event of a release of hazardous substances to groundwater or surface water constituting a hot spot of contamination, treatment shall be required in accordance with OAR 340-122-0085(5) and OAR 340-122-0090.
(4) A removal or remedial action shall prevent or minimize future releases and migration of hazardous substances in the environment. A removal or remedial action and related activities shall not result in greater environmental degradation than that existing when the removal or remedial action commenced, unless short-term degradation is approved by the Director under OAR 340-122-0050(4).
(5) A removal or remedial action shall provide long-term care or management, as necessary and appropriate, including but not limited to monitoring, operation, maintenance, and periodic review.
Stat. Auth.: ORS 465.400(1), ORS 466 & ORS 468.020
Stats. Implemented: ORS 465.200 - ORS 465.455 & ORS 465.900
Hist.: DEQ 26-1988, f. & cert. ef. 9-16-89; DEQ 12-1992, f. & cert. ef. 6-9-92; DEQ 2-1997, f. & cert. ef. 2-7-97

**340-122-0045**

**Numerical Soil Cleanup Levels**

This rule provides cleanup levels for hazardous substances in soil only. Remedial actions under this rule are subject to the public participation requirements provided under ORS 465.320 and OAR 340-122-0100. A remedial action may be proposed under this rule if the criteria of sections (1) through (5) of this rule would be satisfied.
(1) The characterization of the hazardous substances and the facility has been conducted in a manner acceptable to the Department.
(2) The characterization has determined:
(a) The number and the nature of the contaminants of concern;
(b) The contaminants of concern exist in soil only;
(c) All contaminants of concern are listed on the soil cleanup table;
(d) The source(s) of the contaminants of concern;
(e) The vertical and horizontal extent of the contaminants of concern; and
(f) The depth to groundwater.
(3) The responsible party can demonstrate to the Department that upon completion of the remedial action the total excess cancer risk will not exceed 1 x 10-5, and the hazard index for non-carcinogens with similar critical endpoints will not exceed one:
(a) Risks are presumed to be additive for carcinogens and for non-carcinogens with similar critical endpoints. The cleanup levels in Table 1 and Appendix 1 must be prorated downward when the substances have similar critical endpoints to keep the total site risk below the prescribed levels;
(b) In determining whether a site with multiple contaminants of concern will be accepted for remedial action under this rule the Department will consider the following:
(A) Detected concentrations;
(B) Toxicity and critical endpoints;
(C) Frequency of detection;
(D) Mobility;
(E) Persistence;
(F) Bioaccumulation potential; and
(G) Degradation products.
(4) No contaminants of concern at the facility will adversely affect surface water based upon consideration of:
(a) Distance to the surface water;

(b) Containment of the contaminants of concern;
(c) Surface soil permeability;
(d) Maximum two-year, 24-hour precipitation event;
(e) Proximity of flood plain(s);
(f) Terrain slope;
(g) Vegetative cover; and
(h) Hydrological connections between groundwater and surface water.
(5) No contaminants of concern at the facility will adversely affect sensitive environments based upon consideration of:
(a) Distance to the sensitive environment;
(b) Surface soil permeability and erodibility;
(c) Vegetative cover; and
(d) Transport media.
(6) If all the criteria in sections (1), (2), (3), (4) and (5) of this rule are met, the responsible party may propose a remedial action which uses Table 1 and Appendix 1 to determine the appropriate cleanup levels. All remedial actions under this rule must meet the appropriate Soil Cleanup Level for volatiles, semi-volatiles or pesticides or the appropriate Leachate Concentration for inorganics as contained in Table 1 unless the responsible party can demonstrate by one of the following methods that groundwater will not be adversely affected or that the cleanup level is below background or the practical quantitation level (PQL) and a higher residual concentration than the appropriate level in Table 1:
(a) The responsible party can demonstrate with a sampling methodology acceptable to the Department that the leachate concentrations from representative site samples contaminated with volatiles, semi-volatiles, or pesticides do not exceed the Leachate Reference Concentrations in Appendix 1. (For inorganic compounds, the responsible party must always conduct a leaching test, and the resultant leachate must not exceed the Leachate Concentration in Table 1.) The responsible party may perform the Synthetic Precipitation Leaching Procedure (SPLP; EPA Method 1312), the Toxicity Characteristic Leaching Procedure (TCLP; EPA Method 1311) or other Department approved procedures to estimate potential leaching of contamination at the site. In no case may the residual contamination exceed the Maximum Allowable Soil Concentrations in Appendix 1 as specified in section (7) of this rule;
(b) The responsible party can demonstrate with a Department-approved fate and transport model and with default and/or site-specific data approved by the Department that residual soil concentrations will not result in contaminant concentrations in the groundwater which exceed the Groundwater Reference Concentrations listed in Appendix 1. This demonstration must consider factors such as type/nature of contaminants; source quantity; quantity of contaminated soils; clay content; soil pH; redox potential; chemical and physical properties of the contaminants including toxicity and mobility; net precipitation; subsurface hydraulic conductivity; vertical depth to groundwater; degradation products; and naturally-occurring background levels. In no case may the residual contamination exceed the Maximum Allowable Soil Concentrations in Appendix 1 as specified in section (7) of this rule; or
(c) The responsible party can demonstrate that the soil cleanup level for the contaminant of concern is at or below the background level for compounds that occur naturally. The responsible party may in a manner acceptable to the Department determine the representative background concentration and clean up to that level; or
(d) The responsible party can demonstrate that the soil cleanup level is below the practical quantitation level (PQL) for the contaminant of concern. The responsible party may in a manner acceptable to the Department and according to "Test Methods for Evaluating Solid Waste, SW-846, 3rd Edition", U.S. EPA, 1986 (including methods as approved in 54 FR 40260 40269, 9/29/89 and 55 FR 8948-8950, 3/9/90) determine the proper PQL and remediate until the residual contamination meets the PQL level; or
(e) The responsible party can elect to opt out of this rule and perform a remedial investigation, risk assessment, or feasibility study under OAR 340-122-0080 through 340-122-0085.
(7) If leaching to groundwater is not the pathway of concern or if the responsible party demonstrates that groundwater will not be adversely affected by performing the appropriate leaching test or fate and transport model, the residual soil contamination shall not exceed the Residential Maximum Allowable Soil Concentration in Appendix 1 unless the site meets the industrial criteria and the responsible party proposes to meet the Industrial Maximum Allowable Soil Concentration. If the responsible party proposes to meet the Industrial Maximum Allowable Soil Concentration, the facility must meet all the following additional criteria:
(a) The facility is planned and zoned for industrial use; and
(b) Appropriate institutional controls (e.g., deed restrictions, restrictive covenants, Environmental Hazard Notice) will be in force; and
(c) Uses of the facility and uses and zoning of properties within 100 meters of the contaminated area are industrial uses or are other uses where the Department concurs that the exposure is limited and thus does not warrant application of the residential standard.
(8) Proposed remedial actions under this section are not required to include the feasibility study in OAR 340-122-0085 except as provided in subsection (6)(e) of this rule. Only remedial technologies that have been proven to be effective in reaching the cleanup levels shall be approved.

(9) This rule, including the numerical cleanup levels and the procedures and standards set forth in this rule, is not intended to be construed or applied as applicable or relevant and appropriate requirements under Section 121(d) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9621.
(10) If the responsible party has adequately characterized the site and achieved the appropriate cleanup levels or made appropriate demonstrations as described in sections (6) and (7) of this rule, the Department will issue a written determination that the cleanup is complete subject to any Department finding based on new information that the cleanup as performed is not protective of public health, safety or welfare, or the environment.
[**ED. NOTE: The Table(s) and Appendicies referenced in this rule are not printed in the OAR Compilation. Copies are available from the agency.]**
[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]
Stat. Auth.: ORS 465.400(1) & ORS 468.020
Stats. Implemented: ORS 465.200 - ORS 465.455 & ORS 465.900
Hist.: DEQ 12-1992, f. & cert. ef. 6-9-92; DEQ 2-1997, f. & cert. ef. 2-7-97

**340-122-0047**

**Generic Remedies**

(1) The Department may identify or develop generic remedies for common categories of facilities, hazardous substances, or impacted media. For purposes of this rule, a "generic remedy" means a potential remedial technology or method developed or identified by the Department for use at eligible facilities on a streamlined basis with limited evaluation of other remedial action alternatives. Generic remedies may be used as follows:
(a) A generic remedy that has been developed or identified by the Department may be proposed for use at an eligible facility. When evaluating a generic remedy proposed for use at a specific facility, the specific requirements of the remedial investigation or feasibility study may be focused or eliminated, with Department approval.
(b) Any generic remedy which allows for elimination of the requirement for conducting a site-specific feasibility study shall be based on a generic feasibility study documenting the Department's conclusions with respect to the manner in which facilities eligible for use of the generic remedy will meet the requirements of OAR 340-122-0085 and OAR 340-122-0090.
(c) Any generic remedy which includes numeric cleanup standards as a component of the remedy shall be based on a generic risk assessment documenting the Department's conclusions with respect to how facilities eligible for use of the generic remedy will achieve acceptable risk levels and other requirements of OAR 340-122-0084 through OAR 340-122-0090.
(2) In developing generic remedy guidance, the Department will provide opportunities for public participation regarding the scope and content of the guidance.
(3) Remedial actions proposed under this rule are subject to the public participation requirements provided under ORS 465. 320 and OAR 340-122-0100.
(4) The Department may select or approve use of a generic remedy at a specific facility upon a facility-specific demonstration that the generic remedy is consistent with Department generic remedy guidance and in compliance with OAR 340-122-0090(1).
Stat. Auth.: ORS 465.315 & ORS 465.400
Stats. Implemented: ORS 465.200 - ORS 465.455, ORS 465.900, ORS 466.706 - ORS 466.835 & ORS 466.895
Hist.: DEQ 2-1997, f. & cert. ef. 2-7-97

**340-122-0050**

**Activities**
(1) The Director may perform or require to be performed the following activities:
(a) Preliminary Assessment;
(b) Removal;
(c) Remedial Investigation;
(d) Risk Assessment;
(e) Feasibility Study; or
(f) Other investigations and remedial action.
(2) These activities, and the scope of these activities, are to be determined by the Director on a case-by-case basis. The Director may determine that all, a combination of less than all, or only one of the above activities are necessary at a facility. (For example, based upon the results of the preliminary assessment, the Director might find that a remedial investigation and feasibility study are not necessary.) The Director may also determine that performance of the above activities shall overlap or

occur in an order different than that set forth in section (1) of this rule. (For example, the Director might find that a removal must be undertaken during a remedial investigation.)
(3) Removals, remedial actions, preliminary assessments, remedial investigations, feasibility studies, and related activities shall be performed by any person who is ordered or authorized to do so by the Director, or may be performed by the Department.
(4) The Director may allow short-term degradation of the environment during a removal or remedial action or related activities, provided that the Director finds:
(a) Such short-term degradation cannot practicably be avoided during implementation of the removal or remedial action or related activities;
(b) The removal or remedial action or related activity is being implemented in accordance with a schedule approved by the Department; and
(c) The short-term degradation does not present an imminent and substantial endangerment to the public health, safety or welfare, or the environment.
Stat. Auth.: ORS 465
Stats. Implemented: ORS 465.200 - ORS 465.455, ORS 465.900, ORS 466.706 - ORS 466.835 & ORS 466.895
Hist.: DEQ 26-1988, f. & cert. ef. 9-16-89; DEQ 2-1997, f. & cert. ef. 2-7-97

**340-122-0070**

**Removal**

(1) Based upon the Preliminary Assessment or other information, the Director may perform or require to be performed a removal that the Director determines is consistent with the standards set forth under OAR 340-122-0040 and is necessary to prevent, minimize, or mitigate damage to the public health, safety and welfare, and the environment that might result from the release or threat of release of hazardous substances. A removal may address potential harm posed by the toxicity, corrosivity, flammability, ignitability, and other threats to public health, safety and welfare, and the environment from a release or threat of release. A removal may include, but is not limited to, offsite transport and disposal of hazardous substances if such action would be consistent with and expedite completion of remedial action or would minimize the need for onsite engineering or institutional controls.
(2) The performance of a removal shall not affect the Director's authority to perform or require to be performed a remedial action in addition to the removal, if such remedial action will permanently or more fully address a release or threat of release of hazardous substances. The Director may undertake or require that a removal be undertaken at any time from the discovery of a release or threat of a release through the completion of a remedial action.
Stat. Auth.: ORS 465.400(1) & ORS 468.020
Stats. Implemented: ORS 465.200 - ORS 465.455, ORS 465.900, ORS 466.706 - ORS 466.835 & ORS 466.895
Hist.: DEQ 26-1988, f. & cert. ef. 9-16-89; DEQ 12-1992, f. & cert. ef. 6-9-92; DEQ 2-1997, f. & cert. ef. 2-7-97

**340-122-0071**

**Site Evaluation**

(1) When the Department receives information about a release or potential release of a hazardous substance, the Department shall evaluate the information and document its conclusions. The purpose of the site evaluation is to determine whether a release has or might have occurred and whether the release may pose a significant threat to public health, safety and welfare, or the environment.
(2) The Department may request or gather additional information to complete the site evaluation. When evaluating the potential for human health and ecological impacts, the Department may consider, but is not limited to considering, the potential presence in the locality of the facility, of:
(a) Human populations;
(b) Any sensitive human subpopulations;
(c) Threatened and endangered species or their critical habitat;
(d) Ecological receptors, including any terrestrial or aquatic habitat(s);
(e) Exposure pathways potentially connecting receptors with hazardous substances; and
(f) Current and reasonably likely future land and water uses.
(3) After a site evaluation is completed, the Department will determine whether a preliminary assessment, removal, remedial action, other action, or no further action is needed at the facility.
Stat. Auth.: ORS 465.315 & ORS 465.400

Stats. Implemented: ORS 465.200 - ORS 465.455, ORS 465.900, ORS 466.706 - ORS 466.835 & ORS 466.895
Hist.: DEQ 29-1990, f. & cert. ef. 7-13-90; DEQ 2-1997, f. & cert. ef. 2-7-97; Renumbered from 340-122-0425

**340-122-0072**

**Preliminary Assessments**

(1) The Department shall conduct a preliminary assessment or approve a preliminary assessment conducted by another person in accordance with section (4) of this rule if the Department determines that a release of a hazardous substance poses a significant threat to public health, safety or welfare, or the environment. The Department may conduct or approve a preliminary assessment without such determination. The Department may determine that existing information constitutes the equivalent of all or part of a preliminary assessment.
(2) Prior to conducting a preliminary assessment, the Director shall notify the owner and operator of the facility, if known, of the Department's intent to conduct the assessment, and allow the owner or operator to submit relevant information to the Department or to request to conduct the preliminary assessment. The Department may accept or deny any such request.
(3) The purpose of a preliminary assessment is to develop sufficient information to determine whether additional investigation, removal, remedial action, or long-term engineering or institutional controls related to removal or remedial action are needed at a facility to assure protection of present and future public health, safety and welfare, and the environment.
(4) A preliminary assessment shall include sufficient onsite observations, maps, facility data, sampling, and other information to accomplish the purposes of a preliminary assessment as described in section (3) of this rule including, as appropriate:
(a) Description of historical operations at the facility, including past and present generation, management, and use of hazardous substances; compliance with relevant environmental requirements; and investigations or cleanups of releases of hazardous substances;
(b) Identification and characterization of hazardous substances that are being or might have been released and, if available, an estimate of the quantities released, the concentrations in the environment, and extent of migration;
(c) Documentation of releases of hazardous substances to the environment;
(d) Identification of present and past owners and operators of the facility;
(e) Description of the facility, including its name, and a site map identifying property boundaries, the location of known or suspected releases of hazardous substances, and significant topographic, terrestrial, and aquatic habitat features;
(f) Description of potential pathways for migration of known or suspected releases of hazardous substances, including surface water, groundwater, air, soils, and direct contact;
(g) Description of human and ecological receptors potentially affected by releases of hazardous substances;
(h) Description of any other physical factors that might be relevant to assessing short and long-term exposure to releases of hazardous substances; and
(i) Evaluation of present and reasonably likely future threats to public health, safety and welfare, and the environment.
During the preliminary assessment, the Department may consider the following information:
(A) Concentrations of hazardous substances in environmental media;
(B) The documented presence, in the locality of the facility, of any of the following:
(i) Human populations;
(ii) Any sensitive human subpopulations;
(ii) Threatened and endangered species or their critical habitat;
(iv) Ecological receptors including any terrestrial or aquatic habitat;
(v) Exposure pathways potentially connecting receptors with released hazardous substances;
(vi) Current and reasonably likely future land uses; and
(vii) Current and reasonably likely future beneficial uses of water.
(5) After completion of a preliminary assessment, the Director shall make one or more of the following determinations regarding a facility:
(a) Additional investigation, removal, remedial action, or long-term engineering or institutional controls related to removal or remedial action are needed to assure protection of present and future public health, safety and welfare, and the environment;
(b) Current regulatory action under another state or federal agency program is adequate to protect public health, safety and welfare, and the environment;
(c) Other actions are necessary to assure protection of present and future public health, safety and welfare and the environment; or
(d) Based on available information, no further action is needed to assure protection of present and future public health, safety and welfare, and the environment.
(6) When the preliminary assessment is completed, the Director shall provide a copy to the owner and operator, if known, and shall notify them of any determination made pursuant to section (5) of this rule.

Stat. Auth.: ORS 465.315 & ORS 465.400
Stats. Implemented: ORS 465.200 - ORS 465.455, ORS 465.900, ORS 466.706 - ORS 466.835 & ORS 466.895
Hist.: DEQ 26-1988, f. & cert. ef. 9-16-89; Renumbered from 340-122-0060; DEQ 29-1990, f. & cert. ef. 7-13-90; DEQ 2-1997, f. & cert. ef. 2-7-97; Renumbered from 340-122-0426

**340-122-0073**

**Confirmation of a Release**

(1) The Director shall determine that a release of a hazardous substance has been confirmed for the purposes of listing a facility on the Confirmed Release List or the Inventory if the Director determines that the release meets the criteria in subsections (a) and (b) of this section:
(a) The release has been documented by:
(A) An observation made and documented by a qualified government inspector or agent;
(B) A written statement or report from an owner, operator, or representative authorized by an owner or operator stating that the release has occurred; or
(C) Laboratory data indicating the hazardous substance has been detected at levels greater than background levels.
(b) The release is not excluded under section (2) of this rule.
(2) A release shall not be defined as a "confirmed release" pursuant to section (1) of this rule if, based on the information available at the time a final listing decision is made, the Director determines that the release meets any of the following criteria:
(a) The release is a de minimis release;
(b) The release by its nature rapidly dissipates to undetectable or insignificant levels and poses no significant threat;
(c) The release is a permitted or authorized release, but not including deposition, accumulation, or migration of substances resulting from an otherwise-permitted or authorized release;
(d) The release is a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136) and applied for its intended purpose in accordance with label directions, but not including deposition, accumulation, or migration of substances resulting from an otherwise-authorized release;
(e) The release has been cleaned up to a level that is consistent with rules adopted by the Commission under ORS 465.400 or ORS Chapter 466 or that poses no significant threat to present or future public health, safety, welfare, or the environment; or
(f) The release otherwise requires no additional investigation, removal, remedial action, or long-term environmental or institutional controls related to removal or remedial action to assure protection of present and future public health, safety, welfare, and the environment.
(3) A release shall not be excluded pursuant to section (2) of this rule if continuing environmental or institutional controls related to removal or remedial action are required to assure protection of present and future public health, safety, welfare, and the environment.
[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]
Stat. Auth.: ORS 465.400(1), ORS 465.405 & ORS 468.020
Stats. Implemented: ORS 465.200 - ORS 465.455, ORS 465.900, ORS 466.706 - ORS 466.835 & ORS 466.895
Hist.: DEQ 29-1990, f. & cert. ef. 7-13-90; DEQ 2-1997, f. & cert. ef. 2-7-97; Renumbered from 340-122-0427

**340-122-0074**

**Development of Confirmed Release List**

(1) For the purpose of providing public information, the Director shall develop and maintain a Confirmed Release List of all facilities for which the Director has confirmed a release of a hazardous substance in accordance with OAR 340-122-0073.
(2) The list shall include, at a minimum, 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) Concentration, distribution, and characteristics of a hazardous substance, if any, in groundwater, surface water, air, and soils at the facility; and

(h) Status of removal or remedial actions at the facility.
(3)(a) At least 60 days before adding a facility to the Confirmed Release List, the Director shall notify the owner and operator, if known, of all or any part of the proposed facility by certified mail or personal service, and shall provide an opportunity to comment on the proposed listing within 45 days after receiving the notice. For good cause shown, the Department may grant an extension of up to 45 days for comment;
(b) The Director shall consider relevant and appropriate information submitted to the Department in determining whether to add a facility to the Confirmed Release List. Whenever the Director makes a decision to add a facility to the List, the Director shall make a written response to each substantive comment and any material new data submitted during the comment period.
Stat. Auth.: ORS 465.400(1), ORS 465.405 & ORS 468.020
Stats. Implemented: ORS 465.200 - ORS 465.455, ORS 465.900, ORS 466.706 - ORS 466.835 & ORS 466.895
Hist.: DEQ 29-1990, f. & cert. ef. 7-13-90; DEQ 2-1997, f. & cert. ef. 2-7-97; Renumbered from 340-122-0430; DEQ 9-1998, f. & cert. ef. 6-18-98

**340-122-0075**

**Development of Inventory**

(1) For the purpose of providing public information, the Director shall develop and maintain an Inventory of facilities for which the Director:
(a) Has confirmed a release of a hazardous substance in accordance with OAR 340-122-0073; and
(b) Based on a preliminary assessment approved or conducted by the Department, has determined that additional investigation, removal, remedial action, or long-term environmental or institutional controls related to removal or remedial action are required to assure protection of present and future public health, safety and welfare, and the environment.
(2) The Inventory shall include, at a minimum, the items required for the Confirmed Release List, described in OAR 340-122-0074(2), and the following items, if known:
(a) Hazard ranking and narrative information regarding threats to the environment and public health; and
(b) Information that indicates whether the remedial action at the facility will be funded primarily by:
(A) The Department through the use of moneys in the Hazardous Substance Remedial Action Fund;
(B) An owner or operator or other person under an agreement, order, or consent decree under ORS Chapter 465; or
(C) An owner or operator or other person under other state or federal authority.
(3)(a) At least 60 days before a facility is added to the Inventory the Director shall notify the owner and operator, if known, of all or any part of the facility of the proposed listing by certified mail or personal service. The notice shall include a copy of the preliminary assessment on which the listing is based, and the documentation used to calculate a site score in accordance with OAR 340-122-0076(1)(a). The notice may reference these documents if they have been previously provided. The notice shall inform the owner and operator of the opportunity to comment on the information contained in the preliminary assessment and on the proposed site score within 45 days after receiving the notice. For good cause shown, the Department may grant an extension of up to 45 days for comment.
(b) The Director shall consider relevant and appropriate information submitted to the Department in determining whether to add a facility to the Inventory. Whenever the Director makes a decision to add a facility to the Inventory, the Director shall make a written response to each substantive comment and any material new data submitted during the comment period.
(4) At least quarterly, the Department shall publish notice of updates to the Inventory. The notice shall include a brief description of the facilities added or removed, and shall be published in the Secretary of State's Bulletin and submitted to local newspapers of general circulation in locations affected by the listings and to interested persons or community organizations.
Stat. Auth.: ORS 465.000(1), ORS 465.400(1), ORS 465.405, ORS 465.410 & ORS 468.020
Stats. Implemented: ORS 465.200 - ORS 465.455, ORS 465.900, ORS 466.706 - ORS 466.835 & ORS 466.895
Hist.: DEQ 29-1990, f. & cert. ef. 7-13-90; DEQ 5-1991, f. & cert. ef. 3-18-91; DEQ 2-1997, f. & cert. ef. 2-7-97; Renumbered from 340-122-0440; DEQ 9-1998, f. & cert. ef. 6-18-98

**340-122-0076**

**Inventory Ranking**

(1)(a) The Department will score facilities placed on the Inventory in accordance with the Site Scoring Procedure set forth in Appendix 1. The Site Scoring Procedure provides criteria for scoring facilities based on the short-term and long-term risks they pose to present and future public health, safety, welfare or the environment;

(b) The Department will place facilities in the following categories on the Inventory based on their status in the remedial process:
(A) Phase I: Facilities where remedial investigation and feasibility studies have not been initiated;
(B) Phase II: Facilities where remedial investigation or feasibility studies are underway;
(C) Phase III: Facilities where the remedial investigation and feasibility studies have been completed and remedial design, removal or remedial action is underway;
(D) Phase IV: Facilities where all necessary removal and remedial action have been completed except for continuing operation and maintenance or other environmental or institutional controls necessary to protect public health, safety, welfare, and the environment.
(E) The Department will move facilities from one category to the next in quarterly updates of the Inventory as remedial activities progress.
(2) Prior to publishing a facility's score on the Inventory, the Department will notify the owners and operators of the facility, if known, and provide an opportunity for them to comment on the facility score and supporting documentation as described in OAR 340-122-0075(4).
(3) The Department will consider facility scores, among other factors, in prioritizing sites for further investigation, removal, or remedial action at the conclusion of the preliminary assessment or its equivalent. Prior to initiating such action, the Department may rescore a facility if the Department receives additional information that may significantly change a facility's score.
Stat. Auth.: ORS 465.000(1), ORS 465.410 & ORS 468.020
Stats. Implemented: ORS 465.200 - ORS 465.455, ORS 465.900, ORS 466.706 - ORS 466.835 & ORS 466.895
Hist.: DEQ 5-1991, f. & cert. ef. 3-18-91; DEQ 2-1997, f. & cert. ef. 2-7-97; Renumbered from 340-122-0450

**340-122-0077**

**Initiation of Process for Delisting Facilities from the Confirmed Release List and Inventory**

(1) An owner or operator of a facility listed on the Confirmed Release List or Inventory, or any other person adversely affected by the listing, may request the Director to remove a facility from the Confirmed Release List or Inventory. The Department may propose to remove a facility on its own initiative.
(2)(a) The owner, operator, or other person requesting that a facility be removed from the Confirmed Release List or the Inventory shall submit a written petition to the Director setting forth the basis for such request. The petition shall include sufficient information and documentation to support a determination that:
(A) The petitioner is an owner, operator, or person adversely affected by the listing; and
(B) The facility meets the respective criteria for delisting from the Confirmed Release List or from the Inventory set forth in OAR 340-122-0079(1).
(b) A petition to remove from the Confirmed Release List or from the Inventory a facility for which a delisting petition has previously been denied shall demonstrate new information or changed circumstances to support the request.
Stat. Auth.: ORS 465.400(1), ORS 465.405 & ORS 468.020
Stats. Implemented: ORS 465.200 - ORS 465.455, ORS 465.900, ORS 466.706 - ORS 466.835 & ORS 466.895
Hist.: DEQ 29-1990, f. & cert. ef. 7-13-90; DEQ 2-1997, f. & cert. ef. 2-7-97; Renumbered from 340-122-0460

**340-122-0078**

**Inventory Delisting -- Public Notice and Participation**

(1) Prior to the approval or denial of a petition to remove a facility from the Inventory submitted pursuant to OAR 340-122-0077, the Department shall:
(a) Publish a notice and brief description of the proposed action in the Secretary of State's Bulletin, notify a local paper of general circulation, and make copies of the proposed action available to the public;
(b) Make a reasonable effort to identify and notify interested persons or community organizations;
(c) Provide at least 30 days for submission of written comments regarding the proposed action;
(d) Upon written request received within 15 days after agency notice, postpone the date of its intended action no less than ten or more than 90 days in order to allow the requesting person an opportunity to submit information or comments on the proposed action; and
(e) Upon written request by ten or more persons or by a group having ten or more members, conduct a public meeting at or near the facility for the purpose of receiving oral comment regarding the proposed action, except for a petition submitted by an owner pursuant to a cleanup action completed in accordance with these rules.

(2) Where possible, the Department shall combine public notification procedures for delisting from the Inventory with the public notification procedures for the proposed certification of completion of a removal or remedial action conducted pursuant to ORS Chapter 465.
(3) Agency records concerning the removal of a facility from the Inventory shall be made available to the public in accordance with ORS 192.410 to 192.505, subject to exemptions to public disclosure, if any, under ORS 192.501 and 192.502. The Department shall maintain and make available for public inspection and copying a record of pending and completed delisting actions. The records shall be located at the headquarters and regional offices of the Department.
Stat. Auth.: ORS 465.400(1), ORS 465.405 & ORS 468.020
Stats. Implemented: ORS 465.200 - ORS 465.455, ORS 465.900, ORS 466.706 - ORS 466.835 & ORS 466.895
Hist.: DEQ 29-1990, f. & cert. ef. 7-13-90; DEQ 2-1997, f. & cert. ef. 2-7-97; Renumbered from 340-122-0465

**340-122-0079**

**Delisting -- Determination by Director**

(1) The Director shall consider requests or proposals to remove facilities from the Confirmed Release List or the Inventory submitted in accordance with OAR 340-122-0077. The Director shall delist a facility from the Confirmed Release List if the Director determines that a facility does not meet the criteria for inclusion on the Confirmed Release List set forth in OAR 340-122-0074(1). The Director shall remove a facility from the Inventory if the Director determines the facility does not meet the criteria for inclusion on the Inventory set forth in OAR 340-122-0075(1).
(2) In determining whether to remove a facility from the Confirmed Release List or from the Inventory, the Director shall consider:
(a) Any relevant Confirmed Release List or Inventory delisting petitions submitted pursuant to OAR 340-122-0077;
(b) Any public comments submitted on the proposed action pursuant to OAR 340-122-0078; and
(c) Any other relevant information available.
(3) The Director shall not remove a facility from the Confirmed Release List or from the Inventory if continuing environmental controls or institutional controls related to removal or remedial action (e.g., alternative drinking water supply, caps, security measures) are needed to assure protection of present and future public health, safety, welfare, and the environment.
(4)(a) The Director shall document the basis for approving or denying a request or proposal to remove a facility from the Confirmed Release List or the Inventory;
(b) If the Director relies on information described in subsection (2)(a) of this rule to make such determination, the Director shall reference such information in the record.
(5) The removal of a facility from the Confirmed Release List or from the Inventory shall be effective immediately upon the Director's determination.
Stat. Auth.: ORS 465.400(1), ORS 465.405 & ORS 468.020
Stats. Implemented: ORS 465.200 - ORS 465.455, ORS 465.900, ORS 466.706 - ORS 466.835 & ORS 466.895
Hist.: DEQ 29-1990, f. & cert. ef. 7-13-90; DEQ 2-1997, f. & cert. ef. 2-7-97; Renumbered from 340-122-0470

**340-122-0080**

**Remedial Investigation**

(1) If, based upon the Preliminary Assessment, the results of a removal, or other information, the Director determines that remedial action might be necessary to protect public health, safety or welfare, or the environment, the Director may perform or require to be performed a remedial investigation to develop information to determine the need for remedial action.
(2) Remedial investigation may include, but is not limited to, characterization of hazardous substances, characterization of the facility, performance of baseline human health and ecological risk assessments, and collection and evaluation of information relevant to the identification of hot spots of contamination.
(3) In the remedial investigation, characterization of the facility may include, but is not limited to, information regarding:
(a) Waste management history and other past practices that could have led to a release of hazardous substances;
(b) Geological and hydrogeologic factors, including, but not limited to, information regarding topography, soils, sediments, drainage controls, and water resources;
(c) Climatologic and meteorologic factors;
(d) Ambient air quality;
(e) Current and reasonably anticipated future land use in the locality of the facility, considering:
(A) Current land use zoning and other land use designations;

(B) Land use plans as established in local comprehensive plans and land use implementing regulations of any governmental body having land use jurisdiction;
(C) Concerns of the facility owner, neighboring owners, and the community; and
(D) Any other relevant information such as development patterns and population projections.
(f) Current and reasonably likely future beneficial uses of groundwater and surface water in the locality of the facility, considering:
(A) Federal, state, and local regulations governing the appropriation and/or use of water;
(B) Nature and extent of current groundwater and surface water uses;
(C) Suitability of groundwater and surface water for beneficial uses;
(D) The contribution of water to the maintenance of aquatic or terrestrial habitat;
(E) Any beneficial uses of water which the Water Resources Department or other federal state or local programs is managing in the locality of the facility; and
(F) Reasonably likely future uses of groundwater and surface water based on:
(i) Historical land and water uses;
(ii) Anticipated future land and water uses;
(iii) Community and nearby property owners' concerns regarding future water use;
(iv) Regional and local development patterns;
(v) Regional and local population projections; and
(vi) Availability of alternate water sources including, but not limited to, public water supplies, groundwater sources, and surface water sources.
(g) Identification of ecological receptors, terrestrial habitats, and aquatic habitats in the locality of the facility; and
(h) Other relevant information, as appropriate.
(4) In the remedial investigation, characterization of hazardous substances may include, but is not limited to, information regarding:
(a) Identification and characterization of the source of the release or the threatened release of a hazardous substance;
(b) The nature, extent, and concentration of hazardous substances;
(c) The propensity for the hazardous substance to bioaccumulate;
(d) The propensity for the hazardous substance to persist or degrade;
(e) The toxicity of the hazardous substances;
(f) The transport and fate of the hazardous substances;
(g) The proximity of contamination to surface water, groundwater, wetlands, and sensitive environments; and
(h) Other relevant information, as appropriate.
(5) In the remedial investigation, characterization of current and reasonably likely future risks posed by hazardous substances shall be based on baseline human health and ecological risk assessments conducted in accordance with OAR 340-122-0084, unless the Department determines through screening of available information that no exceedance of acceptable risk levels could occur taking into consideration the nature, extent and toxicity of contamination, the types of human and ecological receptors potentially at risk, and pathways and routes of exposure present or potentially present.
(6) The remedial investigation shall identify hazardous substances having a significant adverse effect on beneficial uses of water or waters to which the hazardous substances would be reasonably likely to migrate.
(7) The remedial investigation shall identify hot spots of contamination for media other than water.
Stat. Auth.: ORS 465.400(1) & ORS 468.020
Stats. Implemented: ORS 465.200 - ORS 465.455, ORS 465.900, ORS 466.706 - ORS 466.835 & ORS 466.895
Hist.: DEQ 26-1988, f. & cert. ef. 9-16-89; DEQ 12-1992, f. & cert. ef. 6-9-92; DEQ 2-1997, f. & cert. ef. 2-7-97

**340-122-0084**

**Risk Assessment**

This rule establishes a risk protocol for performance of human health and ecological risk assessments, including: General requirements for risk assessments and specific requirements for baseline human health risk assessments, baseline ecological risk assessments, residual risk assessments, and probabilistic risk assessments.
(1) **General requirements for risk assessments** include:
(a) Risks assessments shall consider existing and reasonably likely future human exposures and significant adverse effects to ecological receptors in the locality of the facility.
(b) Risk assessments may be conducted using either deterministic or probabilistic risk assessment methodologies at the discretion of the party conducting the risk assessment, provided the risk assessment requirements of this rule are met.
(c) Sources of toxicity information to be used in a risk assessment may include the following information to the extent it is available and acceptable to the Department at the time a human health or ecological risk assessment is prepared:

(A) For human health risk assessments:
(i) U.S. EPA IRIS Data Base;
(ii) U.S. EPA HEAST Data Base;
(iii) HEAST alternative method;
(iv) U.S. EPA-NCEA Superfund Health Risk Technical Support Center;
(v) Other U.S. EPA documents or databases;
(vi) ATSDR Toxicological Profiles; or
(vii) Other refereed technical publications.
(B) For ecological risk assessments:
(i) U.S. EPA AQUIRE Data Base;
(ii) U.S. EPA IRIS Data Base;
(iii) U.S. EPA HEAST Data Base;
(iv) U.S. EPA ASTER Data Base;
(v) U.S. EPA PHYTOTOX Data Base;
(vi) U.S. EPA Terrestrial Toxicity Data Base (TERRATOX);
(vii) U.S. Fish and Wildlife Service Technical Reports;
(viii) Oak Ridge National Laboratory Toxicological Benchmark Technical Reports;
(ix) Other U.S. EPA documents or databases;
(x) ATSDR Toxicological Profiles; or
(xi) Other refereed technical publications.
(C) In the absence of toxicity information that is available and acceptable to the Department under paragraph (A) or (B), the Department may require the development of acceptable site-specific toxicity information.
(d) Risk assessments may include use of transport and fate models, subject to Department approval of the model and the data to be used for the parameters specified in the model. The Department shall ensure than any transport and fate model approved for use is capable of simulating all site conditions and contaminant properties that might have a significant impact on site-specific contaminant transport or fate.
(e) The Department shall require appropriate sampling approaches and data quality requirements to support the risk assessment and remedy selection processes.
(f) A plausible upper-bound or high-end exposure for both human health and ecological risk assessments is the 90th percentile upper confidence limit on the arithmetic mean of concentrations of hazardous substances that would be contacted by an exposed receptor and reasonable maximum estimates of the exposure factors used in the risk calculations, unless a greater or lesser best estimate is acceptable to the Department.
(g) The central tendency exposure for both human health and ecological risk assessments is the arithmetic mean of concentrations that would be contacted by an exposed receptor and mean estimates of the exposure factors used in the risk calculations. Risk assessments utilizing only deterministic methods shall provide both central tendency and upper-bound estimates of exposure and risk.
(h) The use of population risk estimates in addition to individual risk estimates is provided for as follows:
(A) For human health risk assessments, risk estimates shall be made only at the level of the individual;
(B) For ecological risk assessments, risk estimates shall be made:
(i) At the level of the individual for species present in the locality of the facility if the species is listed as threatened or endangered species pursuant to 16 U.S.C. 1531 et seq. or ORS 496.172; or
(ii) At the level of the population for all other plants or animals in the locality of the facility.
(i) Cumulative risk from multiple hazardous substances will be assessed by assuming additivity of the risk posed separately by individual non-carcinogenic and carcinogenic hazardous substances in the locality of the facility, unless the Department determines that an assumption of synergism, antagonism, or other toxic response is appropriate or it is demonstrated to the satisfaction of the Department that an assumption other than additivity is appropriate.
(j) Appropriate sources of exposure factor information may include, but are not limited to, the following information, to the extent it is available and acceptable to the Department at the time human health and ecological risk assessments are prepared:
(A) U.S. EPA Risk Assessment Guidance for Superfund. Volume 1. Human Health Evaluation Manual, Part A, 1989;
(B) U.S. EPA Risk Assessment Guidance for Superfund Volume 2. Environmental Evaluation Manual, 1989;
(C) U.S. EPA Risk Assessment Guidance for Superfund. Volume 1. Human Health Evaluation Manual, Supplemental Guidance - Standard Default Exposure Factors, 1991;
(D) U.S. EPA Wildlife Exposure Factors Handbook. Volumes 1 and 2, 1993; and
(E) U.S. EPA Exposure Factors Handbook, 1990.
(2) **Baseline human health risk assessments** shall include, but are not limited to, the following information:
(a) A conceptual site model describing contaminant sources, release mechanisms, transport routes and media, potential human receptor populations, and relevant exposure scenarios based on current and reasonably likely future land and water uses;
(b) Data quality objectives for the human health risk assessment based on the conceptual site model;

(c) Exposure analysis including identification and selection of contaminants of concern, a detailed description of potentially exposed populations and exposure routes, and a quantitative estimate of exposure for both current and reasonably likely future land and water use scenarios;
(d) Toxicity analysis including a summary of current information regarding the carcinogenic effects, noncarcinogenic effects, bioconcentration potential, bioaccumulation potential, biomagnification potential, and persistence of the identified contaminants of concern as well as current slope factors and reference doses;
(e) Risk characterization presenting the quantitative human health risks potentially associated with the facility, a discussion of any available facility-specific human health studies, an explicit discussion of risks associated with the bioconcentration potential, bioaccumulation potential, biomagnification potential, and persistence of each contaminant, and consideration of any other available, published, and peer-reviewed scientific information on other sources of stress as appropriate; and
(f) Quantitative and qualitative uncertainty analysis as appropriate for each element of the risk assessment.
(3) **Baseline ecological risk assessments** shall include, but are not limited to, the following information:
(a) Problem formulation to include identification of contaminants of ecological interest, potential ecological effects, ecological receptors, relevant exposure pathways, initial definition of assessment and measurement endpoints, all with respect to current and reasonably likely future land and water uses, and described in a conceptual site model;
(b) Data quality objectives for the ecological risk assessment based on the conceptual site model, with emphasis on analytical detection limits appropriate for ecological receptors;
(c) Exposure analysis to include identification and selection of potential contaminants of ecological concern, identification and selection of target ecological receptors, an exposure pathway model relating target receptors, exposure routes and measurement endpoints, and a quantitative estimate of exposure for both current and reasonably likely future land and water use scenarios;
(d) Ecological response analysis including a summary of current information regarding the toxicological effects, ecological effects, bioconcentration potential, bioaccumulation potential, biomagnification potential, and persistence of the identified contaminants of ecological concern, as well as ecological benchmark values;
(e) Risk characterization presenting the quantitative ecological risks potentially associated with the facility, identification of contaminants of ecological concern, a discussion of any available facility-specific ecological studies, an explicit discussion of risks associated with the bioconcentration potential, bioaccumulation potential, biomagnification potential, and persistence of each contaminant, and consideration of any other available, published and peer-reviewed scientific information on other sources of stress as appropriate;
(f) As appropriate, the potential for significant adverse effects on the health or viability of individual ecological receptors or local populations may be evaluated with a weight-of-evidence analysis or population viability analysis, respectively. These analyses may utilize field studies, laboratory investigations, appropriate population models, or any combination of these or other methods acceptable to the Department; and
(g) Quantitative and qualitative uncertainty analysis as appropriate for each element of the risk assessment.
(4) **Residual risk assessments** shall be conducted prior to selection or approval of the remedial action, and shall include:
(a) A quantitative assessment of the risk resulting from concentrations of untreated waste or treatment residuals remaining at the facility at the conclusion of any treatment or excavation and offsite disposal activities taking into consideration current and reasonably likely future land and water use scenarios and the exposure assumptions used in the baseline risk assessment; and
(b) A qualitative or quantitative assessment of the adequacy and reliability of any institutional or engineering controls to be used for management of treatment residuals and untreated hazardous substances remaining at the facility.
(c) The combination of (a) and (b) constitute a residual risk assessment that must demonstrate to the Department that acceptable levels of risk as defined by OAR 340-122-0115 would be attained in the locality of the facility.
(5) **Probabilistic techniques** may be applied to human health and ecological risk assessments. The purpose of this rule is to establish a minimum level of technical performance for probabilistic risk assessments submitted to the Department.
(a) Before the commencement of a probabilistic risk assessment, the following issues shall be addressed:
(A) Current and reasonably likely future land and water uses in the locality of the facility;
(B) A site-specific preliminary conceptual site model that relates potential receptors, hazardous substances, and exposure pathways;
(C) Preliminary assessment endpoints for any ecological risk assessment; and
(D) Sources and characteristics of the distributions proposed for use in the assessment.
(b) Based on consideration of the items specified in subsection(5)(a) of this rule, a probabilistic risk assessment may be performed in accordance with a work plan approved by the Department.
(c) The Department is not obligated to accept the results of a probabilistic risk assessment, unless the information requirements set forth in subsection (5)(d) of this rule or otherwise specified by the Department have been addressed in a manner acceptable to the Department.
(d) The probabilistic risk assessment shall include, but not be limited to, information regarding:
(A) All formulae used to estimate exposure point values, toxicity (cancer slope factor, reference dose) values, ecological benchmark values, hazard indices, and incremental lifetime cancer risks;

(B) The probabilistic risk assessment's use of input parameters expressed as either point estimates or distributions. For each input parameter expressed as a distribution, the following information shall be provided:
(i) The shape of the full distribution;
(ii) To the extent practicable, the mean, standard deviation, minimum, 5th percentile, 10th percentile, median, 90th percentile, 95th percentile, and maximum of the specified distribution;
(iii) Justification for the use of each distribution explaining the rationale for its use and the rejection of other relevant distributions. Justification shall be based on one or more of the following:
(I) Distributions presented in a refereed or peer-reviewed publication;
(II) Distributions available from the U.S. Environmental Protection Agency or other state or federal government agency, the American Society for Testing and Materials (ASTM), or any distributions designated by the Department as default distributions;
(III) Expert or professional judgment; or
(IV) Parametric distributions of input variables fit quantitatively to measured data. For such distributions, the following information shall be provided: parametric fits and the data on the same axes; appropriate goodness-of-fit statistics; implications of any important differences between the parametric fits and the data; and influence of the statistical process or underlying mechanism creating the random variable on the selection of the distribution used.
(iv) The extent to which input distributions and their parameters capture and separately represent both stochastic variability and knowledge uncertainty. This information shall comprise a portion of, but not be a replacement for, a comprehensive discussion in the body of the baseline risk assessment of the qualitative and quantitative sources of uncertainty.
(C) Any correlations between or among input variables that are known or expected to have the practical effect of significantly affecting the risk assessment;
(D) For each output distribution resulting from the probabilistic risk assessment, the following information:
(i) The shape of the full distribution and location of the acceptable risk level; and
(ii) To the extent practicable, the mean, standard deviation, minimum, 5th percentile, 10th percentile, median, 90th percentile, 95th percentile, and maximum of the specified distribution.
(E) A probabilistic sensitivity analysis for all key input distributions conducted so as to distinguish, to the extent possible, the effects of variability from the effects of uncertainty in the input variables; and
(F) Justification for the selection of any point estimate value incorporated into the probabilistic assessment explaining the rationale for its selection and for the rejection of other relevant point estimate values. Such justification for use shall be based on one or more of the sources specified in subparagraph (5)(d)(B)(iii) of this rule.
(e) Probabilistic methods may be applied to:
(A) Environmental media contaminant concentration data;
(B) Transport and fate modeling;
(C) Exposure estimation;
(D) Human toxicity estimation;
(E) Ecological response estimation; or
(F) Risk characterization.
Stat. Auth.: ORS 465.315 & ORS 465.400
Stats. Implemented: ORS 465.200 - ORS 465.455, ORS 465.900, ORS 466.706 - ORS 466.835 & ORS 466.895
Hist.: DEQ 2-1997, f. & cert. ef. 2-7-97

**340-122-0085**

**Feasibility Study**

(1) If, based upon the remedial investigation, the results of a removal, or other information, the Director determines that remedial action might be necessary to protect public health, safety or welfare or the environment, the Director may perform or require to be performed a feasibility study to develop information for selection or approval of a remedial action.
(2) A feasibility study shall develop and evaluate a range of remedial action alternatives acceptable to the Department, including any or all of the following:
(a) No action;
(b) Remedial action utilizing engineering and/or institutional controls;
(c) Remedial action utilizing treatment;
(d) Remedial action utilizing excavation and offsite disposal; and
(e) Any combination of the above, as appropriate.
(3) Remedial action alternatives may be eliminated from development or evaluation in the feasibility study if, based on the remedial investigation and consideration of factors specified in OAR 340-122-0090, the Department determines one or more remedial action alternatives are not protective, feasible or appropriate for the facility.

(4) For each remedial action option developed under section (2) of this rule, the feasibility study shall evaluate:
(a) The protectiveness of the alternative based upon the standards set forth in OAR 340-122-0040;
(b) The feasibility of the alternative based upon a balancing of the remedy selection factors set forth in OAR 340-122-0090(3) and (4); and
(c) The extent to which the remedial action alternative treats hot spots of contamination based upon the criteria set forth in sections (5) and (6) of this rule and OAR 340-122-0090(4).
(5) For groundwater or surface water in which a significant adverse effect on existing or reasonably likely future beneficial uses has been identified under OAR 340-122-0080(6):
(a) The feasibility study shall evaluate treatment to concentrations that ensure such significant adverse effects will not occur. Specifically, the following shall be evaluated:
(A) Whether treatment is reasonably likely to restore or protect a beneficial use within a reasonable time; and
(B) The extent to which treatment is feasible, considering the remedy selection factors set forth in OAR 340-122-0090, including application of the higher threshold for evaluating the reasonableness of the cost of treating hot spots of contamination.
(b) Where a concentration identified in subsection (5)(a) of this rule is not equivalent to an acceptable risk level:
(A) The feasibility study shall evaluate the feasibility of treatment to the concentration identified in subsection (5)(a), regardless of whether that level is more or less stringent than the acceptable risk level, applying the higher threshold for reasonableness of the cost of treatment; and
(B) Where the acceptable risk level is more stringent than the concentration identified in subsection (5)(a), the feasibility study shall also evaluate the feasibility of treatment to the acceptable risk level, without application of the higher threshold for reasonableness of the cost of treatment. If treatment to a more stringent acceptable risk level is not feasible, the feasibility study shall evaluate other remedial measures providing protection while allowing beneficial use of the water.
(6) For contamination of media other than groundwater or surface water, the feasibility study shall evaluate the extent to which the hazardous substances cannot be reliably contained.
(7) For hot spots of contamination in media other than groundwater or surface water that have been identified under OAR 340-122-0080(7) or section (6) of this rule, the feasibility study shall evaluate:
(a) The feasibility of treatment to a point where the concentration or condition making the hazardous substance a hot spot would no longer occur at the facility, based upon a balancing of the remedy selection factors set forth in OAR 340-122-0090 and an application of the higher threshold for evaluating the reasonableness of the cost of treating hot spots of contamination; and
(b) The feasibility of treatment to the acceptable risk level through comparison to other remedial methods without application of the higher threshold for reasonableness of the cost of the treatment.
(8) The feasibility study should recommend a protective and feasible remedial action from the remedial action alternatives developed and evaluated in the feasibility study. For any recommended remedial action, the feasibility study shall:
(a) Identify the extent to which the remedial action alternative would be conducted onsite;
(b) Identify all state or local permits, licenses, or other authorizations or procedural requirements that would be exempted pursuant to ORS 465.315(3);
(c) Describe any consultation with affected state or local government bodies; and
(d) Identify applicable substantive requirements of the affected state or local laws and how they would be addressed.
Stat. Auth.: ORS 465.315 & ORS 465.400
Stats. Implemented: ORS 465.200 - ORS 465.455, ORS 465.900, ORS 466.706 - ORS 466.835 & ORS 466.895
Hist.: DEQ 2-1997, f. & cert. ef. 2-7-97

**340-122-0090**

**Selection or Approval of the Remedial Action**

(1) Based on the administrative record, the Director shall select or approve a remedial action that:
(a) Is protective of present and future public health, safety and welfare and of the environment, as specified in OAR 340-122-0040;
(b) Is based on balancing of remedy selection factors, as specified in section (3) of this rule; and
(c) Treats hot spots of contamination to the extent feasible, as specified in section (4) of this rule.
(2) A remedial action may achieve protection through:
(a) Treatment;
(b) Excavation and offsite disposal;
(c) Engineering controls;
(d) Institutional controls;
(e) Any other method of protection; or

(f) A combination of the above.
(3) In determining the appropriate method of remediation for a specific facility, the Director shall select or approve a protective remedial action that balances the following factors:
(a) **Effectiveness**. Each remedial action alternative shall be assessed for its effectiveness in achieving protection, by considering the following, as appropriate:
(A) Magnitude of risk from untreated waste or treatment residuals remaining at the facility absent any risk reduction achieved through onsite management of exposure pathways, as determined in OAR 340-122-0084(4)(a). The characteristics of the residuals shall be considered to the degree that they remain hazardous, taking into account their volume, toxicity, mobility, propensity to bioaccumulate, and propensity to degrade;
(B) Adequacy of any engineering and institutional controls necessary to manage the risk from treatment residuals and untreated hazardous substances remaining at the facility, as determined in OAR 340-122-0084(4)(b);
(C) With respect to hot spots of contamination in water, the extent to which the remedial action restores or protects existing and reasonably likely future beneficial uses of water;
(D) Adequacy of treatment technologies in meeting treatment objectives;
(E) Time until the remedial action objectives would be achieved; and
(F) Any other information relevant to effectiveness.
(b) **Long term reliability.** Each remedial action alternative shall be assessed for its long-term reliability, by considering the following, as appropriate:
(A) Reliability of treatment technologies in meeting treatment objectives;
(B) Reliability of engineering and institutional controls necessary to manage the risk from treatment residuals and untreated hazardous substances, taking into consideration the characteristics of the hazardous substances to be managed and the effectiveness and enforceability over time of engineering and institutional controls in preventing migration of contaminants and in managing risks associated with potential exposure;
(C) Nature, degree, and certainties or uncertainties of any necessary long-term management (e.g., operation, maintenance, and monitoring); and
(D) Any other information relevant to long-term reliability.
(c) **Implementability.** Each remedial action alternative shall be assessed for the ease or difficulty of implementing the remedial action, by considering the following, as appropriate:
(A) Practical, technical, and legal difficulties and unknowns associated with the construction and implementation of a technology, engineering control, or institutional control, including potential scheduling delays;
(B) The ability to monitor the effectiveness of the remedy;
(C) Consistency with federal, state and local requirements; activities needed to coordinate with other agencies; and the ability and time required to obtain any necessary authorization from other governmental bodies;
(D) Availability of necessary services, materials, equipment, and specialists, including the availability of adequate offsite treatment, storage, and disposal capacity and services, and availability of prospective technologies; and
(E) Any other information relevant to implementability.
(d) **Implementation Risk.** Each remedial action alternative shall be assessed for the risk from implementing the remedial action, by considering the following, as appropriate:
(A) Potential impacts on the community during implementation of the remedial action and the effectiveness and reliability of protective or mitigative measures;
(B) Potential impacts on workers during implementation of the remedial action and the effectiveness and reliability of protective or mitigative measures;
(C) Potential impacts on the environment during implementation of the remedial action and the effectiveness and reliability of protective or mitigative measures;
(D) Time until the remedial action is complete; and
(E) Any other information related to implementation risk.
(e) **Reasonableness of Cost.** Each remedial action alternative shall be assessed for the reasonableness of the cost of the remedial action, by considering the following, as appropriate:
(A) Cost of the remedial action including:
(i) Capital costs, including both direct and indirect costs;
(ii) Annual operation and maintenance costs;
(iii) Costs of any periodic review requirements; and
(iv) Net present value of all of the above.
(B) Degree to which the costs of the remedial action are proportionate to the benefits to human health and the environment created through risk reduction or risk management;
(C) With respect to hot spots of contamination in water, the degree to which the costs of the remedial action are proportionate to the benefits created through restoration or protection of existing and reasonably likely future beneficial uses of water;
(D) The degree of sensitivity and uncertainty of the costs; and
(E) Any other information relevant to cost-reasonableness.

(4) The Director shall select or approve a protective remedial action in accordance with the following:
(a) Treatment of hot spots of contamination to the extent feasible considering the treatment criteria in OAR 340-122-0085 (5) and (7) and the factors set forth in OAR 340-122-0090(3);
(b) 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;
(c) A higher threshold shall be applied in evaluating the reasonableness of costs for treating hot spots of contamination, whether such treatment occurs onsite or in conjunction with excavation and offsite disposal; and
(d) Subject to the preference for treatment of hot spots of contamination, where two or more remedial action alternatives are protective, the least expensive alternative shall be preferred, unless the additional cost of a more expensive remedial action alternative is justified by proportionately greater benefits within one or more of the factors set forth in OAR 340-122-0090(3).
(5) Any person responsible for undertaking the remedial action who proposes one remedial action alternative over another shall have the burden of demonstrating to the Director through the remedial investigation and feasibility study that such remedial action alternative fulfills the requirements of OAR 340-122-0090.
(6) Subject to the remedy selection factors specified in section (3) of this rule, in selecting or approving a protective remedial action alternative, the Director shall consider current and reasonably anticipated future land uses at the facility and surrounding properties, taking into account:
(a) Current land use zoning;
(b) Other land use designations;
(c) Land use plans as established in local comprehensive plans and land use implementing regulations of any governmental body having land use jurisdiction; and
(d) Concerns of the facility owner, neighboring owners, and the community.
(7) The Director may incorporate into the selection or approval of a remedial action:
(a) Such periodic review or inspections as are necessary to ensure protection of present and future public health, safety and welfare and of the environment;
(b) A delineation of the extent to which the remedial action occurs onsite, for purposes of ORS 465.315(3); and
(c) Designation of points of compliance for measuring attainment of any remedial action objective. Designation of points of compliance shall consider proximity to the source of the release and exposure pathways evaluated in the baseline risk assessment. Points of compliance shall be established as close as possible to the source of the release, and may also be established at other points relevant to exposure pathways and receptors.
Stat. Auth.: ORS 465.400(1), ORS 466 & ORS 468.020
Stats. Implemented: ORS 465.200 - ORS 465.455, ORS 465.900, ORS 466.706 - ORS 466.835 & ORS 466.895
Hist.: DEQ 26-1988, f. & cert. ef. 9-16-89; DEQ 12-1992, f. & cert. ef. 6-9-92; DEQ 2-1997, f. & cert. ef. 2-7-97

**340-122-0100**

**Public Notice and Participation**

(1) The Department may solicit public input for any of the activities specified in OAR 340-122-0050. Such input may include, but is not limited to, information related to:
(a) Current and reasonably likely land use;
(b) Current and reasonably likely beneficial uses of water;
(c) Ecological assessment endpoints; and
(d) Remedial action goals.
(2) The Department shall, prior to selection or approval of a remedial action:
(a) Provide notice and opportunity for comment and a public meeting regarding the proposed remedial action, in accordance with ORS 465.320; and
(b) Make a reasonable effort to identify and notify interested and affected community organizations and other parties.
(3) Any notice under section (2) of this rule shall include but not be limited to a brief description of the Department's proposed remedial action alternative, if known, and information regarding where a copy of the full proposal may be inspected and copied.
(4) The Director shall consider any comments received during the public comment period and any public meeting before approving the remedial action.
(5) In the Director's discretion, the Department may provide public notice and opportunity for comment and a public meeting regarding a proposed removal and shall consider any comments received during such public comment period or public meeting.
(6) Agency records concerning removal or remedial actions and related investigations shall be made available to the public in accordance with ORS 192.410 to 192.505, subject to exemptions to public disclosure, if any, under ORS 192.501 and

192.502. The Department shall maintain and make available for public inspection and copying a record of pending and completed removals, remedial actions, and related investigations, to be located at the headquarters or regional offices of the Department.
Stat. Auth.: ORS 465.400(1), ORS 465.405, ORS 466 & ORS 468.020
Stats. Implemented: ORS 465.200 - ORS 465.455, ORS 465.900, ORS 466.706 - ORS 466.835 & ORS 466.895
Hist.: DEQ 26-1988, f. & cert. ef. 9-16-88; DEQ 29-1990, f. & cert. ef. 7-13-90; DEQ 2-1997, f. & cert. ef. 2-7-97

**340-122-0110**

**Administrative Record**

(1) For purposes of the Director's selection of a removal or remedial action, and enforcement, cost recovery, or review, if any, related to the Director's action, the administrative record shall consist of the following types of documents generated for a facility up to the time of the Director's action:
(a) Factual information, data, and analyses that form a basis for the Director's action;
(b) The Preliminary Assessment and Remedial Investigational and Feasibility Study, as applicable;
(c) Orders, consent decrees, settlement agreements, work plans, and other decision documents;
(d) Guidance documents and technical literature that form a basis for the Director's action; and
(e) Public comments and other information received by the Department prior to the Director's action, and Department responses to significant comments.
(2) Unless expressly designated part of the administrative record by the Director, the administrative record shall not include:
(a) Draft documents and internal memoranda;
(b) Documents relating to the liability of persons potentially liable under ORS 465.255;
(c) Documents relating to state remedial action costs; and
(d) Documents privileged under law or confidential under ORS 192.501 or 192.502.
Stat. Auth.: ORS 465.400(1), ORS 465.405, ORS 466 & ORS 468.020
Stats. Implemented: ORS 465.200 - ORS 465.455, ORS 465.900, ORS 466.706 - ORS 466.835 & ORS 466.895
Hist.: DEQ 26-1988, f. & cert. ef. 9-16-88; DEQ 29-1990, f. & cert. ef. 7-13-90

**340-122-0115**

**Definitions**

Terms not defined in this rule have the meanings set forth in ORS 465.200. Additional terms are defined as follows unless the context requires otherwise:
(1) "Acceptable risk level" with respect to the toxicity of hazardous substances has the meaning set forth in ORS 465.315 (1)(b)(A) and (B) and is comprised of the acceptable risk level definitions provided for carcinogenic exposures, noncarcinogenic exposures, and ecological receptors in sections (2) through (6) of this rule.
(2) "Acceptable risk level for human exposure to individual carcinogens" means:
(a) For deterministic risk assessments, a lifetime excess cancer risk of less than or equal to one per one million for an individual at an upper-bound exposure; or
(b) For probabilistic risk assessments, a lifetime excess cancer risk for each carcinogen of less than or equal to one per one million at the 90th percentile, and less than or equal to one per one hundred thousand at the 95th percentile, each based upon the same distribution of lifetime excess cancer risks for an exposed individual.
(3) "Acceptable risk level for human exposure to multiple carcinogens" means the acceptable risk level for human exposure to individual carcinogens and:
(a) For deterministic risk assessments, a cumulative lifetime excess cancer risk for multiple carcinogens and multiple exposure pathways of less than or equal to one per one hundred thousand at an upper-bound exposure; or
(b) For probabilistic risk assessments, a cumulative lifetime excess cancer risk for multiple carcinogens and multiple exposure pathways of less than or equal to one per one hundred thousand at the 90th percentile and less than or equal to one per ten thousand at the 95th percentile, each based upon the same distribution of cumulative lifetime excess cancer risks for an exposed individual.
(4) "Acceptable risk level for human exposure to noncarcinogens" means:
(a) For deterministic risk assessments, a hazard index less than or equal to one for an individual at an upper-bound exposure; or
(b) For probabilistic risk assessments, a hazard index less than or equal to one at the 90th percentile, and less than or equal to ten at the 95th percentile, each based upon the same distribution of hazard index numbers for an exposed individual.

(5) "Acceptable risk level for individual ecological receptors" applies only to species listed as threatened or endangered pursuant to 16 USC 1531 et seq. or ORS 465.172, and means:
(a) For deterministic risk assessments, a toxicity index less than or equal to one for an individual ecological receptor at an upper-bound exposure, where the toxicity index is the sum of the toxicity quotients attributable to systemic toxicants with similar endpoints for similarly-responding species and the toxicity quotient is the ratio of the exposure point value to the ecological benchmark value; or
(b) For probabilistic risk assessments, a toxicity index less than or equal to one at the 90th percentile and less than or equal to 10 at the 95th percentile, each based on the same distribution of toxicity index numbers for an exposed individual ecological receptor; or
(c) The probability of important changes in such factors as growth, survival, fecundity, or reproduction related to the health and viability of an individual ecological receptor that are reasonably likely to occur as a consequence of exposure to hazardous substances is de minimis.
(6) "Acceptable risk level for populations of ecological receptors" means a 10 percent chance, or less, that no more than 20 percent of the total local population will be exposed to an exposure point value greater than the ecological benchmark value for each contaminant of concern and no other observed significant adverse effects on the health or viability of the local population.
(7) "Assessment endpoint" means an explicit expression of a specific ecological receptor and an associated function or quality that is to be maintained or protected. Assessment endpoints represent ecological receptors directly or as their surrogates for the purposes of an ecological risk assessment.
(8) "Background level" means the concentration of hazardous substance, if any, existing in the environment in the location of the facility before the occurrence of any past or present release or releases.
(9) "Beneficial uses of water" means any current or reasonably likely future beneficial uses of groundwater or surface water by humans or ecological receptors.
(10) "Carcinogen" means any substance or agent that produces or tends to produce cancer in humans.
(11) "Cleanup level" for purposes of OAR 340-122-0045, means the residual concentration of a hazardous substance in a medium that is determined to be protective of public health, safety and welfare, and the environment under specified exposure conditions.
(12) "Commission" means the Environmental Quality Commission.
(13) "Confirmed release" means a release of a hazardous substance into the environment that has been confirmed by the Department in accordance with OAR 340-122-0073.
(14) "Confirmed release list" means a list of facilities for which the Director has confirmed a release of a hazardous substance.
(15) "Contaminant of concern" means a hazardous substance that is present in such concentrations that the contaminant poses a threat or a potentially unacceptable risk to public health, safety or welfare, or the environment considering:
(a) The toxicological characteristics of the hazardous substance that influence its ability to affect adversely human health, ecological receptors or the environment relative to the concentration of the hazardous substance at the facility;
(b) The chemical and physical characteristics of the hazardous substance that govern its tendency to persist in the environment, move through environmental media, or accumulate through food webs;
(c) The background level of the hazardous substances;
(d) The thoroughness of the testing for the hazardous substance at the facility;
(e) The frequency that the hazardous substance has been detected at the facility; and
(f) Degradation by-products of the hazardous substances.
(16) "Critical endpoint" or "Critical effect" means the adverse health effect used as the basis for the derivation of the reference dose (RfD). Exposure to a given chemical may result in a variety of toxic effects (e.g., liver defects, kidney defects, or blood defects). The critical endpoint is selected from the different adverse health effects produced by a given chemical, and is the adverse health effect with the lowest dose level that produced toxicity.
(17) "Department" means the Oregon Department of Environmental Quality.
(18) "Deterministic risk assessment" means a risk assessment that produces a point value estimate of risk for a specific set of exposure assumptions.
(19) "De minimis release" means a release of a hazardous substance that, because of the quantity or characteristics of the hazardous substance released and the potential for migration and exposure of human or environmental receptors, can reasonably be considered to pose no significant threat to public health, safety or welfare, or the environment.
(20) "Director" means the Director of the Department of Environmental Quality or the Director's authorized representative.
(21) "Ecological benchmark value" means the highest no-observed-adverse-effect-level (NOAEL) for individual ecological receptors considering effects on reproductive success or the median lethal dose or concentration (LD50 or LC50) for populations of ecological receptors. If a NOAEL, LD50 or LC50, as applicable, is not available for ecological receptors considered in the risk assessment, the ecological benchmark value may be derived from other toxicological endpoints for those receptors or appropriate surrogates for those receptors, adjusted with uncertainty factors to equate to a NOAEL, LD50 or LC50. The ecological benchmark value shall be based, to the extent practicable, on studies whose routes of exposure and

duration of exposure were commensurate with the expected routes and duration of exposure for ecological receptors considered in the risk assessment, or appropriate surrogates for those receptors.
(22) "Ecological receptor" means a population of plants or animals (excluding domestic animals and cultivated plants) or an individual member of any species listed as threatened or endangered pursuant to 16 U.S.C. 1532 et seq. or ORS 496.172.
(23) "Engineering control" means a remedial method used to prevent or minimize exposure to hazardous substances, including technologies that reduce the mobility or migration of hazardous substances. Engineering controls may include, but are not limited to, capping, horizontal or vertical barriers, hydraulic controls, and alternative water supplies.
(24) "Environment" includes ecological receptors, the waters of the state, any drinking water supply, any land surface and subsurface strata, sediments, saturated soils, subsurface gas, or ambient air or atmosphere.
(25) "Exposure point value" means the concentration or dose of a hazardous substance occurring at a location of potential contact between a human receptor and the hazardous substance, or between an ecological receptor and the hazardous substance.
(26) "Facility" or "Site" 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.
(27) "Groundwater" means any water, except capillary moisture, beneath the land surface or beneath the bed of any stream, lake, reservoir or other body of surface water within the boundaries of the state, whatever may be the geological formation or structure in which such water stands, flows, percolates or otherwise moves.
(28) "Hazard index" means a number equal to the sum of the hazard quotients attributable to systemic toxicants with similar toxic endpoints.
(29) "Hazard quotient" means the ratio of the exposure point value to the reference dose, where the reference dose is typically the highest dose causing no adverse effects on survival, growth or reproduction in human populations.
(30) "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 as defined in ORS 465.200(18); and
(d) Any substance designated by the commission under ORS 465.400.
(31) "Hot spots of contamination" means:
(a) For groundwater or surface water, hazardous substances having a significant adverse effect on beneficial uses of water or waters to which the hazardous substances would be reasonably likely to migrate and for which treatment is reasonably likely to restore or protect such beneficial uses within a reasonable time, as determined in the feasibility study; and
(b) For media other than groundwater or surface water, (e.g., contaminated soil, debris, sediments, and sludges; drummed wastes; "pools" of dense, non-aqueous phase liquids submerged beneath groundwater or in fractured bedrock; and non-aqueous phase liquids floating on groundwater), if hazardous substances present a risk to human health or the environment exceeding the acceptable risk level, the extent to which the hazardous substances:
(A) Are present in concentrations exceeding risk-based concentrations corresponding to:
(i) 100 times the acceptable risk level for human exposure to each individual carcinogen;
(ii) 10 times the acceptable risk level for human exposure to each individual noncarcinogen; or
(iii) 10 times the acceptable risk level for exposure of individual ecological receptors or populations of ecological receptors to each individual hazardous substance.
(B) Are reasonably likely to migrate to such an extent that the conditions specified in subsection (a) or paragraphs (b)(A) or (b)(C) would be created; or
(C) Are not reliably containable, as determined in the feasibility study.
(32) "Institutional control" means a legal or administrative tool or action taken to reduce the potential for exposure to hazardous substances. Institutional controls may include, but are not limited to, use restrictions, environmental monitoring requirements, and site access and security measures.
(33) "Inventory" means a list of facilities for which the Director has confirmed a release of a hazardous substance and, based on a preliminary assessment or equivalent information, has determined that additional investigation, removal, remedial action, or long term engineering or institutional controls related to removal or remedial action are required to assure protection of the present and future public health, safety and welfare, and the environment.
(34) "Locality of the facility" means any point where a human or an ecological receptor contacts, or is reasonably likely to come into contact with, facility-related hazardous substances, considering:
(a) The chemical and physical characteristics of the hazardous substances;
(b) Physical, meteorological, hydrogeological, and ecological characteristics that govern the tendency for hazardous substances to migrate through environmental media or to move and accumulate through food webs;

(c) Any human activities and biological processes that govern the tendency for hazardous substances to move into and through environmental media or to move and accumulate through food webs; and
(d) The time required for contaminant migration to occur based on the factors described in subsections (34)(a) through (c) of this rule.
(35) "Measurement endpoints for ecological receptors" are quantitative expressions of an observed or measured response in ecological receptors exposed to hazardous substances.
(36) "Noncarcinogen" means hazardous substances with adverse health effects on humans other than cancer.
(37) "Onsite", for purposes of ORS 465.315(3), means the areal extent of contamination and all suitable areas in close proximity to the contamination necessary for implementation of a removal or remedial action.
(38) "Permitted or authorized release" means a release that is from an active facility and that is subject to and in substantial compliance with a current and legally enforceable permit issued by an authorized public agency.
(39) "Population" and "Local population", for purposes of evaluating ecological receptors, means a group of individual plants, animals, or other organisms of the same species that live together and interbreed within a given habitat, including any portion of a population of a transient or migratory species that uses habitat in the locality of the facility for only a portion of the year or for a portion of their lifecycle.
(40) "Practical quantification limit" or "PQL" means the lowest concentration that can be reliably measured within specified limits of precision, accuracy, representativeness, completeness, and comparability when testing field samples under routine laboratory operating conditions using Department-approved methods.
(41) "Preliminary assessment" means an investigation conducted in accordance with OAR 340-122-0072 for the purpose of determining whether additional investigation, removal, remedial action, or related engineering or institutional controls are needed to assure protection of public health, safety and welfare, and the environment.
(42) "Probabilistic risk assessment" means a risk assessment that produces a credible range or distribution of possible risk estimates by taking into consideration the variability and uncertainty in the exposure and toxicity data used to make the assessment.
(43) "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 any threat thereof, but excludes:
(a) Any release which 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 such release is subject to the 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 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.
(44) "Remedial action" and "Removal" have the meanings set forth in ORS 465.200 (22) and (24), respectively, and, for purposes of these rules, may include investigations, treatment, excavation and offsite disposal, engineering controls, institutional controls, any combination thereof.
(45) "Remediated" means implementation of a removal or remedial action.
(46) "Residual risk assessment" means both:
(a) A quantitative assessment of the risk resulting from concentrations of untreated waste or treatment residuals remaining at the conclusion of any treatment and offsite disposal taking into consideration current and reasonably likely future land and water use scenarios and the exposure assumptions used in the baseline risk assessment; and
(b) A qualitative or quantitative assessment of the adequacy and reliability of any institutional or engineering controls to be used for management of treatment residuals and untreated hazardous substances.
(47) "Risk" means the probability that a hazardous substance, when released into the environment, will cause adverse effects in exposed humans or ecological receptors.
(48) "Risk assessment" means the process used to determine the probability of an adverse effect due to the presence of hazardous substances. A risk assessment includes identification of the hazardous substances present in the environmental media; assessment of exposure and exposure pathways; assessment of the toxicity of the hazardous substances; characterization of human health risks; and characterization of the impacts or risks to the environment.
(49) "Sensitive environment", for purposes of OAR 340-122-0045, means an area of particular environmental value where a hazardous substance could pose a greater threat than in other non-sensitive areas. Sensitive environments include but are not limited to: Critical habitat for federally endangered or threatened species; National Park, Monument, National Marine Sanctuary, National Recreational Area, National Wildlife Refuge, National Forest Campgrounds, recreational areas, game management areas, wildlife management areas; designated federal Wilderness Areas; wetlands (freshwater, estuarine, or coastal); wild and scenic rivers; state parks; state wildlife refuges; habitat designated for state endangered species; fishery

resources; state designated natural areas; county or municipal parks; and other significant open spaces and natural resources protected under Goal 5 of Oregon's Statewide Planning Goals.
(50) "Significant adverse effect on beneficial uses of water" means current or reasonably likely future exceedance of:
(a) Applicable or relevant federal, state or local water quality standards, criteria, or guidance;
(b) In the absence of applicable or relevant water quality standards, criteria, or guidance, the acceptable risk level; or
(c) If subsections (a) and (b) of this section do not apply, the concentration of a hazardous substance indicated by available published peer-reviewed scientific information to have a significant adverse effect on a current or reasonably likely future beneficial use of water.
(51) "Soil" means a mixture of organic and inorganic solids, air, water, and biota which exists on the earth surface above bedrock, including materials of anthropogenic sources such as slag and sludge.
(52) "Surface water" means lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, wetlands, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface waters), which are wholly or partially within or bordering the state or within its jurisdiction.
(53) "Total excess cancer risk" means the upper bound on the estimated excess cancer risk associated with exposure to multiple hazardous substances and multiple exposure pathways.
(54) "Treatment" means to permanently and substantially eliminate or reduce the toxicity, mobility or volume of hazardous substances with the use of either in-situ or ex-situ remedial technologies.
Stat. Auth.: ORS 465.315 & ORS 465.400
Stats. Implemented: ORS 465.200 - ORS 465.455, ORS 465.900, ORS 466.706 - ORS 466.835 & ORS 466.895
Hist.: DEQ 2-1997, f. & cert. ef. 2-7-97

**340-122-0120**

**Security Interest Exemption**

(1) Pre-foreclosure. A person or "holder" who maintains indicia of ownership primarily to protect a security interest in a facility, and who does not participate in the management of the facility, is not an "owner or operator" of such facility under ORS 465.255(1)(a) and (b). Whether a transaction falls within this exemption will depend on the facts and on the law otherwise applicable to the transaction:
(a) "Holder" for the purposes of ORS 465.200 et seq. and this rule means a person who maintains indicia of ownership (as defined below) primarily to protect a security interest (as defined below). A holder includes the initial holder (such as a loan originator), any subsequent holder (such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market), a guarantor of an obligation, a surety, or any other person who holds ownership indicia primarily to protect a security interest, or a receiver or other person who acts on behalf or for the benefit of a holder;
(b) "Indicia of Ownership" as used in ORS 465.200 et seq. and this rule means evidence of a security interest, evidence of an interest in a security interest, or evidence of an interest in real or personal property securing a loan or other obligation, including any legal or equitable title to real or personal property acquired incident to foreclosure or its equivalents. Evidence of such interests include, but are not limited to, mortgages, deeds of trust, liens, judgment liens, statutory liens, surety bonds and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased property (hereinafter "lease financing transaction"), legal or equitable title obtained pursuant to foreclosure, and their equivalents. Evidence of such interests also include, but are not limited to, assignments, pledges, or other rights to or other forms of encumbrance against property that are held primarily to protect a security interest. A person is not required to hold title or a security interest in order to maintain indicia of ownership;
(c) "Primarily to Protect a Security Interest" as used in ORS 465.200 et seq. and this rule means that the holder's indicia of ownership are held primarily for the purpose of securing payment or performance of an obligation. The term "primarily to protect a security interest" does not include indicia of ownership held primarily for investment purposes, nor ownership indicia held primarily for purposes other than as protection for a security interest;
(d) "Security Interest" as used in ORS 465.200 et seq. and this rule means an interest in a facility created or established for the purpose of securing a loan or other obligation. Security interests include, but are not limited to, mortgages, deeds of trusts, liens, judgment liens, statutory liens, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, assignments, factoring agreements, accounts receivable financing arrangements, and consignments, if the transaction creates or establishes an interest in a facility for the purpose of securing a loan or other obligation;
(e) "Participating in the Management of a Facility" as used in ORS 465.200 et seq. and this rule means that the holder is engaging or has engaged in acts of facility management, as defined herein:
(A) Actions That are Participation in Management. Participation in the management of a facility means actual participation in the management or operational affairs of the facility by the holder, and does not include the mere capacity to influence, or

ability to influence, or the unexercised right to control facility operations. Whether the holder has participated in management sufficiently to void the exemption is a fact-sensitive inquiry. In all cases, the determination of whether a holder is participating in management depends on the holder's actions with respect to the facility rather than the outcomes associated with such actions. A holder is participating in management, while the borrower is still in possession of the facility encumbered by the security interest, only if the holder either:
(i) Exercises decision-making control over the borrower's environmental compliance, such that the holder has undertaken responsibility for the borrower's hazardous substance handling or disposal practices; or
(ii) Exercises control at a level comparable to that of a manager of the borrower's enterprise, such that the holder has assumed or manifested responsibility for the overall management of the enterprise encompassing the day-to-day operational (as opposed to financial or administrative) decision-making of the enterprise. Operational aspects of the enterprise include, but are not limited to, functions typically performed by positions such as that of facility or plant manager, operations manager, chief operating officer, or chief executive officer. Financial or administrative aspects include, but are not limited to, functions typically performed by positions such as that of credit manager, accounts payable/receivable manager, personnel manager, controller, or chief financial officer.
(B) Actions That are not Participation in Management:
(i) Actions at the Inception of the Loan or Other Transaction. No act or omission prior to the time that indicia of ownership are held primarily to protect a security interest constitutes evidence of participation in management. A prospective holder who undertakes or requires an environmental inspection of the facility in which indicia of ownership is to be held, or requires a prospective borrower to clean up a facility or to comply or come into compliance (whether prior or subsequent to the time that indicia of ownership are held primarily to protect a security interest) with any applicable law or regulation, is not by such action considered to be participating in the facility's management. Neither the statute nor this rule requires a holder to conduct or require an inspection to qualify for the exemption, and the liability of a holder cannot be based on or affected by the holder not conducting or requiring an inspection.
NOTE: A person who desires to preserve or claim a defense under ORS 465.255(2)(a) must undertake the appropriate inquiry described in ORS 465.255(6).
(ii) Policing the Security Interest or Loan. A holder who engages in policing activities prior to foreclosure or its equivalents will remain within the exemption provided that the holder does not by such actions participate in the management of the facility. Such policing actions include, but are not limited to, requiring the borrower to clean up the facility during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, rules, and regulations during the term of the security interest; securing or exercising authority to monitor or inspect the facility (including on-site inspections) in which indicia of ownership are maintained, or the borrower's business or financial condition during the term of the security interest; or taking other actions to adequately police the loan or security interest (such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower);
(iii) Work Out. A holder who engages in work out activities prior to foreclosure or its equivalent will remain within the exemption provided that the holder does not by such action participate in the management of the facility. For purposes of this rule, "work out" refers to those actions by which a holder, at any time prior to foreclosure or its equivalents, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Work out activities include, but are not limited to, restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owing to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance relating to work out activities; and exercising any right or remedy the holder is entitled to by law or under any warranties, convenants, conditions, representations, or promises from the borrower;
(iv) Actions Taken Under ORS 465.255(7)(a). A holder does not participate in the management of a facility merely by taking a response action in accordance with ORS 465.255(7)(a).
(2) Post-foreclosure. A person who holds indicia of ownership after foreclosure or its equivalents primarily to protect a security interest is not an "owner or operator" of such facility under ORS 465.255(1)(a) and (b) provided that the holder undertakes to sell, re-lease property held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the property in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or appropriate with respect to the facility, taking all facts and circumstances into consideration, and provided that the holder did not participate in management prior to foreclosure or its equivalents:
(a) "Foreclosure or its equivalents" as used in this rule include, but are not limited to, purchase at foreclosure sale; acquisition or assignment of title in lieu of foreclosure; termination of a lease financing transaction or other repossession; acquisition of a right to title or possession; an agreement in satisfaction of the obligation; or any other formal or informal manner (whether pursuant to law or under warranties, covenants, conditions, representations, or promises from the borrower) by which the holder acquires title to or possession of the secured property. Indicia of ownership that are held primarily to protect a security interest include legal or equitable title acquired through or incident to foreclosure or its equivalents;

(b) A holder who did not participate in management prior to foreclosure or its equivalents, may sell, release property held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), liquidate, maintain business activities, wind up operations, undertake any response action in accordance with ORS 465.255(7)(a), and take measures to preserve, protect, or prepare the secured asset prior to sale or other disposition without voiding the exemption, provided that the holder undertakes to sell, re-lease property held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest the facility in a reasonably expeditious manner. To show that the holder has acted in a "reasonably expeditious manner," the holder may:
(A) Use whatever commercially reasonable means to sell, re-lease, or divest as are relevant or appropriate with respect to the facility; or
(B) Establish that the ownership indicia maintained following foreclosure or its equivalents continue to be held primarily to protect a security interest if, within 12 months following foreclosure, the holder lists the facility with a broker, dealer, or agent who deals with the type of property in question, or advertises the facility as being for sale or disposition on at least a monthly basis in either a real estate publication or a trade or other publication suitable for the facility in question, or a newspaper of general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable federal, state, or local rules of court for publication required by court order or rules of civil procedure) covering the area whether the property is located. For purposes of this provision, the 12-month period begins to run from the time that the holder acquires marketable title, provided that the holder, after the expiration of any redemption or other waiting period provided by law, acts diligently to acquire marketable title. If the holder fails to act diligently to acquire marketable title, the 12-month period begins to run on the date of the foreclosure or its equivalents.
(c) A holder that outbids, rejects, or fails to act upon an offer of fair consideration for the facility establishes that the ownership indicia in the secured property are not held primarily to protect the security interest, unless the holder is required, in order to avoid liability under federal or state law, to make a higher bid, to obtain a higher offer, or to seek or obtain an offer in a different manner:
(A) "Fair consideration", in the case of a holder maintaining indicia of ownership primarily to protect a senior security interest in the facility, is the value of the security interest calculated as follows:
(i) An amount equal to or in excess of the sum of the outstanding principal (or comparable amount in the case of a lease that constitutes a security interest) owed to the holder immediately preceding the acquisition of full title (or possession in the case of property subject to a lease financing transaction) pursuant to foreclosure or its equivalents; plus
(ii) Any unpaid interest, rent, or penalties (whether arising before or after foreclosure or its equivalents); plus
(iii) All reasonable and necessary costs, fees, or other charges incurred by the holder incident to work out, foreclosure or its equivalents, retention, maintaining the business activities of the enterprise, preserving, protecting and preparing the facility prior to sale, re-lease of property held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or other disposition; plus
(iv) Remedial action costs incurred under ORS 465.255(7)(a); less
(v) Any amounts received by the holder in connection with any partial disposition of the property, gross revenues received as a result of maintaining the business activities of the enterprise, and any amounts paid by the borrower subsequent to the acquisition of full title (or possession in the case of property subject to a lease financing transaction) pursuant to foreclosure or its equivalents.
(B) In the case of a holder maintaining indicia of ownership primarily to protect a junior security interest, fair consideration is the value of all outstanding higher priority security interests plus the value of the security interest held by the junior holder, each calculated as set forth above;
(C) "Outbids, rejects, or fails to act upon an offer" of fair consideration means that the holder outbids, rejects, or fails to act upon within 90 days of receipt of a written, bona fide, firm offer of fair consideration for the property received at any time after six months following foreclosure and its equivalents. A "written, bona fide, firm offer" means a legally enforceable, commercially reasonable, cash offer solely for the foreclosed facility, including all material terms of the transaction, from a ready, willing, and able purchaser who demonstrates the ability to perform. For purposes of this provision, the six-month period begins to run from the time that the holder acquires marketable title, provided that the holder, after the expiration of any redemption or other waiting period provided by law, acts diligently to acquire marketable title. If the holder fails to act diligently to acquire marketable title, the six-month period begins to run on the date of foreclosure or its equivalents.
(3) Holder's Basis of Liability Independent of Status as Owner or Operator:
(a) Notwithstanding this rule, a holder may incur liability in connection with its activities under the independent bases of liability set forth in ORS 465.255(1)(d) to (7);
(b) A holder who obtains actual knowledge of a release at a facility acquired by the holder through foreclosure or its equivalent and then subsequently transfers ownership or operation of the facility to another person without disclosing such knowledge shall not be entitled to the security interest exemption and shall be considered an "owner or operator" under ORS 465.255(1)(c);
(c) This rule applies only to liability under ORS 465.200 et seq. and does not apply to any right that the state or any person may have under federal statute, common law, or state statute other than ORS 465.200 et seq., to recover remedial action costs or to seek any other relief related to a release.

Stat. Auth.: ORS 465.400, ORS 465.435 & ORS 465.440
Stats. Implemented: ORS 465.200 - ORS 465.455, ORS 465.900, ORS 466.706 - ORS 466.835 & ORS 466.895
Hist.: DEQ 29-1992, f. & cert. ef. 12-17-92

**340-122-0130**

**Involuntary Acquisition of Property by the Government**

(1) State or local government ownership or control of property by involuntary acquisition or involuntary transfers within the meaning of ORS 465.255(3)(a)(A) includes, but is not limited to:
(a) Involuntary acquisitions by or transfers to a state or local government entity in its capacity as a sovereign, including transfers or acquisitions pursuant to abandonment proceedings, or as the result of tax delinquency, bankruptcy, or escheat, or other circumstances in which the government involuntarily obtains ownership or control of property by virtue of its function as sovereign;
(b) Acquisitions by or transfers to a state or local government entity or its agent (including governmental lending and credit institutions, loan guarantors, loan insurers, and financial regulatory entities that acquire security interests or properties of failed private lending or depository institutions) acting as a conservator or receiver pursuant to statutory mandate or regulatory authority;
(c) Acquisitions or transfers of assets through foreclosure or its equivalents or other means by a state or local government entity in the course of administering a governmental loan or loan guarantee or loan insurance program; and
(d) Acquisitions by or transfers to a state or local government entity pursuant to seizure or forfeiture authority.
(2) Nothing in this rule affects the applicability of OAR 340-122-0120 to any security interest, property, or asset acquired by a state or local governmental entity pursuant to an involuntary acquisition or transfer.
(3) Notwithstanding the exemptions in section (1) of this rule, a governmental entity may be subject to the independent bases of liability set forth in ORS 465.255.
(4) This rule applies only to liability under ORS 465.200 et seq. and does not apply to any right that the state or any person may have under federal statute, common law, or state statute other than ORS 465.200 et seq. to recover remedial action costs or to seek any other relief related to a release.
Stat. Auth.: ORS 465.400, ORS 465.435 & ORS 465.440
Stats. Implemented: ORS 465.200 - ORS 465.455, ORS 465.900, ORS 466.706 - ORS 466.835 & ORS 466.895
Hist.: DEQ 29-1992, f. & cert. ef. 12-17-92

**340-122-0140**

**Exemption for ORS Chapter 709 Trust Companies Acting as Fiduciaries**

(1) An ORS Chapter 709 trust company acting as a fiduciary and holding property in a fiduciary capacity is exempt from personal liability as an "owner or operator" of the property under ORS 465.255(1)(a) and (b) if:
(a) The contamination of the property occurred before establishment of the fiduciary relationship and acceptance of the property by the trust company, and, prior to the establishment of the fiduciary relationship, the trust company did not participate in management of the property as defined in OAR 340-122-0120; or
(b) The contamination of the property occurred after establishment of the fiduciary relationship and acceptance of the property by the trust company and the contamination was not the result of an act or omission of the trust company described in section (2) of this rule.
(2) Notwithstanding the exemption in section (1) of this rule, an ORS Chapter 709 trust company acting as a fiduciary may be personally liable regarding a release at property held in a fiduciary capacity if:
(a) An act or omission of the trust company constitutes an independent basis for liability under ORS 465.255(1)(c) to (7); or
(b) The release results from an act or omission of the trust company occurring outside the scope of its duties and the standard of care required under ORS 128.057; or
(c) The release otherwise results from an act or omission of the trust company that is negligent, grossly negligent, reckless, willful, or intentional.
(3) Notwithstanding the exemption to the personal liability of the trust company set forth above, this rule does not prevent claims against:
(a) Assets that are part of or all of any estate or trust that contains the facility;
(b) Any other estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility that is administered by the ORS Chapter 709 trust company;

(c) The assets of a trust or estate remain subject to any claims for liability pertaining to contaminated property even if legal title rests with the trust company. Such claims may be asserted against the trust company in its representative capacity, whether or not the trust company is personally liable.
(4) The exemption to personal liability of the trust company set forth above does not apply to ownership or operation of a facility at property which is:
(a) Acquired by the trust company for the trust, estate, or principal, in exchange for assets of the trust, estate, or principal; and
(b) Acquired subsequent to the establishment of the fiduciary relationship.
(5) This rule applies only to liability under ORS 465.200 et seq. and does not apply to any right that the state or any person may have under federal statute, common law, or state statute other than ORS 465.200 et seq. to recover remedial action costs or to seek any other relief related to a release.
Stat. Auth.: ORS 465.400, ORS 465.435 & ORS 465.440
Stats. Implemented: ORS 465.200 - ORS 465.455, ORS 465.900, ORS 466.706 - ORS 466.835 & ORS 466.895
Hist.: DEQ 29-1992, f. & cert. ef. 12-17-92

# Solid Waste Orphan Site Account

**340-122-0510**

**Purpose**

These rules establish eligibility, selection criteria, and conditions for use of solid waste Orphan Site Account funds. Solid waste Orphan Site Account funds are to be used for investigation and cleanup of hazardous substance releases from solid waste disposal facilities, in accordance with ORS 459.236.
Stat. Auth.: ORS 459.045, ORS 459.236 & ORS 459.311
Stats. Implemented: ORS 459.005, ORS 459.236, ORS 459.311, ORS 465.200 - ORS 465.455 & ORS 465.900
Hist.: DEQ 7-1993, f. & cert. ef. 4-27-93

**340-122-0520**

**Definitions**

Terms not defined in this section have the meanings set forth in ORS 459.005 and 465.200. Additional terms are defined as follows:
(1) "Repayment Plan" means a written agreement between the Department and a local government unit setting forth the terms and schedule for repayment by the local government unit of monies provided by the Department pursuant to ORS 459.236(5). The repayment plan may be incorporated into an agreement or order for removal or remedial action issued by the Department under ORS 465.260.
(2) "Solid Waste Orphan Site Account" means those monies in the Orphan Site Account established under ORS 465.380 to be used to pay certain costs for removal or remedial action at solid waste disposal sites. The solid waste Orphan Site Account consists of monies collected from the solid waste disposal fee imposed under ORS 459.236, monies paid the Department pursuant to a repayment plan, monies originally spent from the solid waste Orphan Site Account and recovered from responsible parties, and proceeds from interest.
(3) "Surcharge" or "Equivalent Funding" means the charge authorized under ORS 459.311 to be imposed on solid waste collection services by a local government unit, or an equivalent amount of funding provided by the local government unit from another source.
Stat. Auth.: ORS 459.045, ORS 459.236 & ORS 459.311
Stats. Implemented: ORS 459.005, ORS 459.236, ORS 459.311, ORS 465.200 - ORS 465.455 & ORS 465.900
Hist.: DEQ 7-1993, f. & cert. ef. 4-27-93

**340-122-0530**

**Eligible Sites**

The terms "disposal site", "hazardous substances" and "release" are defined in ORS 459.005(11), 465.200(9) and 465.200(14), respectively. Within the meaning of these terms, the solid waste Orphan Site Account may be used for investigation and cleanup of a release of hazardous substances at the following types of solid waste disposal sites:
(1) Solid waste disposal sites owned or operated by a local government unit. Examples include:
(a) Sites where the local government unit is conducting a removal or remedial action pursuant to ORS 465.260; and
(b) Sites owned or operated by a local government unit where DEQ is conducting a removal or remedial action.
(2) Privately-owned or operated solid waste disposal sites which receive or received domestic solid waste and for which DEQ determines responsible parties are unknown, unwilling, or unable to undertake removal or remedial action. Examples include:
(a) Sites for which a local government unit has liability where DEQ conducts a removal or remedial action;
(b) Sites for which a local government unit has no liability where DEQ conducts a removal or remedial action; and
(c) Sites where a local government unit conducts a removal or remedial action at an orphan site under an ORS 465.260 order or agreement with DEQ.
Stat. Auth.: ORS 459.045, ORS 459.236 & ORS 459.311
Stats. Implemented: ORS 459.005, ORS 459.236, ORS 459.311, ORS 465.200 - ORS 465.455 & ORS 465.900
Hist.: DEQ 7-1993, f. & cert. ef. 4-27-93

**340-122-0540**

**Funding Factors**

DEQ may fund only those remedial action costs defined in ORS 465.200(16) that are reasonable in DEQ's judgement. DEQ shall consider at least the following factors, to the extent relevant information is available, in determining which removals or remedial actions shall receive funding from the solid waste Orphan Site Account and the amount of funding:
(1) The site's risk to public health and the environment, based on consideration of the factors set forth in OAR 340-122-0080(2) and other available hazard ranking or risk assessment information. Each site's risk shall be evaluated relative to the risk posed by other eligible sites.
(2) The need for removal or remedial action at the site relative to fund availability and the need for removal or remedial activities at other sites.
(3) The extent to which other obligations or sources of funding for the same activities exist or will be sufficient over the life of the removal or remedial activity (e.g., ORS Chapter 459 closure financial assurance).
(4) The nature of the activities for which funding is sought, in the following order of preference:
(a) Direct costs for cleanup, provided that adequate technical investigation has been completed;
(b) Direct costs of technical investigation and remedy evaluation;
(c) Indirect costs (e.g., administration and overhead associated with the investigation or cleanup activities);
(d) Legal costs.
(5) The extent to which the removal or remedial action was undertaken before the effective date of these rules. For any such prior activities, DEQ may provide funding from the solid waste Orphan Site Account provided:
(a) The activities were performed pursuant to an order or agreement under ORS 465.260 ensuring that all activities were protective of health and the environment;
(b) The funding is only for amounts exceeding the amount collected, or to be repaid, by the local government unit through surcharge or equivalent funding;
(c) The activities were performed on or after July 24, 1989 (i.e., the effective date of HB 3515); and
(d) The activities are evaluated under and subject to the factors set forth in sections (1) through (4) of this rule.
Stat. Auth.: ORS 459.045, ORS 459.236 & ORS 459.311
Stats. Implemented: ORS 459.005, ORS 459.236, ORS 459.311, ORS 465.200 - ORS 465.455 & ORS 465.900
Hist.: DEQ 7-1993, f. & cert. ef. 4-27-93

**340-122-0550**

**Grants and Loans**

DEQ may provide local government units with solid waste Orphan Site Account funds in the form of:
(1) A grant for remedial action costs exceeding the maximum amount collected by surcharge or equivalent funding; or
(2) A loan for remedial action costs up to the amount raised by surcharge or equivalent funding.
Stat. Auth.: ORS 459.045, ORS 459.236 & ORS 459.311
Stats. Implemented: ORS 459.005, ORS 459.236, ORS 459.311, ORS 465.200 - ORS 465.455 & ORS 465.900
Hist.: DEQ 7-1993, f. & cert. ef. 4-27-93

**340-122-0560**

**Application Process**

(1) Local government unit applicants shall submit a grant or loan application to DEQ on a DEQ-approved form, and additional information deemed necessary by DEQ. Applications for potential funding will be due according to a schedule determined by the Department.
(2) Except for emergency actions to protect public health and the environment, funding decisions about use of the solid waste Orphan Site Account shall be made once a year.
Stat. Auth.: ORS 459.045, ORS 459.236 & ORS 459.311
Stats. Implemented: ORS 459.005, ORS 459.236, ORS 459.311, ORS 465.200 - ORS 465.455 & ORS 465.900
Hist.: DEQ 7-1993, f. & cert. ef. 4-27-93

**340-122-0570**

**Funding Conditions**

(1) For grants under OAR 340-122-0550(1), the local government unit and DEQ shall enter a grant agreement, including provisions regarding:
(a) Specification of removal or remedial activities and DEQ oversight pursuant to an ORS 465.260 order or agreement;
(b) Calculation, collection, and use of local government units' surcharge or equivalent funding obligations under ORS 459.236(4);
(c) Necessary cost documentation, accounting, and auditing procedures; and
(d) Where applicable, recovery of remedial action costs from responsible parties.
(2) For loans under OAR 340-122-0550(2), the local government unit and DEQ shall enter a loan agreement, including provisions regarding:
(a) The same items set forth in subsections (1)(a), (c) and (d) of this rule;
(b) Calculation, collection, and use of local government units' surcharge or equivalent funding obligations under ORS 459.236(5); and
(c) A repayment plan for the amount of solid waste Orphan Site Account monies provided, plus payment of interest, but excluding the first $100,000 spent by the local government on removal or remedial activities.
Stat. Auth.: ORS 459.045, ORS 459.236 & ORS 459.311
Stats. Implemented: ORS 459.005, ORS 459.236, ORS 459.311, ORS 465.200 - ORS 465.455 & ORS 465.900
Hist.: DEQ 7-1993, f. & cert. ef. 4-27-93

**340-122-0580**

**Application of Surcharge Proceeds**

(1) Subject to OAR 340-122-0540, proceeds from surcharge or equivalent funding collected by a local government unit shall be credited by DEQ toward the local government unit's funding obligation under ORS 459.236(4) or (5) if the proceeds are:
(a) Expended for removal or remedial action undertaken by the local government unit at a solid waste disposal site in accordance with an ORS 465.260 order or agreement; or
(b) Paid to DEQ for the costs of removal or remedial action undertaken by DEQ at a solid waste disposal site; or
(c) Paid to a third party for the costs of removal or remedial action undertaken by the third party at a solid waste disposal site in accordance with an ORS 465.260 order or agreement.
(2) Proceeds used for any of the purposes set forth in section (1) of this rule, at one or more solid waste disposal sites, shall be credited toward a local government unit's total funding obligation under ORS 459.236(4) or (5) on a cumulative basis. Any amount of surcharge proceeds retained for collection and accounting costs under ORS 459.311(5), up to five percent of the surcharge, shall be included in the amount credited toward a local government unit's total funding obligation under ORS 459.236(4) or (5).
Stat. Auth.: ORS 459.045, ORS 459.236 & ORS 459.311
Stats. Implemented: ORS 459.005, ORS 459.236, ORS 459.311, ORS 465.200 - ORS 465.455 & ORS 465.900
Hist.: DEQ 7-1993, f. & cert. ef. 4-27-93

**340-122-0590**

**Limitations**

(1) Funding from the solid waste Orphan Site Account under these rules does not substitute for existing obligations, including solid waste disposal site financial assurance requirements of ORS Chapter 459.
(2) DEQ may apply the factors set forth in OAR 340-122-0540 to use solid waste Orphan Site funds for interim removal actions instead of final remedial actions. DEQ is not obligated to use solid waste Orphan Site Account funds to undertake final remedial action or to pay with solid waste Orphan Site Account monies all remedial action costs exceeding surcharge or equivalent funding.
(3) These rules do not provide an exemption or defense to liability to third parties or to a DEQ enforcement or cost recovery action should a local government unit refuse to undertake necessary remedial activities or fail to apply surcharge or equivalent funding as required by a loan or grant agreement with DEQ.

(4) These rules do not preclude multiple local government units or potentially responsible parties from agreeing to apportion responsibility for remedial action costs, which apportionment may be reflected in the amount of solid waste Orphan Site Account funding requested.
(5) These rules do not prevent DEQ from undertaking or requiring emergency removal or remedial activities as necessary to protect public health, safety, and welfare or the environment.
(6) These rules do not require DEQ to spend all available solid waste Orphan Site Account funds during any given funding cycle. DEQ may, for example, retain a portion of funds to be used as a reserve for potential emergency actions or for future use at a prospective higher priority site.
Stat. Auth.: ORS 459.045, ORS 459.236 & ORS 459.311
Stats. Implemented: ORS 459.005, ORS 459.236, ORS 459.311, ORS 465.200 - ORS 465.455 & ORS 465.900
Hist.: DEQ 7-1993, f. & cert. ef. 4-27-93

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