

CHAPTER 12. HAZARDOUS SUBSTANCES TAX

A tax is imposed on the possession of hazardous substances at facilities in the state, including substances manufactured, stored, or used at the facility. Any chemical substance or waste for which a material safety data sheet is required by Department of Consumer and Business Services is considered a hazardous substance. Excluded from this category are crude oil and petroleum products, solid waste, or hazardous waste under ORS 466.005. The tax rate is set by the State Fire Marshal, subject to a statutory maximum.

The hazardous substance tax began in 1989. Its purpose is to minimize the use and dangers of hazardous substances, to fund the Oregon Community Right to Know programs, and to provide funding for the Orphan Site Account. The Orphan Site Account is part of the Hazardous Substance Remedial Action Fund established under ORS 465.381 and is used to clean up contaminated sites where the responsible party is unknown, unwilling, or unable to undertake the cleanup.

The level of the tax is set each year by the State Fire Marshal based on guidelines established in law (ORS 453.402). For funding the Community Right to Know and Protection Act, the fee can range from \$25 to \$2,000 per site. For funding the Toxics Use Reduction and Hazardous Waste Reduction Act, the fee can range from \$25 to \$2,000 per site. For funding the Orphan Site Account, the fee can range from \$0 to \$9,000 per site, but not more than \$25,000 for a single company. The collections for the Orphan Site Account cannot exceed \$1 million per year.

Total receipts from the tax were \$3.5 million for the 1997–99 biennium.

12.001 STATE AND LOCAL GOVERNMENT PROPERTY-HAZARDOUS SUBSTANCE FEE EXEMPTION

Oregon Statute: 453.402(4)(e)

Sunset Date: None

Year Enacted: 1989

Total	
1999–01 Revenue Impact:	Not Available
2001–03 Revenue Impact:	Not Available

DESCRIPTION: State and local government property is exempt from paying the hazardous substances fee that contributes to the Orphan Site Account, which is used to finance the cleanup of contaminated sites where the responsible party is unknown or is unwilling or unable to undertake the cleanup.

PURPOSE: To compensate for the fact that the Orphan Site Account may not be used to pay the state’s remedial action costs at facilities owned by the state.

WHO BENEFITS: State and local governments, and by extension, taxpayers.

EVALUATION: This exemption is to recognize that the Orphan Site Account is not used to clean up hazardous substances on property owned by state or local governments. [*Evaluated by the Department of Revenue.*]

12.002 SUBSTANCE PROHIBITED FROM TAX BY FEDERAL LAW

Oregon Statute: 453.402(4)(d)

Sunset Date: None

Year Enacted: 1989

Total	
1999–01 Revenue Impact:	Not Available
2001–03 Revenue Impact:	Not Available

DESCRIPTION: Oregon law states that “Any substance or activity which the Constitution or laws of the United States prohibit the state from taxing” are exempt from the Hazardous Substances Tax. It is not clear, however, whether the federal constitution of laws prohibit the taxation of any specific substance or activity. Some federal agencies have refused to pay this tax, claiming “sovereign immunity.”

PURPOSE: To comply with federal law.

WHO BENEFITS: The federal government, and by extension, taxpayers.

EVALUATION: Not Evaluated.