

**OREGON REVISED STATUTES (ORS) 2007  
WATER SYSTEMS**

**(Generally)**

**448.115 Definitions for ORS 448.115 to 448.285.** As used in ORS 448.115 to 448.285, 454.235 and 454.255 unless the context requires otherwise:

- (1) “ Connection” means the connection between a water system and a customer that enables the customer to receive potable water from the system.
- (2) “Construction standards” means criteria for constructing or installing water system facilities.
- (3) “Department” means the Department of Human Services.
- (4) “Director” means the Director of Human Services.
- (5) “Emergency” means a condition resulting from an unusual calamity such as a flood, an earthquake or an accidental spill of hazardous material that can endanger the quality of the water produced by a water system.
- (6) “Operational requirements” means requirements that prescribe the manner in which water systems must be operated.
- (7) “Permit” means a document issued to a water system that authorizes it to commence or continue to operate in the State of Oregon and lists the conditions the system must meet to continue operating.
- (8) “Safe drinking water” means water that is sufficiently free from biological, chemical, radiological or physical impurities such that individuals will not be exposed to disease or harmful physiological effects.
- (9) “Sanitary survey” means an on-site review of the source, facilities, equipment, operation and maintenance of a water system, including related land uses, for the purpose of evaluating the capability of that water system to produce and distribute safe drinking water.
- (10) “Special master” means the person appointed by the court to administrate the water system.
- (11) “Variance” means permission from the agency for a water system to provide water that does not meet water quality standards.
- (12) “Water supplier” means any person, group of persons, municipality, district, corporation or entity that owns or operates a water system.
- (13) “Water system” means a system for the provision of water for human consumption through pipes or other constructed conveyances.
- (14) “Waterborne disease” means disease caused by chemical, physical, radiological or biological agents epidemiologically associated with infection, illness or disability that is transported to human beings by water that has been ingested or through contact as in bathing or other domestic uses. [1981 c.749 §2; 1983 c.271 §3; 1985 c.178 §4; 1997 c.249 §145; 1999 c.59 §126; 1999 c.653 §1; 2001 c.900 §196]

**448.119 Application of ORS 448.119 to 448.285 and other provisions to water**

**systems.** Before a water system is subject to regulation under ORS 448.119 to 448.285, 454.235 and 454.255, the system must have at least four service connections, or it must serve water to public or commercial premises which are used by an average of at least 10 individuals daily at least 60 days each year. In a housing subdivision of four or more living units where the water service connections of individual units are only two or three per water system, at the discretion of the Director of Human Services, the Department of Human Services may regulate the water systems within the subdivision under ORS 448.119 to 448.285, 454.235 and 454.255. [1981 c.749 §3; 1985 c.178 §5; 1997 c.249 §146]

**448.120** [Repealed by 1967 c.344 §10]

**448.123 Purpose.**

- (1) It is the purpose of ORS 448.119 to 448.285, 454.235 and 454.255 to:
  - (a) Ensure that all Oregonians have safe drinking water.
  - (b) Provide a simple and effective regulatory program for drinking water systems.
  - (c) Provide a means to improve inadequate drinking water systems.
- (2) In carrying out the purpose set forth in subsection (1) of this section, the Department of Human Services shall act in accordance with the goal set forth in ORS 468B.155.
- (3) If, in carrying out any duty prescribed by law, the department acquires information related to ground water quality in Oregon, the department shall forward a copy of the information to the centralized repository established pursuant to ORS 468B.167. [1981 c.749 §4; 1989 c.833 §50; 1997 c.249 §147; 2007 c.71 §136]

**448.127 Short title.** ORS 448.119 to 448.285, 454.235 and 454.255 may be referred to as the Oregon Drinking Water Quality Act. [1981 c.749 §5; 1997 c.249 §148]

**448.130** [Repealed by 1967 c.344 §10]

(Administration)

**448.131 Water quality, construction and installation standards; rules; effect on existing facilities; fees.**

- (1) The Department of Human Services shall adopt water quality standards that are necessary to protect the public health through insuring safe drinking water within a water system.
- (2) In order to insure safe drinking water, the department shall prescribe:
  - (a) Construction standards governing the performance of a water system insofar as they relate to the safety of drinking water.
  - (b) Standards for the operation of water systems in so far as they relate to the delivery of safe drinking water.
  - (c) Other standards and requirements considered necessary by the department to insure safe drinking water.

- (3) The department shall require that construction and installation plans be submitted and approved before construction begins on new systems or substantial improvements are made to old systems. The department may adopt rules exempting certain water systems from the plan review process.
- (4) The department may impose and collect a fee from a water supplier for reviewing construction and installation plans.
- (5) Nothing in this section authorizes the department to require alterations of existing facilities unless alterations are necessary to insure safe drinking water. [1981 c.749 §6]

**448.135 Variances; notice.**

- (1) The Department of Human Services may grant variances from standards if:
  - (a) There is no unreasonable risk to health;
  - (b) The water supplier has provided sufficient evidence to confirm that the best available treatment techniques are unable to treat the water in question so that it meets maximum contaminant levels;
  - (c) The water supplier agrees to notify the customers of the water supplier at appropriate intervals, as determined by the department, why the water system is, or remains, out of compliance with standards;
  - (d) The water supplier agrees to adhere to a compliance schedule, if the department prescribes one, which outlines how the water supplier intends to achieve compliance with standards. If a schedule is prescribed, it must be reviewed and evaluated every three years; and
  - (e) The department has announced its intention to grant a variance and has either:
    - (A) Held a public hearing in the affected area prior to granting the variance; or
    - (B) Served notice of intent to grant the variance either personally, or by registered or certified mail to all customers connected to the water system, or by publication in a newspaper in general circulation in the area. If no hearing is requested within 10 days of the date that notice is given, the department may grant the variance.
- (2) The Department of Human Services may grant variances from standards requiring the use of a specified water treatment technique if the department:
  - (a) Determines that the use of a specified water treatment technique is not necessary to protect the public health based on the nature of the raw water source for a public water system;
  - (b) Has conditioned the variance as required by the federal Safe Drinking Water Act, 42 U.S.C. 300g-4;
  - (c) Has announced its intent to grant a variance and has either:
    - (A) Held a public hearing in the area prior to granting the variance; or
    - (B) Served notice of intent to grant the variance either personally, or

by registered or certified mail to all customers connected to the water system, or by publication in a newspaper in general circulation in the area. If no hearing is requested within 10 days of the date that notice is given, the department may grant the variance; and

- (d) Promptly notifies the administrator of the United States Environmental Protection Agency of any variance granted, as required by the federal Safe Drinking Water Act, 42 U.S.C. 300g-4. [1981 c.749 §7; 1983 c.271 §5; 2007 c.559 §1]

**448.140 Permit for operation of water system.** A water system that does not comply with the rules and standards of the Department of Human Services shall be operated only after the water supplier has received a permit for the system from the department if:

- (1) The department has not granted a variance from standards as provided under ORS 448.135 to the water supplier; and
- (2) The water system is providing water that does not meet maximum contaminant standards as determined by an investigation conducted by the department under ORS 448.150. [1981 c.749 §8]

**448.145 When permit may be issued; compliance schedule; hearing; notice.**

- (1) A permit shall be issued by the Department of Human Services when there are economic or other compelling factors such that the water supplier is unable to install the water treatment facilities or to meet the maximum contaminant levels.
- (2) The department shall prescribe a compliance schedule, including interim measures to eliminate the risk to health, which sets a specific time limit for the water supplier operating on a permit to install the water treatment facilities or to meet the maximum contaminant levels.
- (3) For so long as the water supplier operates on a permit, it must notify its customers at least once every three months why the water system is, or remains, out of compliance.
- (4) When the department announces its intention to grant a permit, it shall:
  - (a) Hold a public hearing in the affected area prior to granting the permit; or
  - (b) Serve notice of intent to issue the permit either personally, or by registered or certified mail to all customers connected to the water system, or by publication in a newspaper in general circulation in the area. If no hearing is requested within 10 days of the date that notice is given, the department may finalize the permit.
- (5) The document evidencing the permit shall contain a statement of the conditions under which the water system may operate. [1981 c.749 §9; 1983 c.271 §6]

**448.150 Duties of department; fee.**

- (1) The Department of Human Services shall:
  - (a) Conduct periodic sanitary surveys of drinking water systems and sources, take water samples and inspect records to ensure that the systems are not creating an unreasonable risk to health. The department shall provide written reports of such examinations to the local health administrators and water suppliers. The department may impose a fee on water suppliers to recover the costs of conducting the periodic sanitary surveys.
  - (b) Require regular water sampling by water suppliers to determine compliance with water quality standards established by the department. These samples shall be analyzed in a laboratory approved by the department. The results of the laboratory analysis of a sample shall be reported to the department by the water supplier, unless direct laboratory reporting is authorized by the water supplier. The laboratory performing the analysis shall report the validated results of the analysis directly to the department and to the water supplier if the analysis shows that a sample contains contaminant levels in excess of any maximum contaminant level specified in the water quality standards.
  - (c) Investigate any water system that fails to meet the water quality standards established by the department.
  - (d) Require every water supplier that provides drinking water that is from a surface water source to conduct sanitary surveys of the watershed as may be considered necessary by the department for the protection of public health. The water supplier shall make written reports of such sanitary surveys of watersheds promptly to the department and to the local health department.
  - (e) Investigate reports of waterborne disease pursuant to its authority under ORS 431.110 and take necessary actions as provided for in ORS 446.310, 448.030, 448.115 to 448.285, 454.235, 454.255 and 455.680 to protect the public health and safety.
  - (f) Notify the Department of Environmental Quality of a potential ground water management area if, as a result of its water sampling under paragraphs (a) to (e) of this subsection, the Department of Human Services detects the presence in ground water of:
    - (A) Nitrate contaminants at levels greater than 70 percent of the levels established pursuant to ORS 468B.165; or
    - (B) Any other contaminants at levels greater than 50 percent of the levels established pursuant to ORS 468B.165.
- (2) The notification required under subsection (1)(f) of this section shall identify the substances detected in the ground water and all ground water aquifers that may be affected. [1981 c.749 §10; 1989 c.833 §51; 1989 c.946 §1; 1997 c.249 §149; 2005 c.696 §1; 2007 c.447 §1]

#### **448.153 State Drinking Water Advisory Committee; rules.**

- (1) The State Drinking Water Advisory Committee is created to advise and assist the Department of Human Services on policies related to the protection, safety and regulation of public drinking water in Oregon.
- (2) The committee created under this section shall consist of 15 members appointed by the Public Health Officer. The officer shall make the appointments after considering nominees from:
  - (a) Public water systems of cities with a population greater than 100,000;
  - (b) Privately owned water systems;
  - (c) Environmental advocacy groups;
  - (d) The American Council of Engineering Companies of Oregon;
  - (e) The Conference of Local Health Officials created by ORS 431.330;
  - (f) The League of Oregon Cities;
  - (g) The League of Women Voters of Oregon;
  - (h) The Oregon Association of Water Utilities;
  - (i) The Oregon Environmental Health Association;
  - (j) The Oregon Environmental Laboratory Association;
  - (k) The Pacific Northwest Section of the American Water Works Association;
  - (l) The Special Districts Association of Oregon;
  - (m) Organizations representing plumbers or backflow testers;
  - (n) Water consumers; and
  - (o) Watershed councils.
- (3) The committee shall adopt rules to govern its proceedings and shall select a chair and any other officers it considers necessary.
- (4) The members shall be appointed to serve for terms of three years. A vacancy on the committee shall be filled by appointment by the Public Health Officer for the unexpired term.
- (5) The committee shall meet regularly four times a year at times and places fixed by the chair of the committee. The committee may meet at other times specified by the chair or a majority of the members of the committee.
- (6) The Department of Human Services shall provide assistance and space for meetings as requested by the chair of the committee.
- (7) Members of the committee shall be entitled to actual and necessary expenses as provided by ORS 292.495 (2). [2007 c.572 §1]

**Note:** 448.153 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 448 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**Note:** Section 2, chapter 572, Oregon Laws 2007, provides:

**Sec. 2.** Notwithstanding the term of office specified in section 1 of this 2007 Act [448.153], of the members first appointed to the State Drinking Water Advisory

Committee:

- (1) Five shall serve for terms ending June 30, 2009.
- (2) Five shall serve for terms ending June 30, 2010.
- (3) Five shall serve for terms ending June 30, 2011. [2007 c.572 §2]

**448.155 Technical assistance and training; public information.** The Department of Human Services:

- (1) May provide technical assistance and organize, coordinate and conduct training for water system personnel.
- (2) Shall conduct a program designed to stimulate public participation in matters relating to water systems through public presentations, dissemination of informational materials and other similar efforts. [1981 c.749 §11]

**448.160 Emergency plans.**

- (1) The Department of Human Services shall maintain a plan outlining actions to be taken by the department during emergencies relating to water systems.
- (2) The department may require that a water supplier compile an emergency plan if it appears necessary to the Director of Human Services. [1981 c.749 §12]

**448.165 Local government water service plans.**

- (1) Counties may develop water service plans. These plans should encourage small water systems to combine management functions and to consolidate where possible. Water service plans must be in keeping with county land use plans.
- (2) Cities or counties, whichever have authority to issue building permits, must certify that the Department of Human Services has approved the construction and installation plans of a proposed water system development and the development plan does not violate city or county water service plans before issuing a building permit.
- (3) Counties or boundary commissions are authorized to approve the formation, consolidation and expansion of water systems not owned by cities in keeping with county and city plans. In doing so, counties or boundary commissions should consider whether water service is extended in a logical fashion and water systems have a financial base sufficient for operation and maintenance. [1981 c.749 §13]

**448.170 Department agreement to authorize local government to exercise duties; suits involving validity of administrative rule.**

- (1) The Department of Human Services may enter into an agreement with a local governmental unit for the local governmental unit to perform the duties of the department under the Oregon Drinking Water Quality Act. The duration of the agreement, the duties to be performed and the remuneration to be paid by the department are subject to agreement by the department and

the local governmental unit.

- (2) In any action, suit or proceeding arising out of county administration of functions pursuant to ORS 446.310, 448.030, 448.115 to 448.285, 454.235, 454.255, 455.170 and 757.005 and involving the validity of a rule adopted by the department, the department shall be made a party to the action, suit or proceeding. [1981 c.749 §14]

**448.175 Department authority to order compliance.** Subject to ORS chapter 183, the Department of Human Services:

- (1) Shall require that the water suppliers give public notice of violations in the water system.
- (2) May refuse to allow expansion of or additional connections to a water system until the water system meets water quality standards and requirements.
- (3) May enter an order requiring a water supplier to acquire or construct a water system that provides water meeting department standards. When the order requires a city to acquire a water system, the system must have the majority of its facilities within the city's adopted urban growth boundary. When the order is entered upon a city, the procedure described in ORS 454.235 to 454.255 shall be followed.
- (4) May enter an order requiring a water supplier that fails to comply with the schedule prescribed under ORS 448.140 to cease operation of the water system. [1981 c.749 §17]

**448.180 Waiver of construction standards.** The Department of Human Services may grant waivers on construction standards if the department is satisfied there will be no unreasonable risk to health. [1983 c.271 §2]

**448.205** [1973 c.835 §§167,168; 1975 c.254 §1; repealed by 1981 c.749 §28]

**448.210** [1973 c.835 §169; 1975 c.254 §2; repealed by 1981 c.749 §28]

**448.215** [Formerly 449.215; 1975 c.254 §3; repealed by 1981 c.749 §28]

**448.220** [Formerly 449.223; 1975 c.254 §4; repealed by 1981 c.749 §28]

**448.222** [1975 c.254 §17; repealed by 1981 c.749 §28]

**448.225** [Formerly 449.220; 1975 c.254 §5; 1979 c.696 §7; repealed by 1981 c.749 §28]

**448.226** [1975 c.254 §16; 1979 c.696 §8; repealed by 1981 c.749 §28]

**448.228** [1975 c.254 §17a; repealed by 1981 c.749 §28]

**448.230** [Formerly 449.225; 1975 c.254 §6; repealed by 1981 c.749 §28]

**448.235** [Formerly 449.235; 1975 c.254 §7; repealed by 1981 c.749 §28]

**448.240** [Formerly 449.227; 1975 c.254 §8; repealed by 1981 c.749 §28]

**448.245** [Formerly 449.237; 1975 c.254 §9; repealed by 1981 c.749 §28]

**448.246** [1975 c.691 §2; repealed by 1981 c.749 §28]

**448.248** [1975 c.691 §3; repealed by 1981 c.749 §28]

**448.250 Remedy when system a health hazard; special master; sale of system.**

- (1) Whenever a water system or part thereof presents or threatens to present a public health hazard requiring immediate action to protect the public health, safety and welfare, the Director of Human Services may request the district attorney of the county wherein the system is located to institute an action. The action may be commenced without the necessity of prior administrative procedures or hearing and entry of an order or at any time during such administrative proceedings, if such proceedings have been commenced. The action may petition for a mandatory injunction compelling the water supplier to cease and desist operation or to make such improvements and corrections as are necessary to remove the public health hazard or threat thereof.
- (2)
  - (a) If the water supplier refuses to comply with the order of the court, in addition to other remedies, the court may appoint a special master to operate the water system. Costs of operation and improvement during operation by the special master are to be charged to the water supplier and may be collected by impounding revenue due to the water supplier from customers of the supplier; or, if those funds are insufficient, from other revenues due to the water supplier.
  - (b) The court may require sale of a water system under a special master to a responsible party if the water supplier refuses to comply with the standards and requirements of the Department of Human Services.
- (3) 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.
- (4) Nothing in this section is intended to prevent the maintenance of actions for legal or equitable remedies relating to private or public nuisance or for recovery of damages brought by private persons or by the state on relation of any person. [Formerly 449.247; 1975 c.254 §10; 1979 c.284 §145; 1981 c.749 §15]

**448.255 Notice of violation; content; hearing; order; appeal.**

- (1) Whenever the Director of Human Services has reasonable grounds to believe that a water system or part thereof is being operated or maintained in violation of any rule adopted pursuant to ORS 448.115 to 448.285, 454.235 and 454.255, the director shall give written notice to the water supplier responsible for the system.
- (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 director 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 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 Department of Human Services.
- (5) Hearings under this section shall be conducted by an administrative law judge assigned from the Office of Administrative Hearings established under ORS 183.605.
- (6) The order shall be affirmed or reversed by the director after hearing. A copy of the director'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 §171; 1975 c.254 §11; 1981 c.749 §16; 1997 c.249 §150; 1999 c.849 §§84,85; 2003 c.75 §36]

**448.260** [1973 c.835 §185; 1975 c.254 §18a; repealed by 1981 c.749 §28]

**448.265 Prohibited actions; nuisance abatement.**

- (1) It shall be unlawful for any person to do any of the following if the result would be to pollute a source of a water system or to destroy or endanger a water system:
  - (a) Establish or maintain any slaughter pen, stock-feeding yards or hogpens.
  - (b) Deposit or maintain any unclean or unwholesome substance.
- (2) Violation of subsection (1)(a) or (b) of this section is a public nuisance and may be abated as other nuisances under the laws of this state. [Formerly 449.320; 1975 c.254 §12; 1981 c.749 §18; 2003 c.14 §270]

**448.268 Area of ground water concern; declaration.** If, as a result of its activities under ORS 448.150, the Department of Human Services confirms the presence in ground water drinking water supplies of contaminants resulting at least in part from suspected nonpoint source activities, the department shall declare an area of ground water concern. The declaration shall identify the substances confirmed in the ground water and all ground water aquifers that may be affected. [1989 c.833 §32]

**Note:** 448.268 and 448.271 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 448 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**448.270** [1973 c.835 §170; repealed by 1981 c.749 §28]

**448.271 Transfer of property that includes well; testing; effect.**

- (1) In any transaction for the sale or exchange of real estate that includes a well that supplies ground water for domestic purposes, the seller of the real estate shall, upon accepting an offer to purchase that real estate, have the well tested for nitrates and total coliform bacteria. The Department of Human Services also may require additional tests for specific contaminants in an area of ground water concern or ground water management area. The seller shall submit the results of the test required under this section to the department.
- (2) The failure of a seller to comply with the provisions of this section does not invalidate an instrument of conveyance executed in the transaction. [1989 c.833 §30]

**Note:** See note under 448.268.

(Federal Safe Drinking Water Act Administration)

**448.273 Federal Safe Drinking Water Act administration.** The Legislative Assembly finds that an agreement between this state and the federal government to assume primary enforcement responsibility in this state for the federal Safe Drinking Water Act is in the best interest of this state, subject to the following assumptions:

- (1) The federal government provides an annual program grant in an amount no less than that allocated for the state in the 1984 fiscal year.
- (2) The federal government provides technical assistance to this state, as requested, in emergency situations and during outbreaks of waterborne diseases.
- (3) The federal government must negotiate an annual work plan for the Department of Human Services that can be accomplished within the amount of program grant funding available.
- (4) The Department of Human Services adopts standards no less stringent than the National Primary Drinking Water Regulations of the United States Environmental Protection Agency.
- (5) The Department of Human Services provides engineering assistance through regional offices in at least four geographically distributed areas in this state.
- (6) In cooperation with representatives of local health departments, the Department of Human Services develops an equitable formula for distribution of available funds to support local health department water programs.
- (7) The primacy agreement may be canceled by the Department of Human Services, upon 90 days' notice, if at any time the federal requirements exceed the amount of federal funding and the cancellation is approved by the legislative review agency as defined in ORS 291.371 (1).
- (8) The federal government can impose financial sanctions against this state if

the state fails to meet the objectives of the annual negotiated work plan without reasonable explanation by tying the next annual funding to specific state production and by withholding of funds a possibility if continued unexplained failures occur but no sanction exists to interfere with other types of federal funding in this state.

- (9) The federal government may seek to enforce the safe drinking water standards if this state fails to take timely compliance action against a public water system that violates such standards.
- (10) Enforcement under subsection (9) of this section may be by injunctive relief or, in the case of willful violation, civil penalties authorized by 42 U.S.C. 300g-3 (a) and (b). [1985 c.178 §1; 2001 c.900 §257]

**448.275** [1973 c.835 §173; repealed by 1981 c.749 §28]

**448.277 Department as administrator.** The Department of Human Services is authorized to enter into an agreement with the federal government to administer the federal Safe Drinking Water Act in this state. The agreement is subject to the legislative assumption stated in ORS 448.273. The agreement shall remain in effect subject to annual renegotiation of the duties to be performed and the remuneration to be received by the department except that it may be canceled by the department, upon 90 days' notice, if at any time the federal requirements exceed the amount of federal funding and the cancellation is approved by the legislative review agency as defined in ORS 291.371 (1). [1985 c.178 §2]

(Cross Connections and Backflow Assemblies)

**448.278 Program for regulating cross connections and backflow assemblies; fees.**

- (1) The Department of Human Services shall establish a program for regulating cross connections and the backflow assemblies that are part of a water system.
- (2) The department may assess an annual fee on community water systems for the purpose of implementing the cross connection and backflow assembly program established pursuant to this section. The fee may not exceed:
  - (a) \$30 for a water system that has 15 to 99 service connections;
  - (b) \$75 for a water system that has 100 to 999 service connections;
  - (c) \$200 for a water system that has 1,000 to 9,999 service connections;or
  - (d) \$350 for a water system that has 10,000 or more service connections.[2005 c.806 §11]

**Note:** 448.278 was added to and made a part of 448.119 to 448.285 by legislative action but was not added to any other series in ORS chapter 448. See Preface to Oregon Revised Statutes for further explanation.

**448.279 Certification of inspectors of cross connections and testers of backflow assemblies; fees; rules.**

- (1) The Department of Human Services by rule shall establish a certification program for persons who inspect cross connections or test backflow assemblies. The program shall include minimum qualifications necessary for a person to be certified to:
  - (a) Conduct a cross connection inspection; and
  - (b) Test a backflow assembly.
- (2) Except for an employee of a water supplier as defined in ORS 448.115, a person certified under this section must:
  - (a) Become licensed as a construction contractor with the Construction Contractors Board as provided under ORS chapter 701; or
  - (b) Be employed by a landscape contracting business licensed under ORS 671.510 to 671.760.
- (3) In conjunction with the certification program established under subsection (1) of this section, the department may establish and collect a fee from an individual requesting certification under the program. A fee imposed under this subsection:
  - (a) Is not refundable; and
  - (b) May not exceed the cost of administering the certification program of the department for which purpose the fee is established, as authorized by the Legislative Assembly within the budget of the department and as the budget may be modified by the Emergency Board.
- (4) The department may not require a journeyman plumber licensed under ORS chapter 693 or an apprentice plumber, as defined in ORS 693.010, to obtain a certification for testing backflow assemblies under the program established under this section.
- (5) All moneys collected by the department under this section shall be deposited in the General Fund to the credit of an account of the department. Such moneys are continuously appropriated to the department to pay the cost of administering the certification program established pursuant to this section and the cost of administering water system cross connection and backflow assembly programs. [1993 c.565 §§2,3; 1997 c.398 §1; 1999 c.402 §3; 2005 c.609 §9; 2005 c.736 §1; 2005 c.806 §12; 2007 c.71 §137; 2007 c.541 §4]

(Civil Penalties)

**448.280 Civil penalties; notice.**

- (1) In addition to any other penalty provided by law:
  - (a) Any person who violates any rule of the Department of Human Services relating to the construction, operation or maintenance of a water system or part thereof shall incur a civil penalty not to exceed \$500 for each day of violation, except that a violation at any water

system that serves more than 10,000 people shall be subject to a civil penalty not to exceed \$1,000 for each day of violation.

- (b) Any person who operates an environmental laboratory and who purports that the laboratory is accredited under the environmental laboratory accreditation program established under ORS 438.615 when the laboratory is not accredited shall incur a civil penalty in accordance with the schedule of penalties established by rule by the Director of Human Services, in collaboration with the accrediting authority.
- (2) No civil penalty prescribed under subsection (1) of this section shall be imposed until the person incurring the penalty has received five days' advance notice in writing from the department or unless the person incurring the penalty shall otherwise have received actual notice of the violation not less than five days prior to the violation for which a penalty is imposed. [1973 c.835 §174; 1975 c.254 §13; 1981 c.749 §19; 1999 c.653 §2; 1999 c.1063 §5]

**448.285 Penalty schedule; factors to be considered in imposing penalty; rules.**

- (1) The Director of Human Services shall adopt by rule a schedule or schedules establishing the amount of civil penalty that may be imposed for a particular violation. No civil penalty shall exceed \$500 per day, except that a violation at any water system that serves more than 10,000 people shall be subject to a civil penalty not to exceed \$1,000 for each day of violation.
- (2) The director may impose the penalty without hearing but only after the notice required by ORS 448.280 (2). In imposing a penalty pursuant to the schedule or schedules adopted pursuant to this section, the director shall consider the following factors:
  - (a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.
  - (b) Any prior violations of statutes, rules, orders and permits pertaining to the water system.
  - (c) The economic and financial conditions of the person incurring the penalty.
- (3) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the Department of Human Services considers proper and consistent with the public health and safety.
- (4) In adopting rules or imposing penalties under this section for violations of ORS 448.280 (1)(b), the director shall collaborate with the accrediting authority. [1973 c.835 §175; 1975 c.254 §14; 1981 c.749 §20; 1999 c.653 §3; 1999 c.1063 §6]

**448.290 Process for imposing civil penalty.**

- (1) Civil penalties under ORS 448.285 shall be imposed as provided in ORS 183.745.

- (2) All amounts recovered under this section shall be paid into the State Treasury and credited to the General Fund. [1973 c.835 §176; 1989 c.706 §15; 1991 c.734 §28]

(Jurisdiction of Cities)

**448.295 Jurisdiction of cities over property used for system or sources.** Subject to the authority of the Department of Human Services, for the purpose of protecting from pollution their domestic water supply sources, cities shall have jurisdiction over all property:

- (1) Occupied by the distribution system or by the domestic water supply sources by and from which the city or any person or corporation provides water to the inhabitants of the city.
- (2) Acquired, owned or occupied for the purpose of preserving or protecting the purity of the domestic water supply source.
- (3) Acquired, owned or occupied by cities within the areas draining into the domestic water supply sources. [Formerly 449.305; 1983 c.740 §170]

**448.300 City ordinance authority.** Cities may prescribe by ordinance what acts constitute offenses against the purity of the water supply and the punishment or penalties therefor and may enforce those ordinances within their corporate limits and on property described in ORS 448.295. [Formerly 449.310]

**448.305 Special ordinance authority of certain cities.**

- (1) Subject to subsection (2) of this section, by ordinance a city may prohibit or restrict access for purposes of fishing, hunting, camping, hiking, picnicking, trapping of wild animals or birds, harvesting of timber or mining or removal of minerals or carrying on any other activity in its watershed area, or by ordinance may permit any such activity in its watershed area upon conditions specified in the ordinance. However, no ordinance passed under authority of this section shall prohibit the hunting or trapping of fur-bearing or predatory mammals doing damage to public or private property or prohibit the hunting or trapping of any bird or mammal for scientific purposes, as defined in ORS 497.298 (3).
- (2) Subsection (1) of this section applies only to cities with respect to watershed areas which are the subject of an agreement between the city and the United States or any department or agency thereof, which agreement authorizes such action by the city.
- (3) An ordinance adopted by any city pursuant to this section shall include a penalty clause providing for a penalty upon conviction of a fine of not more than \$100 or imprisonment for not more than 30 days, or both such fine and imprisonment.
- (4) After adoption of an ordinance pursuant to subsection (1) of this section, a city shall post the area with suitable signs setting forth the prohibition of

access or the conditions of limited access imposed by the ordinance. Failure to post the area as required in this subsection shall be a defense in any prosecution under an ordinance adopted by any city under authority of this section. [Formerly 449.327]

**448.310 Investigation of complaints.** The officer in charge of the domestic water supply source or the community water supply system serving the city shall investigate complaints made concerning purity of the source or system and if the complaint appears to be well founded, file a complaint against the person violating ordinances of the city and cause arrest and prosecution. [Formerly 449.335]

**448.315 Special police to enforce ORS 448.295.** The mayor or authorities having control of the community water supply system supplying the city may appoint special police officers who:

- (1) After taking oath, shall have the powers of constables.
- (2) May arrest with or without warrant any person committing, within the territory described in ORS 448.295, for:
  - (a) Any offense against the purity of the domestic water supply source or the community water supply system under state law or an ordinance of such city; or
  - (b) Any violation of any rule of the Department of Human Services or the authorities having control of the city water system for the protection of the purity of the domestic water supply source or the community water supply system.
- (3) May take any person arrested for any violation under this section before any court having jurisdiction thereof to be proceeded with according to law.
- (4) When on duty, shall wear in plain view a badge or shield bearing the words "Special Police" and the name of the city for which appointed. [Formerly 449.315; 1991 c.67 §124; 2003 c.14 §271]

**448.320 Jurisdiction over violations of city ordinances.** The municipal court of any city passing an ordinance under authority of ORS 448.300 or 448.305 and the justice court and circuit court of the county wherein such city is located or in which the watershed area is located shall have concurrent jurisdiction to try and determine any prosecution brought under such ordinance. If prosecution is had in a justice court or a circuit court, the court shall remit to the city, after deducting court costs, the amount of any fine collected, except as otherwise provided by ORS 3.136 (2). If a jail term is imposed, the convicted person shall be confined in the city jail or in the county jail and if confined in the county jail the county shall be entitled to recover from the city the actual costs of such incarceration. [Formerly 449.328; 1995 c.658 §105; 1999 c.788 §56]

**448.325 Injunction to enforce city ordinances.** In cases of violation of any ordinance adopted under ORS 448.300 or 448.305 any city or any corporation

owning a domestic water supply source or the community water supply system for the purpose of supplying any city or its inhabitants with water may have the nuisance enjoined by civil action in the circuit court of the proper county. The injunction may be perpetual. [Formerly 449.340]

(Water Pipes and Fittings)

**448.330 Moratorium of pipe and fittings for potable water supply; acceptability criteria; exceptions; rules.**

- (1) The Director of Human Services may prohibit the sale of water pipe used to carry potable water and solders, fillers or brazing material used in making up joints and fittings in this state and the installation or use of water pipe used to carry potable water and solders, fillers or brazing material used in making up joints and fittings in any private or public potable water supply system or individual water user's lines until such time as the director determines that adequate standards exist and are practiced in the manufacture of water pipe used to carry potable water and solders, fillers or brazing material used in making up joints and fittings to insure that the pipe and solder do not present a present or potential threat to the public health in this state.
- (2) The Director of Human Services shall adopt, by rule, product acceptability criteria for water pipe used to carry potable water and solders, fillers or brazing material used in making up joints and fittings for water supply purposes which insure that the pipe and solder do not present a threat to the public health in this state. The Department of Human Services shall be responsible for the monitoring of the sale and use of water pipe used to carry potable water and solders, fillers or brazing material used in making up joints and fittings for compliance with the product acceptability criteria. The Department of Consumer and Business Services shall cooperate with, and assist, the Department of Human Services in its monitoring efforts.
- (3) No water pipe used to carry potable water or solders, fillers or brazing material used in making up joints and fittings which does not conform to the product acceptability criteria adopted under subsection (2) of this section shall be sold in this state or installed in any part of any public or private potable water supply system or individual water user's lines.
- (4) Notwithstanding subsection (1) or (3) of this section, the Director of Human Services may grant exemptions from any prohibition of the sale or use of water pipe used to carry potable water for the emergency repair or replacement of any existing part of a water supply system, or for the necessary use by a well driller in the installation of a well. The director may require any person using water pipe used to carry potable water under this subsection to notify the Department of Human Services of the date and location of that use. [1979 c.535 §1; 1987 c.414 §152]

(Generally)

**448.405 Definitions for ORS 448.405 to 448.465.** As used in ORS 448.405 to 448.465:

- (1) “Commission” means the Environmental Quality Commission.
- (2) “Department” means the Department of Environmental Quality.
- (3) “Director” means the Director of the Department of Environmental Quality.
- (4) “Operator” means a person responsible for the operation of a potable water treatment plant, water distribution system or sewage treatment works.
- (5) “Person” means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, municipality or any other political subdivision of this state, any interstate body or any other legal entity.
- (6) “Potable water treatment plant” means that portion of a water system that in some way alters the physical, chemical or bacteriological quality of the water being treated.
- (7) “Sewage treatment works” means any structure, equipment or process required to collect, carry away and treat domestic waste and dispose of sewage as defined in ORS 454.010.
- (8) “Supervise” means to operate or to be responsible for directing employees that are responsible for the operation of a water system.
- (9) “Water distribution system” means that portion of the water system in which water is stored and conveyed from the potable water treatment plant or other supply point to the premises of a consumer.
- (10) “Water system” means potable water treatment plants and water distribution systems:
  - (a) That have 15 or more service connections used by year-round residents or that regularly serve 25 or more year-round residents; or
  - (b) That regularly serve at least 25 of the same persons for more than six months per year. [1987 c.635 §1; 1999 c.653 §4; 2001 c.900 §197]

**Note:** 448.405 to 448.465 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 448 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**448.407 Advisory committee to commission and Department of Human Services.** To aid and advise the Environmental Quality Commission and Department of Human Services in the adoption of rules under ORS 448.410 and 448.450, the Director of the Department of Environmental Quality and the Director of Human Services shall appoint an advisory committee. The members of the committee shall include but need not be limited to representatives of all types of water systems. [1987 c.635 §16]

**Note:** See note under 448.405.

**448.409 Biennial report.** On or before January 1 of each odd-numbered year, the Department of Environmental Quality and the Department of Human Services shall develop and submit a joint report to the Legislative Assembly. The report shall include, but need not be limited to:

- (1) A summary of actions taken under ORS 448.405 to 448.465, 448.992 and 448.994;
- (2) An evaluation of the effectiveness of such actions; and
- (3) Any information and recommendations, including legislative recommendations the Department of Environmental Quality or the Department of Human Services considers appropriate. [1987 c.635 §17; 2001 c.900 §198; 2003 c.14 §272]

**Note:** See note under 448.405.

(Sewage Treatment Works)

**448.410 Authority and duties of Environmental Quality Commission; rules; fees.**

- (1) The Environmental Quality Commission shall:
  - (a) Adopt rules necessary to carry out the provisions of ORS 448.410 to 448.430 and 448.992.
  - (b) Classify all sewage treatment works. In classifying the sewage treatment works, the commission shall take into consideration size and type, character of wastewater to be treated and other physical conditions affecting the sewage treatment works and the skill, knowledge and experience required of an operator.
  - (c) Certify persons qualified to supervise the operation of sewage treatment works.
  - (d) Subject to the prior approval of the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting the fee, establish a schedule of fees for certification under paragraph (c) of this subsection. The fees established under the schedule shall be sufficient to pay the costs incurred by the Department of Environmental Quality in carrying out the provisions of ORS 448.410 to 448.430 and 448.992 and shall be within the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency Board.
- (2) The commission may grant a variance from the requirements of ORS 448.415, according to criteria established by rule by the commission.
- (3) In adopting rules under this section, the commission shall consult with the Department of Human Services in order to coordinate rules adopted under this section with rules adopted by the Department of Human Services under ORS 448.450. [1987 c.635 §2; 1991 c.703 §9; 2003 c.14 §273]

**Note:** See note under 448.405.

**448.415 Certification required for operators.**

- (1) Except as provided in ORS 448.430, any sewage treatment works, whether publicly or privately owned, used or intended for use by the public or private persons must be supervised by an operator certified pursuant to ORS 448.410. The operator's certification must correspond to the classification of the sewage treatment works supervised by the operator.
- (2) Except as provided in ORS 448.430, a person may not:
  - (a) Allow any sewage treatment works to be operated unless the operator is certified or the sewage treatment works is supervised by an operator certified under the provisions of ORS 448.410 to 448.430 and 448.992.
  - (b) Perform the duties of an operator unless the person is certified under the provisions of ORS 448.410 to 448.430 and 448.992. [1987 c.635 §§3,4]

**Note:** See note under 448.405.

**448.420 Special certification provisions.** On and after September 27, 1987, an operator holding a current Oregon sewage treatment certification issued under a voluntary certification program shall be considered certified under the program established under ORS 448.410 at the same classification and grade. Certification of operators by any state that, as determined by the Director of the Department of Environmental Quality, accepts certifications made under ORS 448.410 to 448.430 and 448.992, shall be accorded reciprocal treatment and shall be recognized as valid and sufficient within the purview of ORS 448.410 to 448.430 and 448.992, if in the judgment of the director, the certification requirements of such state are substantially equivalent to the requirements of ORS 448.410 to 448.430 and 448.992 or any rule adopted under ORS 448.410 to 448.430 and 448.992. [1987 c.635 §5]

**Note:** See note under 448.405.

**448.425 Deposit and use of fees.** Any fees collected pursuant to the schedule adopted under ORS 448.410 shall be deposited in the General Fund of the State Treasury to the credit of the Department of Environmental Quality. Such fees are continuously appropriated to the department to pay the cost of administering the provisions of ORS 448.410 to 448.430 and 448.992. [1987 c.635 §6]

**Note:** See note under 448.405.

**448.430 Certification exception.** The requirements of ORS 448.415 shall not apply to:

- (1) Any sewage treatment works with an approved design flow of less than 75,000 gallons a day, if the owner has contracted with a certified operator to provide part-time supervision as the Environmental Quality Commission by rule determines necessary; or
- (2) A subsurface sewage disposal system as defined in ORS 454.605. [1987 c.635 §7]

**Note:** See note under 448.405.

(Potable Water Treatment Plants)

**448.450 Authority and duties of Department of Human Services; rules; fees.**

- (1) The Department of Human Services shall:
  - (a) Adopt rules necessary to carry out the provisions of ORS 448.450 to 448.465, 448.992 and 448.994.
  - (b) Classify all potable water treatment plants and water distribution systems actually used or intended for use by the public. In classifying the potable water treatment plants and water distribution systems, the department shall take into consideration size and type, character of water to be treated and other physical conditions affecting the treatment plants and distribution systems and the skill, knowledge and experience required of an operator.
  - (c) Certify persons qualified to supervise the operation of a potable water treatment plant or a water distribution system.
  - (d) Subject to the prior approval of the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting the fee, establish a schedule of fees for certification under paragraph (c) of this subsection. The fees established under the schedule shall be sufficient to pay the cost of the Department of Human Services in carrying out the provisions of ORS 448.450 to 448.465, 448.992 and 448.994 and shall be within the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency Board.
- (2) Notwithstanding the authority of the Department of Human Services to establish fees for certification under subsection (1)(d) of this section, the department will not establish fees for certification of operators of water systems serving ground water to fewer than 150 service connections.
- (3) In adopting rules under this section, the Department of Human Services shall consult with the Department of Environmental Quality in order to coordinate rules adopted under this section with rules adopted by the Environmental Quality Commission under ORS 448.410. [1987 c.635 §9; 1991 c.67 §125; 1991 c.703 §10; 2001 c.723 §1; 2001 c.900 §199a]

**Note:** See note under 448.405.

**448.455 Certification required for operators.**

- (1) Any potable water treatment plant or water distribution system whether publicly or privately owned, used or intended for use by the public or private persons must be supervised by an operator certified pursuant to ORS 448.450. The operator's certification must correspond to the classification of the water treatment plant or distribution system supervised by the operator.
- (2) A person may not:
  - (a) Allow any potable water treatment plant or water distribution system to be operated unless the operator is certified or the potable water treatment plant or water distribution system is supervised by an operator certified under the provisions of ORS 448.450 to 448.465, 448.992 and 448.994.
  - (b) Perform the duties of an operator unless the person is certified under the provisions of ORS 448.450 to 448.465, 448.992 and 448.994. [1987 c.635 §§10,11; 2001 c.723 §2]

**Note:** See note under 448.405.

**448.460 Special certification provisions.** On and after September 27, 1987, an operator holding a current Oregon water treatment certification issued under a voluntary certification program shall be considered certified under the program established under ORS 448.450 at the same classification and grade. Certification of operators by any state that, as determined by the Department of Human Services, accepts certifications made under ORS 448.450 to 448.465, 448.992 and 448.994, shall be accorded reciprocal treatment and shall be recognized as valid and sufficient within the purview of ORS 448.450 to 448.465, 448.992 and 448.994, if in the judgment of the Director of Human Services, the certification requirements of such state are substantially equivalent to the requirements of ORS 448.450 to 448.465, 448.992 and 448.994 or any rule adopted under ORS 448.450 to 448.465, 448.992 and 448.994. [1987 c.635 §12]

**Note:** See note under 448.405.

**448.465 Deposit of fees.** Any fees collected pursuant to the schedule adopted under ORS 448.450 shall be deposited in the General Fund of the State Treasury to the credit of the Department of Human Services. Such fees are continuously appropriated to the Department of Environmental Quality to pay the cost of administering the provisions of ORS 448.450 to 448.465, 448.992 and 448.994. [1987 c.635 §13]

**Note:** See note under 448.405.

**448.470** [1987 c.635 §14; 1989 c.1091 §1; repealed by 2001 c.723 §3]

**PENALTIES**

**448.990 Penalties for violation of pool facility or water system requirements.**

- (1) Violation of ORS 448.005 to 448.090 by any person, firm or corporation, whether acting as principal or agent, employer or employee, is punishable, upon conviction, by a fine of not less than \$25 nor more than \$500 or by imprisonment in the county jail not exceeding six months, or by both. Each day that the violation continues is a separate offense.
- (2) Subject to ORS 153.022, violation of any of the following is punishable as a Class A misdemeanor:
  - (a) Any rule of the Department of Human Services adopted pursuant to ORS 448.115 to 448.330.
  - (b) Any order issued by the department pursuant to ORS 448.175.

- (c) ORS 448.265 or 448.315 (2)(a). [Amended by 1967 c.344 §8; subsections (2) to (5) enacted as 1973 c.835 §177; 1975 c.254 §18; part renumbered subsection (5) of 468.990; 1983 c.271 §4; 1999 c.1051 §302]

**448.992 Sewage treatment works violation penalties.**

- (1) Except as provided in subsection (2) of this section, any person who knowingly and willfully violates ORS 448.415 (2) shall upon conviction be punished by a fine of not more than \$500 per day of violation or imprisonment for not more than six months, or both.
- (2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under ORS 448.410 to 448.430, or by any rule adopted under ORS 448.410 to 448.430, shall upon conviction, be punished by a fine of not more than \$500 or by imprisonment for not more than six months, or both. [1987 c.635 §8]

**448.994 Potable water treatment plant violation penalty.**

- (1) Except as provided in subsection (2) of this section, any person who knowingly and willfully violates ORS 448.455 (2) shall upon conviction be punished by a fine of not more than \$500 per day of violation or imprisonment for not more than six months, or both.
- (2) Subject to ORS 153.022, any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under ORS 448.450 to 448.465 and 448.992, or by any rule adopted under ORS 448.450 to 448.465 and 448.992, shall upon conviction, be punished by a fine of not more than \$500 or by imprisonment for not more than six months, or both. [1987 c.635 §15; 1999 c.1051 §303]