

Routine Program Change

Updating Oregon's Subsurface Sewage Disposal Enforceable Policies

O.R.S. §§ 454.605-454.755

July 24, 2014

I. Introduction

The Oregon Coastal Management Program requests that the National Oceanic and Atmospheric Administration (NOAA) Office of Ocean and Coastal Resource Management (OCRM) approve updates to the OCMP to reflect changes to Oregon's statutes regarding subsurface sewage disposal. Oregon requests concurrence that these updates constitute a Routine Program Change.

Section II.A describes the relevant program in ORS Chapter 454 and identifies changes to the statutes since OCRM's previous approvals. Section II.B identifies those sections that state "enforceable policies" that are used in Oregon's federal consistency review determinations. Section II.C shows that the submitted updates are a Routine Program Change under NOAA regulations and guidelines.

II. Analysis of Routine Program Change

A. Discussion of the Program in Chapter 454

The OCMP was initially approved by NOAA in 1977, and was subsequently revised and approved *in toto* by NOAA in 1987. The 1987 OCMP serves as the baseline program for subsequent updates and routine program changes.

In 1987, the effective OCMP included the state's sewage disposal and gray water discharge law, requiring a license to advertise and perform sewage disposal services and compliance with rules governing the design and construction, operation and maintenance, and pumping out or cleaning of sewage disposal systems and facilities. In 2002, OCRM approved a Routine Program Change reflecting changes made to ORS §§ 454.605 to 454.780 since 1987, including the repeal of ORS §§ 454.775 and 454.780, regarding onsite disposal alternatives, and the addition of ORS § 454.607, announcing the state policy of encouraging improvement to, maintenance of, and innovation in sewage disposal.

The attached table includes the full listing of statutory provisions addressing subsurface sewage disposal, including those which remain unchanged since prior OCRM approval. This is in order to ensure that the full current program remains part of the OCMP and establishes the 2013 Edition of the Oregon Revised Statutes as the effective baseline for all of these statutory provisions, should they be further amended in the future. We are also attaching the full current versions of the statutes.

As shown in the attached table, the only changes to many of these sections since their last OCRM approval, whether 1987 or 2002, involved conforming cross-references and updating terminology. The correction of cross-references of Oregon law included replacing ORS 468.700 with ORS 468B.005,

recognizing this recodification; replacing ORS 401.055 with ORS 401.165, also recognizing a recodification; replacing ORS 701.100 with ORS 701.106, the former provision having been repealed in 2007 and the latter having been enacted that year; and replacing ORS 183.310 to 183.550 with “ORS chapter 183.” Updates in terminology included replacing “workmen” with “workers,” “him” with “the petitioner,” and “relatives who are aged or incapacitated or have disabilities” with “aged, incapacitated or disabled relatives.”

Other updates and changes are as follows:

O.R.S. §§ 545.605-545.610. As of the 2002 OCRM approval, ORS 454.610 explicitly allowed the discharge of gray water under specific circumstances, but in 2009, the legislature passed a bill requiring the permitting of any construction, installation, and operation of a gray water reuse and disposal system. ORS 454.620 also now requires the Environmental Quality Commission to adopt rules for these permits. In addition, the legislature added a new subsection to the state policy regarding sewage disposal systems, encouraging the reuse of gray water. Consequently, the definition of “gray water” was moved from ORS 545.610 to ORS 545.605, the definitions section.

O.R.S. § 454.615. The Environmental Quality Commission is charged with adopting rules that prescribe minimum requirements for design and construction, operation and maintenance, and pumping out or cleaning of sewage disposal systems and facilities. The deadline for adopting these rules, September 1, 1975, has been removed. In addition, what had been the fourth subsection of ORS 454.615, requiring the rules to address proper handling of kitchen, bath, and laundry wastes (as opposed to human and animal wastes), has been deleted.

O.R.S. § 454.735. This section, which required the Department of Environmental Quality to authorize an official in each county to receive applications and fees required by ORS 454.605 to 454.745, was repealed in 1999.

B. Enforceable Policies

OCRM initially approved Oregon’s Coastal Management Program, including entire state statutes as part of the approved program. Subsequently OCRM has requested that states identify enforceable policies within their statutes as updates are submitted. While Oregon seeks to incorporate the entire updated statutes implementing the program of ORS §§ 454.605-454.755 into the OCMP, we have identified specific sections that define enforceable policies for federal consistency purposes.

Each of the sections identified specifies a substantive enforceable policy; identifies when a license or permit is required, or defines its conditions; or provides enforceable mechanisms for implementation of the substantive provisions. Statutory sections not defined as enforceable are those that are purely procedural, that contain only statements of findings, or that merely grant state officials authority to undertake administrative acts not affecting the potential activities of federal actors or licensees.

Thus, statements of policy, requirements for authorizations, lists of conditions for authorizations, provisions for rules that define regulatory requirements, and definitions that specify the content of

obligations and requirements are enforceable policies. The sections in this Routine Program Change stating enforceable policies are: 545.605, 545.607, 545.610, 545.615, 545.625, 545.635, 545.645, 545.655, 545.657, 545.675, 545.685, 545.695, 545.705, 545.710, 454.715, 545.745, and 545.755. The attached table identifies these with an X and describes the content of each section.

These policies are rendered enforceable by the license required in 454.695, by the permits in 454.610 and 454.655, and by the authority of the Environmental Quality Commission in 545.685 to limit or prohibit sewage disposal system and facility construction in defined areas. Enforcement implementation includes indemnity requirements under 545.705 and 545.710, revocations under 454.715, and the authority of the Department of Environmental Quality in 545.645 to act without prior administrative procedures when a sewage disposal system or facility presents or threatens to present a public health hazard.

C. Action as Routine Program Change

Pursuant to CZMA §306(e) and 15 C.F.R. §923.84, this section explains why this update to Oregon's program is a Routine Program Change and does not constitute an amendment. Under 15 C.F.R. §923.80(d), amendments are defined as substantial changes in one or more of five listed coastal management program areas:

- (1) uses subject to management;
- (2) special management areas;
- (3) boundaries;
- (4) authorities and organization; and
- (5) coordination, public involvement and the national interest.

OCRM's 1996 Program Change guidance states that a "substantial change" is a high threshold requiring case-by-case determination. Statutory changes are identified in the attached table. The table relates each change to Oregon's authority as previously approved as part of the OCMP in 1987 or in subsequent RPCs (2002 in this instance). Each change is described in detail in the right-hand column of the table.

1. Uses subject to management.

This submittal does not identify new uses subject to management.

2. Special management areas.

This submittal does not designate or change special management areas. It does not establish new criteria for special management areas.

3. Boundaries.

This submittal does not change the boundaries of Oregon's coastal zone.

4. Authorities and organization.

This submittal does not change Oregon's administration of the OCMP. The same authorities continue to apply these programs.

5. Coordination, public involvement, and the national interest.

This submittal does not change any coordination, public involvement, or national interest provisions of the OCMP.

Accordingly, this submittal is a Routine Program Change, and Oregon requests OCRM concurrence.

Regulation of Subsurface Sewage Disposal

Changes to Statutes in the Program since Last OCRM Approval

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ¹	Changes Since Last Approval
454.605	Definitions for ORS 454.605 to 454.755	Defines terms for statutes ORS 454.605 through 454.755	X	2002	2009	<ul style="list-style-type: none"> Added the definition of “gray water” (drawn almost verbatim from the definition that had been ORS 545.610(1))
454.607	Policy	States public policy to encourage the improvement to, maintenance of, and innovation in sewage disposal consistent with public health and safety and water quality, and the reuse of gray water	X	2002	2009	<ul style="list-style-type: none"> Added a subsection encouraging “The appropriate reuse of gray water for beneficial uses”
454.610	Regulation of gray water discharge; permit; rules	Requires a permit for the construction, installation, and operation of a gray water reuse and disposal system; requires the adoption of rules for permits; and identifies parameters for those rules	X	2002	2009	<ul style="list-style-type: none"> Addition of “permit; rules” to the end of the title Subsection (1) moved to ORS 454.605 and replaced with a requirement that construction, installation, and operation of a gray water reuse and disposal system be done only after receiving a permit from the Department of Environmental Quality, and a requirement that the Environmental

¹ Oregon is seeking to establish the 2013 Edition of the Oregon Revised Statutes and the 2014 Oregon Laws supplement as the effective baseline for the statutory provisions incorporated into the Oregon Coastal Management Program (OCMP). The year in the “updates adopted and effective” column refers to the year(s) during which the Oregon legislature adopted changes to the statutory provisions incorporated into the OCMP.

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ¹	Changes Since Last Approval
						<p>Quality Commission adopt rules for permits along with identifying parameters for those rules</p> <ul style="list-style-type: none"> In subsection (2), there is a slight change in the sentence structure of the first line but the point remains the same; “Department of Environmental Quality” is shortened to “department” in (a); and “which” is changed to “that” in two places in (b)
454.615	Rules for sewage disposal systems and disposal facilities	Requires the adoption of rules to prescribe minimum requirements for design and construction, operation and maintenance, and pumping out or cleaning of sewage disposal systems and facilities	X	1987	2009	<ul style="list-style-type: none"> Replacement of “Standards” with “Rules” at the beginning of the title Deletion of “by September 1, 1975” and change of “by rule standards which” to “rules that” in first line “workmen” changed to “workers” at the end of subsection (3) Deletion of subsection (4): “Prescribe requirements for handling kitchen, bath and laundry wastes as opposed to human and animal wastes which recognize the possibility for separate treatment of different types of waste”
454.625	Rules	Requires the adoption of rules to carry out ORS 454.605 to 454.755	X	1987		<ul style="list-style-type: none"> Reference to “ORS 183.310 to 183.550” changed to “ORS chapter 183” Reference to 454.745 changed to 454.755
454.635	Notice of violation; service; request for	Requires issuance of notice for rule violations, identifies	X	1987		<ul style="list-style-type: none"> Reference to “ORS 183.310 to 183.550” changed to “ORS chapter

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective¹	Changes Since Last Approval
	hearing; conduct of hearing; order	minimum content of the notice and how notice is to be served, identifies the form of petition for hearing, and requires certain actions after a hearing				183” in subsection (4) <ul style="list-style-type: none"> • “him” changed to “the petitioner” in subsection (5)
454.640	Contract agent enforcement of standards	Authorizes a contract agent to enforce the standards in ORS 454.605 to 454.755 and in rules of the Environmental Quality Commission		2002		<ul style="list-style-type: none"> • None
454.645	Enforcement when health hazard exists	Authorizes the Department of Environmental Quality to act without prior administrative procedures when a sewage disposal system or facility presents or threatens to present a public health hazard, and allows such cases to be given preference on the docket	X	1987		<ul style="list-style-type: none"> • None
454.655	Permit required for construction; application; time limit; special application procedure for septic tank installation on parcel of 10 acres or more	Requires a permit for constructing or installing a sewage disposal system or facility, except for small emergency repairs; identifies procedures and other details regarding the permits, including that construction meet the rules of the Environmental Quality Commission	X	2002		<ul style="list-style-type: none"> • None

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective¹	Changes Since Last Approval
454.657	Variance from subsurface sewage disposal system rules or standards; conditions; hearing	Authorizes the Environmental Quality Commission to grant specific variances from particular requirements regarding subsurface sewage disposal systems, requires the adoption of rules for variances for extreme and unusual hardship and identifies parameters for those rules	X	1987	2007	<ul style="list-style-type: none"> • “Variance from subsurface sewage disposal system rules or standards” replaced “Variance” in the title • ORS 468B.005 replaced ORS 468.700 in subsection (1) • “relatives who are aged or incapacitated or have disabilities” replaced “aged, incapacitated or disabled relatives” in subsection (2)(c)
454.660	Delegation of variance powers; appeal; qualification of officers; hearing and decision	Authorizes the delegation of power to grant variances to special variance officers and identifies qualifications for variance officers and hearing requirements		1987		<ul style="list-style-type: none"> • None
454.662	Variance fee; low income elderly exemption	Requires a fee for variance applications, with specific exceptions		2002		<ul style="list-style-type: none"> • None
454.665	Inspection of completed construction; certificate of satisfactory completion; appeal from denial or revocation of certificate	Authorizes the Department of Environmental Quality to inspect completed construction and identifies procedures following inspection		2002		<ul style="list-style-type: none"> • None
454.675	Exemptions; application to	Sewage disposal systems and facilities constructed before	X	2002		<ul style="list-style-type: none"> • None

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ¹	Changes Since Last Approval
	alterations or repairs	January 1, 1974 need not meet standards subsequently adopted if not creating a public health hazard or causing water pollution, but alternations and repairs must conform with Environmental Quality Commission rules				
454.685	Order limiting or prohibiting construction of sewage disposal systems; factors to be considered	Authorizes the Environmental Quality Commission to limit or prohibit sewage disposal system and facility construction in defined areas and identifies procedures and considerations for issuing such orders	X	1987		<ul style="list-style-type: none"> • None
454.695	License required to perform sewage disposal services; application; rules	Requires a license to perform or advertise sewage disposal services, identifies application requirements, requires the establishment of rules regarding the term of a license, and authorizes the adoption of rules prescribing qualifications for a license	X	2002		<ul style="list-style-type: none"> • Addition of “rules” to the end of the title
454.705	Bond; content; action on bond; notice of bond	Requires execution of a bond by an applicant for a license to perform sewage disposal services, identifies provisions of the bond, and requires licensees to provide customers with the	X	2002		<ul style="list-style-type: none"> • None

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ¹	Changes Since Last Approval
		name and address of the surety company				
454.710	Deposit in lieu of bond	Authorizes applicants for a license to deposit the equivalent value in lieu of a bond, under the same terms and conditions, and identifies procedures for doing so	X	1987		<ul style="list-style-type: none"> “department” fully written as “Department of Environmental Quality”
454.715	Suspension or revocation of license	Authorizes the suspension or revocation of a license upon finding one of several specified actions	X	2002	2005 2007	<ul style="list-style-type: none"> Reference to “ORS 183.310 to 183.550” changed to “ORS chapter 183” “for a failure to comply with ORS 701.100 or 701.102 and rules adopted thereunder” changed to “as provided under ORS 701.102 or 701.106 and rules adopted by the board” at the end of subsection (4)
454.725	Contracts with local governments	Authorizes the Department of Environmental Quality to enter into agreements with local governments to perform duties of the department, including performing variance duties		2002		<ul style="list-style-type: none"> None
454.745	Permit, service, report, variance and license fees; refund; waiver	Requires the Environmental Quality Commission to establish a schedule of application fees for services rendered, permits, reports, variances, and licenses and for the registration of sewage disposal service license	X	2002		<ul style="list-style-type: none"> Reference to ORS 401.055 changed to ORS 401.165

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ¹	Changes Since Last Approval
		holders and workers; authorizes each local government in contract with the Department of Environmental Quality to establish a schedule of fees for services rendered, permits, reports, and variances; policies regarding fee refunds and waivers; and where fees are to be deposited				
454.755	Fees for certain reports on sewage disposal	Requires fees to be paid upon application for specified reports by the Department of Environmental Quality	X	2002		<ul style="list-style-type: none"> None

Statutes that Were in the Program but Have Been Repealed since Last OCRM Approval

ORS Section	Title at Last Approval	Description	Last OCRM Approval	Changes Since Last Approval
[454.735]	Designation of local official to receive applications and fees	Requires the Department of Environmental Quality to authorize an official in each county to receive applications and fees required by ORS 454.605 to 454.745	1987	<ul style="list-style-type: none"> Repealed in 1999

Text of ORS Chapter 454 Statutes Included in July 24, 2014 RPC
2013 Edition Oregon Revised Statutes

REGULATION OF SUBSURFACE SEWAGE DISPOSAL

454.605 Definitions for ORS 454.605 to 454.755. As used in ORS 454.605 to 454.755, unless the context requires otherwise:

(1) “Absorption facility” means a system of open-jointed or perforated piping, alternate distribution units or other seepage systems for receiving the flow from septic tanks or other treatment units and designed to distribute effluent for oxidation and absorption by the soil within the zone of aeration.

(2) “Alternative sewage disposal system” means a system incorporating all of the following:

(a) Septic tank or other sewage treatment or storage unit; and

(b) Disposal facility or method consisting of other than an absorption facility but not including discharge to public waters of the State of Oregon.

(3) “Construction” includes installation, alteration or repair.

(4) “Contract agent” means a local unit of government that has entered into an agreement with the Department of Environmental Quality pursuant to ORS 454.725.

(5) “Effluent sewer” means that part of the system of drainage piping that conveys treated sewage from a septic tank or other treatment unit into an absorption facility.

(6) “Governmental unit” means the state or any county, municipality or other political subdivision, or any agency thereof.

(7)(a) “Gray water” means shower and bath waste water, bathroom sink waste water, kitchen sink waste water and laundry waste water.

(b) “Gray water” does not mean toilet or garbage wastes or waste water contaminated by soiled diapers.

(8) “Local unit of government” means any county or municipality.

(9) “Nonwater-carried sewage disposal facility” includes, but is not limited to, pit privies, vault privies and chemical toilets.

(10) “Public health hazard” means a condition whereby there are sufficient types and amounts of biological, chemical or physical, including radiological, agents relating to water or sewage which are likely to cause human illness, disorders or disability. These include, but are not limited to, pathogenic viruses, bacteria, parasites, toxic chemicals and radioactive isotopes.

(11) “Septic tank” means a watertight receptacle which receives the discharge of sewage from a sanitary drainage system and which is so designed and constructed as to separate solids from liquids, digest organic matter during a period of detention and allow the liquids to discharge to another treatment unit or into the soil outside of the tank through an absorption facility.

(12) “Sewage” means domestic water-carried human and animal wastes, including kitchen, bath and laundry wastes from residences, buildings, industrial establishments or other places, together with such ground water infiltration, surface waters or industrial waste as may be present.

(13) “Sewage disposal service” means:

(a) The construction of subsurface sewage disposal systems, alternative sewage disposal systems or any part thereof.

(b) The pumping out or cleaning of subsurface sewage disposal systems, alternative sewage

disposal systems or nonwater-carried sewage disposal facilities.

(c) The disposal of materials derived from the pumping out or cleaning of subsurface sewage disposal systems, alternative sewage disposal systems or nonwater-carried sewage disposal facilities.

(d) Grading, excavating and earth-moving work connected with the operations described in paragraph (a) of this subsection.

(14) "Subsurface sewage disposal system" means a cesspool or the combination of a septic tank or other treatment unit and effluent sewer and absorption facility.

(15) "Zone of aeration" means the unsaturated zone that occurs below the ground surface and the point at which the upper limit of the water table exists. [1973 c.835 §208; 1975 c.167 §1; 1977 c.828 §1; 1991 c.598 §3; 1999 c.551 §3; 2009 c.248 §3]

454.607 Policy. It is the public policy of the State of Oregon to encourage:

(1) Improvements to, maintenance of and innovative technology for subsurface and alternative sewage disposal systems and nonwater-carried sewage disposal facilities consistent with the protection of the public health and safety and the quality of the waters of this state; and

(2) The appropriate reuse of gray water for beneficial uses. [1999 c.551 §2; 2009 c.248 §2]

454.610 Regulation of gray water discharge; permit; rules. (1) A person may not construct, install or operate a gray water reuse and disposal system without first obtaining a permit from the Department of Environmental Quality. A gray water reuse and disposal system for which a permit has been issued under this section is exempt from the requirements of ORS 454.655. The Environmental Quality Commission shall adopt rules for permits issued under this section. In adopting the rules, the commission shall:

(a) Consider the recommendations of an advisory committee appointed by the department pursuant to ORS 183.333;

(b) Minimize the burden of permit requirements on property owners; and

(c) Prescribe requirements that allow for separate systems for the treatment, disposal or reuse of gray water. These requirements must ensure the protection of:

(A) Public health, safety and welfare;

(B) Public water supplies; and

(C) Waters of the state, as that term is defined in ORS 468B.005.

(2) Subject to ORS 454.645, the rules adopted by the commission under this section may not prohibit the discharge of gray water if:

(a) Soil and site conditions for such gray water conform to the rules of the department regarding standard subsurface sewage disposal systems or alternative sewage disposal systems, except that such systems may use two-thirds the normal size surface area for a drainfield and shall be preceded by a treatment facility such as, but not limited to, a septic tank; or

(b) Such gray water is discharged into an existing subsurface sewage disposal system or alternative sewage disposal system that is functioning satisfactorily, or a public sewage system that serves the dwelling from which such gray water is derived. [1977 c.523 §6; 1999 c.551 §4; 2001 c.104 §194; 2009 c.248 §4]

454.615 Rules for sewage disposal systems and disposal facilities. The Environmental Quality Commission shall adopt rules that:

(1) Prescribe minimum requirements for the design and construction of subsurface sewage

disposal systems, alternative sewage disposal systems and nonwater-carried sewage disposal facilities or parts thereof including grading, excavating and earth-moving work connected therewith, and allow for use of alternative systems and component materials consistent with the minimum requirements. Requirements prescribed under this section may vary in different areas or regions of the state.

(2) Prescribe minimum requirements for the operation and maintenance of subsurface sewage disposal systems, alternative sewage disposal systems and nonwater-carried sewage disposal facilities or parts thereof.

(3) Prescribe requirements for the pumping out or cleaning of subsurface sewage disposal systems, alternative sewage disposal systems and nonwater-carried sewage disposal facilities or parts thereof, for the disposal of material derived from such pumping out or cleaning, for sewage pumping equipment, for sewage tank trucks and for the identification of sewage tank trucks and workers. [1973 c.835 §209; 1975 c.167 §2; 2009 c.248 §5]

454.625 Rules. In accordance with the applicable provisions of ORS chapter 183, the Environmental Quality Commission shall adopt such rules as it considers necessary for the purpose of carrying out ORS 454.605 to 454.755. [1973 c.835 §210]

454.635 Notice of violation; service; request for hearing; conduct of hearing; order. (1) Whenever the Department of Environmental Quality has reasonable grounds for believing that any subsurface sewage disposal system, alternative sewage disposal system or nonwater-carried sewage disposal facility or part thereof is being operated or maintained in violation of any rule adopted pursuant to ORS 454.625, it shall give written notice to the person or persons in control of such system or facility.

(2) The notice required under subsection (1) of this section shall include the following:

- (a) Citation of the rule allegedly violated;
- (b) The manner and extent of the alleged violation; and
- (c) A statement of the party's right to request a hearing.

(3) The notice shall be served personally or by registered or certified mail and shall be accompanied by an order of the department requiring remedial action which, if taken within the time specified in the order, will effect compliance with the rule allegedly violated. The order shall become final unless a request for hearing is made by the party receiving the notice within 10 days from the date of personal service or the date of mailing of the notice.

(4) The form of petition for hearing and the procedures employed in the hearing shall be consistent with the requirements of ORS chapter 183 and shall be in accordance with rules adopted by the Environmental Quality Commission.

(5) The order shall be affirmed or reversed by the commission after hearing. A copy of the commission's decision setting forth findings of fact and conclusions shall be sent by registered or certified mail to the petitioner or served personally upon the petitioner. An appeal from such decision may be made as provided in ORS 183.480 relating to a contested case. [1973 c.835 §211; 1975 c.167 §3]

454.640 Contract agent enforcement of standards. In order to protect the health, safety and welfare of its citizens, a contract agent may enforce, consistent with state enforcement, standards for subsurface sewage disposal systems, alternative sewage disposal systems and nonwater-carried sewage disposal facilities established in ORS 454.605 to 454.755 or in rules of

the Environmental Quality Commission. [1981 c.147 §2; 1999 c.551 §5]

454.645 Enforcement when health hazard exists. (1) Whenever a subsurface sewage disposal system, alternative sewage disposal system or a nonwater-carried sewage disposal facility or part thereof presents or threatens to present a public health hazard creating an emergency requiring immediate action to protect the public health, safety and welfare, the Department of Environmental Quality may institute an action. The action may be commenced without the necessity of prior administrative procedures, or at any time during such administrative proceedings, if such proceedings have been commenced. The action shall be in the name of the State of Oregon and may petition for a mandatory injunction compelling the person or governmental unit in control of the system or facility to cease and desist operation or to make such improvements or corrections as are necessary to remove the public health hazard or threat thereof.

(2) Cases filed under provisions of this section or any appeal therefrom shall be given preference on the docket over all other civil cases except those given an equal preference by statute.

(3) Nothing in this section is intended to prevent the maintenance of actions for legal or equitable remedies relating to private or public nuisances or for recovery of damages brought by private persons or by the state on relation of any person. [1973 c.835 §212; 1975 c.167 §4; 1979 c.284 §148]

454.655 Permit required for construction; application; time limit; special application procedure for septic tank installation on parcel of 10 acres or more. (1) Except as otherwise provided in ORS 454.675, without first obtaining a permit from the Department of Environmental Quality, no person shall construct or install a subsurface sewage disposal system, alternative sewage disposal system or part thereof. However, a person may undertake emergency repairs limited to replacing minor broken components of the system without first obtaining a permit.

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

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

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

(5)(a) Unless weather conditions or distance and unavailability of transportation prevent the issuance of a permit within 20 days of the receipt of the application and fees by the department, the department shall issue or deny the permit within 20 days after such date. If such conditions prevent issuance or denial within 20 days, the department shall notify the applicant in writing of

the reason for the delay and shall issue or deny the permit within 60 days after such notification.

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

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

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

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

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

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

(c) Upon request of the applicant, shall conduct a hearing in the manner provided in ORS 454.635 (4) and (5) on the reasons specified in a notice of intent to deny the application with the burden of proof upon the department to justify the reasons specified; and

(d) In the case of issuance of a permit, may include as a condition of the permit that no other permit for a subsurface sewage disposal system or alternative sewage disposal system shall be issued for use on the described parcel while the approved septic tank, effluent sewer and absorption facility are in use on the described parcel. [1973 c.835 §213; 1974 c.30 §2; 1975 c.167 §5; 1975 c.794 §1; 1999 c.551 §6; 2001 c.557 §6]

454.657 Variance from subsurface sewage disposal system rules or standards; conditions; hearing. (1) After hearing the Environmental Quality Commission may grant to applicants for permits required under ORS 454.655 specific variances from the particular requirements of any rule or standard pertaining to subsurface sewage disposal systems for such period of time and upon such conditions as it may consider necessary to protect the public health and welfare and to protect the waters of the state, as defined in ORS 468B.005. The commission shall grant such specific variance only where after hearing it finds that strict compliance with the rule or standard is inappropriate for cause or because special physical conditions render strict compliance unreasonable, burdensome or impractical.

(2) The commission shall adopt rules for granting variances from rules or standards pertaining to subsurface sewage disposal systems in cases of extreme and unusual hardship. The rules shall provide for consideration of the following factors in reviewing applications for variances due to hardship:

(a) Advanced age or bad health of applicants;

(b) Relative insignificance of the environmental impact of granting a variance; and

(c) The need of applicants to care for relatives who are aged or incapacitated or have disabilities.

(3) The department shall strive to aid and accommodate the needs of applicants for variances due to hardship.

(4) Variances granted due to hardship may contain conditions such as permits for the life of the applicant, limiting the number of permanent residents using a subsurface sewage disposal system and use of experimental systems for specified periods of time. [1975 c.309 §2; 1979 c.591 §4; 2007 c.70 §256]

454.660 Delegation of variance powers; appeal; qualification of officers; hearing and decision. (1) The Environmental Quality Commission shall delegate on such general conditions as it may find appropriate the power to grant variances to special variance officers appointed by the Director of the Department of Environmental Quality. Decisions of the variance officers to grant variances may be appealed to the Environmental Quality Commission.

(2) Variance officers appointed under this section shall be persons qualified in soil sciences and possessing knowledge of and experience in subsurface sewage disposal methods.

(3) Each request for a variance under ORS 454.657 shall be heard by the appropriate variance officer in the county within which the parcel of real property described in the variance request is located.

(4) Each request for a variance shall be heard by the appropriate variance officer within 30 days after the date on which a completed application for a variance has been received by the Department of Environmental Quality. A decision shall be made by the variance officer within 45 days after completion of the hearing on the variance request. [1975 c.309 §3]

454.662 Variance fee; low income elderly exemption. (1) Except as provided in subsection (2) of this section, each application for a variance submitted pursuant to ORS 454.657 must be accompanied by a fee, the amount of which shall be determined by a fee structure adopted by the Environmental Quality Commission as described in ORS 454.745. The moneys received are continuously appropriated to meet administrative expenses of the hearings and appeals.

(2) Notwithstanding subsection (1) of this section, an applicant for a variance under this section is not required to pay the fee specified in subsection (1) of this section if, at the time of filing the application, the applicant:

(a) Is 65 years of age or older;

(b) Is a resident of this state; and

(c) Has an annual household income, as defined in ORS 310.630, of \$15,000 or less. [1975 c.309 §4; 1979 c.591 §1; 1999 c.551 §7]

454.665 Inspection of completed construction; certificate of satisfactory completion; appeal from denial or revocation of certificate. (1) Upon completing the construction for which a permit has been issued under ORS 454.655, the permit holder shall notify the Department of Environmental Quality. The department may at its own election inspect the construction to determine if it complies with the rules of the Environmental Quality Commission. For that construction inspected by the department, the department shall issue a certificate of satisfactory completion to the permit holder unless the construction does not comply with such rules. If the construction does not comply with such rules, the department shall notify the permit holder and shall require satisfactory completion before issuing the certificate. Failure to meet the

requirements for satisfactory completion within a reasonable time constitutes a violation of ORS 454.605 to 454.755.

(2) If the inspection authorized under subsection (1) of this section is not made within seven days after notification by the permit holder, a certificate of satisfactory completion shall be considered to have been issued. When feasible the department shall notify the party whose work is to be inspected, whether the department will be able to make such inspection within the seven-day requirement of this subsection.

(3) No person shall operate or use any subsurface sewage disposal system, alternative sewage disposal system or part thereof unless a certificate of satisfactory completion has been issued for the construction for which a permit was issued under ORS 454.655.

(4) Whenever the department finds cause to revoke or refuses to issue a certificate of satisfactory completion pursuant to this section, the permit holder may appeal the decision in accordance with the provisions of ORS chapter 183. [1973 c.835 §214; 1975 c.167 §6; 1979 c.169 §1; 1999 c.551 §8]

454.675 Exemptions; application to alterations or repairs. Subsurface sewage disposal systems, alternative sewage disposal systems or nonwater-carried sewage disposal facilities or parts thereof which were constructed prior to January 1, 1974, but which are not creating a public health hazard or causing water pollution shall not be required to conform to the construction standards adopted subsequent to their initial construction. However, all alterations or repairs of such systems or facilities or parts thereof shall be made in accordance with the rules of the Environmental Quality Commission. [1973 c.835 §215; 1975 c.167 §7; 1999 c.551 §9]

454.685 Order limiting or prohibiting construction of sewage disposal systems; factors to be considered. (1) Whenever the Environmental Quality Commission finds that the construction of subsurface sewage disposal systems, alternative sewage disposal systems or nonwater-carried sewage disposal facilities should be limited or prohibited in an area, it shall issue an order limiting or prohibiting such construction. The order shall be issued only after public hearing for which more than 30 days' notice is given. Notice must be in form reasonably calculated to notify interested persons in the affected area.

(2) In issuing an order authorized by subsection (1) of this section, the commission shall consider the following factors for the proposed affected area:

- (a) Present and projected density of population.
- (b) Size of building lots.
- (c) Topography.
- (d) Porosity and absorbency of soil.
- (e) Any geological formations which may adversely affect the disposal of sewage effluent by subsurface means.
- (f) Ground and surface water conditions and variations therein from time to time.
- (g) Climatic conditions.
- (h) Present and projected availability of water from unpolluted sources.
- (i) Type of and proximity to existing domestic water supply sources.
- (j) Type of and proximity to existing surface waters.
- (k) Capacity of existing subsurface sewage disposal systems. [1973 c.835 §216; 1975 c.167

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454.695 License required to perform sewage disposal services; application; rules. (1) No person shall perform sewage disposal services or advertise or purport to be in the business of performing such services without first obtaining a license from the Department of Environmental Quality.

(2) Application for a license required by subsection (1) of this section shall be made in writing in a form prescribed by the department and shall include the following information:

(a) The name and address of the applicant and of the person responsible for supervising the services;

(b) The location of the business of the applicant and the name under which the business is conducted; and

(c) Such other information as the department considers necessary to determine the eligibility of the applicant for the license.

(3) Application for a license required under subsection (1) of this section must be accompanied by the license fees prescribed in ORS 454.745 and by the bond described in ORS 454.705.

(4) The Environmental Quality Commission shall establish by rule the term of a license issued under this section and a method for determining the expiration date for a license issued under this section. The commission may provide for staggered expiration dates for licenses issued under this section.

(5) The commission may adopt rules prescribing the qualifications, training and education requirements of sewage disposal service license holders and workers and the registration of sewage disposal service workers. [1973 c.835 §217; 1977 c.828 §2; 1983 c.616 §3; 1991 c.598 §4; 1999 c.551 §10]

454.705 Bond; content; action on bond; notice of bond. (1) An applicant for a license required by ORS 454.695 shall execute a bond in favor of the State of Oregon. The bond shall be in the amount established by rule by the Environmental Quality Commission and shall be executed by the applicant as principal and by a surety company authorized to transact a surety business within the State of Oregon as surety.

(2) The bond shall be filed with the Department of Environmental Quality and shall provide that:

(a) In performing sewage disposal services, the applicant shall comply with the provisions of ORS 454.605 to 454.755 and with the rules of the Environmental Quality Commission regarding sewage disposal services; and

(b) Any person injured by a failure of the applicant to comply with ORS 454.605 to 454.755 and with the rules of the commission regarding sewage disposal services shall have a right of action on the bond in the name of the person, provided that written claim of such right of action shall be made to the principal or the surety company within two years after the services have been performed.

(3) Every person licensed pursuant to ORS 454.695 shall deliver to each person for whom services requiring such license are performed, prior to the completion of such services, a written notice of the name and address of the surety company which has executed the bond required by this section and of the rights of the recipient of such services as provided by subsection (2) of this section. [1973 c.835 §218; 1975 c.171 §1; 1999 c.551 §11]

454.710 Deposit in lieu of bond. In lieu of the surety bond required by ORS 454.705, an

applicant for a license required by ORS 454.695 may deposit, under the same terms and conditions as when a bond is filed, the equivalent value in cash or negotiable securities of a character approved by the State Treasurer. The deposit is to be made in a bank or trust company for the benefit of the Department of Environmental Quality. Interest on deposited funds or securities shall accrue to the depositor. [1981 c.148 §2]

454.715 Suspension or revocation of license. Subject to ORS chapter 183, the Department of Environmental Quality at any time may suspend or revoke any license issued pursuant to ORS 454.695 if it finds:

- (1) A material misrepresentation or false statement in the application for the license.
- (2) Failure to comply with the applicable provisions of this chapter.
- (3) Violation of any rule of the Environmental Quality Commission regarding sewage disposal services.
- (4) The licensee was licensed by the Construction Contractors Board at the time of licensing under ORS 454.695 and the license issued by the board was revoked or suspended as provided under ORS 701.102 or 701.106 and rules adopted by the board. [1973 c.835 §219; 1999 c.344 §6; 2001 c.104 §195; 2005 c.432 §5; 2007 c.114 §15]

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

(2) The Department of Environmental Quality may enter into an agreement with a local unit of government when the local unit of government requests to perform the variance duties of the department under ORS 454.657 and 454.660 subject to variance criteria specified in the agreement by the department. Each local unit of government performing variance duties under an agreement may set and collect a variance application fee as provided in ORS 454.662. A fee collected by a local unit of government under this subsection shall not exceed the cost to the local unit of government of performing the variance duties of the department. [1973 c.835 §219a; 1975 c.167 §9; 1975 c.309 §5; 1979 c.591 §3; 1999 c.551 §12]

454.745 Permit, service, report, variance and license fees; refund; waiver. (1) In conjunction with the rules adopted under ORS 454.615 and 454.625, the Environmental Quality Commission shall establish a schedule of application fees for services rendered, permits, reports, variances and licenses and for the registration of sewage disposal service license holders and workers. The fees shall be based upon actual costs for efficiently conducted minimum services, as developed by the Director of the Department of Environmental Quality.

(2) Each local unit of government that has entered into an agreement with the Department of Environmental Quality under ORS 454.725 may establish a schedule of application fees for services rendered, permits, reports and variances. The fees shall be based on actual costs for efficiently conducted minimum services, as developed by the local unit of government. Notwithstanding the authority to adopt a schedule of fees, no contract provided for under ORS 454.725 shall be entered into or continued when the total amount of fees collected by the local unit of government exceeds the total cost of the program for providing the services rendered, permits, reports and variances issued under this section.

(3) The department or its contract agent may refund all or a portion of a fee accompanying an application for a permit pursuant to ORS 454.655, a variance pursuant to ORS 454.662, a license

pursuant to ORS 454.695 or a report pursuant to ORS 454.755 if the applicant withdraws the application before the department or its contract agent has done any field work or other substantial review of the application.

(4) Notwithstanding the requirements of ORS 454.655 (3) and 454.755 (1), the Environmental Quality Commission may waive a fee prescribed in subsection (1) of this section in the event a state of emergency is declared under ORS 401.165. The commission shall determine whether to waive a fee contained in subsection (1) of this section on a case-by-case basis. The commission may delegate the authority granted under this section to the director.

(5) Fees collected under subsection (1) of this section shall be deposited in the State Treasury and credited to an account of the department. The moneys received are continuously appropriated to the department to carry out the requirements of ORS 454.605 to 454.755. [1973 c.835 §220; 1974 c.30 §3; 1975 c.167 §10; 1975 c.607 §33; 1979 c.591 §2; 1997 c.64 §1; 1999 c.551 §13]

454.755 Fees for certain reports on sewage disposal. (1) Any person, upon application for any of the following actions by the Department of Environmental Quality, shall pay to the department a fee in the amount required for each lot or parcel:

(a) A report of evaluation of site suitability for a subsurface sewage disposal system, alternative sewage disposal system, nonwater-carried sewage disposal facility or a part thereof, pursuant to ORS 454.655;

(b) A report of evaluation of adequacy of a sewage disposal method required prior to the approval of a plat of a subdivision, pursuant to ORS 92.090 (5)(c); or

(c) A report on any proposed repair or alteration of an existing subsurface sewage disposal system, alternative sewage disposal system, nonwater-carried sewage disposal facility or a part thereof. A person may apply for the permit required under ORS 454.655 (1) to alter or repair a system without obtaining this report.

(2) The fee paid for a report of evaluation of site suitability pursuant to subsection (1)(a) of this section shall entitle the applicant to as many site inspections as is necessary within 90 days from the date of the first site inspection to determine site suitability for a single home site. The department may require separate fees if it determines that the site inspections are for the purpose of determining site suitability for more than one home site. [1974 c.30 §2; 1974 c.74 §4; 1975 c.167 §11; 1975 c.607 §34; 1999 c.551 §14]