

Background

In Oregon, in order to use water to grow a commercial crop, one must generally have a water right or obtain water from a legal source. Using water without a water right, when one is required, may result in civil or criminal penalties. House Bill 4061, passed by the Oregon Legislature in 2022, provides additional enforcement tools to curb unauthorized water use at locations growing hemp or marijuana plants (more broadly referred to as cannabis), as well as establishes new provisions related to water hauling. This handout provides an overview of the new law. More information can be found at <https://go.ora.gov/xum7h>.

All provisions of the bill are effective June 3, 2022. This handout focuses on HB 4061 and does not cover requirements or penalties for violations of other laws.

Hauled Water - Records Retention for Persons Hauling Water

A person purchasing water from a water supplier at a fire hydrant, water fill station, or other distribution location, in order to haul the water to another location to be used for irrigation or nursery purposes is required to: (1) maintain records for 12 months from the date of purchase, and (2) present those records to law enforcement or OWRD upon request. This means that any person who purchases water in order to haul the water to grow a crop (irrigation and nursery use) must keep records. This includes, but is not limited to:

- Water hauling businesses that purchase water and deliver it to a location where the water is then used to grow plants or crops.
- A person employed by an operation growing crops that purchases and hauls water, and the hauled water is then used to grow plants or crops.
- A person that owns an operation growing crops, if that person purchases and hauls water themselves and the hauled water is then used to grow plants or crops.

Records must include:

1. The date and location that the water purchased at.
2. Name and contact information of the person the water was delivered to.
3. How the water will be used (irrigation or nursery), including the plant type.
4. Quantity of water delivered.
5. Location the water was delivered to.
6. Date the water was delivered.

Prohibitions on Water Hauling and Providing False Information

The new law prohibits persons from hauling water to, or arranging to haul water to, any location growing cannabis if that location contains more than four cannabis plants and is not registered/licensed as a grow site by the Oregon Liquor Cannabis Commission (OLCC) for recreational marijuana, Oregon Department of Agriculture (ODA) for hemp, or Oregon Health Authority (OHA) for medical marijuana. The Department recommends that water haulers verify that a site is licensed before hauling water to a location growing cannabis and maintain records.

Finally, the law prohibits any person from willfully or negligently providing false information to OWRD or law enforcement related to water hauling for cannabis plants. The Department interprets this prohibition to

include both verbal and/or written information and that it applies to anyone – including a grow site owner, operator, or employee or a water hauler.

Criminal and Civil Penalties

With one exception, these new penalties pertain to newly established violations described above. ***Violations and penalties described below were passed into law by House Bill 4061; requirements, violations and penalties of other laws are not covered below.***

Violation	Penalty
Use of water without a water right at any cannabis site not licensed with OLCC, ODA, or OHA, if the site contains more than four cannabis plants.	Criminal: Class A misdemeanor, which is punishable by up to one year in prison, with a maximum fine of \$25,000.
Hauling water or arranging to haul water to any cannabis site not licensed with OLCC, ODA, or OHA, if the site contains more than four cannabis plants.	Criminal: If done with criminal negligence, Class A misdemeanor, which is punishable by up to one year in prison and up to a \$6,250 fine. <u>If</u> the violator is the owner of the water hauling business or the responsible party for the cannabis grow operation, the maximum fine is increased to \$25,000.
Willfully or negligently providing false information to either the Department or law enforcement regarding the hauling of water to a cannabis site.	Civil: Penalties to be defined in rule at a later date, but not to exceed \$5,000 per day. Criminal: Class A misdemeanor, which is punishable by up to one year in prison and up to a \$6,250 fine.
Persons purchasing water from a water distribution location for irrigation/nursery use that fail to retain and provide records of hauled water.	Civil: Penalties to be defined in rule at a later date, but not to exceed \$5,000 per day.

Notice of Violation Timelines

This bill extends the time period from five days to ten business days for the Department to issue a notice of violation after becoming aware of a violation.

Hauled Water - Records Retention for Water Suppliers

Water suppliers that sell water to the public must retain water sale records for up to 12 months from the date of sale and present those records immediately upon request to either the either OWRD or law enforcement. Records will include:

- 1) Name and contact information of person the water was sold to.
- 2) Quantity of water sold.
- 3) License plate number of the vehicle used to haul water.
- 4) Purchase date.

These requirements do not apply when water is sold to: (1) a state and/or local government purchaser; (2) a contractor licensed by the Oregon Construction Contractors Board; or (3) for water used for firefighting purposes. Additionally, any supplier providing these records to either the Department or law enforcement or participating in any judicial proceedings will have immunity from any civil or criminal liability that may be the result of the records being released. This does not provide a water supplier immunity from their own non-compliance with Oregon’s water laws, such as the requirement for a water supplier to have a water right.