

Department of Environmental Quality
State Agency Coordination Program

*In Accordance with ORS 197.180, and
OAR Chapter 660, Divisions 30 and 31*

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DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE AGENCY COORDINATION PROGRAM

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EXECUTIVE SUMMARY

Oregon Revised Statutes Chapter 197 requires state agencies to carry out their land use responsibilities in compliance with the statewide planning goals and compatible with state acknowledged comprehensive plans. Agencies are required to develop and adopt a state agency coordination (SAC) program to fulfill these obligations. This document describes the Department of Environmental Quality's (Department) policies and procedures for state agency coordination on land use related matters. This is the Department's second update of the SAC program since its initial adoption in 1978.

By state law, state agency coordination programs must contain four elements:

1. Identification of agency rules and programs that affect land use.
2. Procedures to assure goal compliance and compatibility with acknowledged comprehensive plans.
3. Procedures to assure cooperation with and technical assistance to local government.
4. Procedures to coordinate with federal agencies, other state agencies and special districts.

The SAC must also include a description of all agency rules and programs, and procedures for the resolution of land use disputes. The key portions of a SAC such as the procedures for goal compliance plan compatibility and the determination of new or amended programs that affect land use must be adopted by administrative rule.

The following paragraphs provide an overview of each of the Department's SAC document sections.

Section 1 - Introduction

The Department is authorized to maintain, restore, and preserve the state's air and water resources and to manage hazardous and solid waste. These authorities are vested in a five member Environmental Quality Commission (Commission) appointed by the Governor and responsible for overseeing Department policy.

The SAC Program document reflects the Department's view of the federal, state and local government roles regarding environmental quality. The federal and state roles primarily consist of the development, implementation, and enforcement of environmental standards. Local governments generally focus on the prevention of environmental pollution or degradation through comprehensive planning or other mechanisms which regulate development.

The Commission supports an increasing emphasis on the prevention of environmental degradation at the state level. The Commission and Department believe this focus should be well coordinated with local government, most appropriately through the land use planning process. As resources permit, it is the Department's intent to identify and pursue opportunities within its program areas to further state or local efforts to prevent environmental degradation through more effective planning.

Section II - Overview of Department Programs

This section summarizes all agency programs according to the seven Department divisions: Air Quality, Environmental Cleanup, Hazardous and Solid Waste, Laboratory and Applied Research, Management Services, Region Operations, and Water Quality (see Figure 1).

Section III - Rules, Programs and Actions Affecting Land Use

Goals that Relate to Land Use

Of the nineteen statewide land use goals, Goal 6 - Air, Water and Land Resources Quality, most directly relates to Department programs in that federal and state regulatory authorities governing these resources are vested in the Department and Commission. This goal requires that all waste and process discharges from development comply with state and federal environmental quality standards. However, other goals such as Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources; Goal 11 - Public Facilities and Services; Goal 16 - Estuarine Resources; and Goal 19 - Ocean Resources are also significant in that the implementation of these goals must involve the consideration of the carrying capacity and protection of air and water resources. In accordance with the State Agency Coordination rule requirements, the Department will comply with all applicable statewide goals.

Department Programs Referenced in Goals

The Department of Land Conservation and Development's (DLCD) administrative rule OAR 660-30-005 considers that an agency rule or program affects land use if, (1) it is specifically referenced in the statewide planning goals, or (2) it is reasonably expected to have significant effects on resources, objectives or areas identified in the goals or in acknowledged comprehensive plans. Under DLCD's first criterion, the implementation requirements of Goal 16 direct state and federal agencies to ... "review, revise and implement their plans, actions, and management authorities to maintain water quality and minimize man-induced sedimentation in estuaries." The goal further direct local government to recognize these authorities rather than developing new or duplicatory

management controls. The Department's nonpoint source discharge water quality program is specifically referenced as a state authorized management program for estuaries.

Goal 16 also identifies the Department's water quality and sewage disposal systems authorities as state authorities of special concern in estuarine areas. As such, agencies are to assure that their procedures and standards address the objectives of the goal.

Goal 19 speaks to the conservation of natural resources of the nearshore ocean and the continental shelf. The implementation requirements of this goal includes water quality permits and oil spillage regulation authorities as state authorities of special concern.

To provide assistance in evaluating DLCD's "significance" criterion, in the second criterion, the Department relied on two interpretive guidelines: a) the land use responsibilities of a program or action involving more than one agency, rests with the agency that has primary statutory authority; and b) a determination of land use significance must consider the Department's mandate to protect public health and safety and the environment.

Exemptions

Under DLCD rules, state agencies must identify any rules or programs that are specifically exempt from goal compliance or plan compatibility. The Department authorities under the Health Hazard Abatement Law, ORS 222.840 to 222.915, have been determined exempt from land use coordination requirements by the opinion of the Attorney General. (Opinion request OP-6326).

The court, in West Side Sanitary District v. LCDC (#26780) held that in the Health Division's determination of whether a danger to public health exists, the sole issue involved is current health conditions and not future land use implications. The above cited opinion states that the Environmental Quality Commission has no discretion to apply land use planning goals in the review and approval of a jurisdiction or alternative plan for the removal or alleviation of a health hazard.

Program Affecting Land Use

In applying DLCD's criteria, the Department has identified twenty-three actions that affect land use. The procedures for assuring comprehensive plan compatibility for these Department actions are summarized in Figure 2 (page viii).

Section IV - Procedures for Assuring Statewide Goal Compliance and Compatibility with Acknowledged Plans

Procedures for Compliance with Statewide Goals - It is the Department's intent to achieve goal compliance by relying on local government determinations of acknowledged comprehensive plan compatibility to the degree possible. DLCD's administrative rule OAR 660-30-065 describes circumstances that require an agency to directly comply with the statewide goals. When necessary, the Department will identify the applicable goal(s), seek advice from DLCD or the Attorney General's office when needed, consult with the affected local governments, and adopt appropriate findings to support goal compliance.

Procedures for Acknowledged Plan Compatibility - The Department has identified twenty-three actions that affect land use and has developed procedures for assuring statewide goal compliance and comprehensive plan compatibility.

The majority of Department actions affecting land use involve the requirement of a Land Use Compatibility Statement (LUCS). Through the use of the LUCS, the Department relies on the affected local government to determine comprehensive plan compatibility. Procedural provisions involving a LUCS include:

- A completed LUCS, acted upon by the affected local government must be submitted by an applicant with an approval request or permit application. If an affirmative LUCS is not received the Department will not process the application, unless otherwise obligated by statute.
- The Department relies on an affirmative LUCS as a determination of local plan compatibility. If a negative LUCS is received the application will not be processed.
- If the Department concludes a local government LUCS review and determination may not be legally sufficient, the Department may deny the permit application and provide notice to the applicant. In the alternative, when the applicant and local government express a willingness to reconsider the land use determination, the Department may hold the permit application in abeyance until the reconsideration is made.
- If more than one local government has jurisdiction for an activity, the LUCS must be reviewed by each affected jurisdiction.
- A local government may withdraw or modify its compatibility determination any time prior to the issuance of a permit.
- If a LUCS or underlying land use decision is appealed after the Department has determined an application complete, the permit will be processed and may be issued except when the LUCS has been stayed or invalidated by the Land Use Board of Appeals (LUBA), or other court of law.

- If a LUCS is successfully appealed after the Department has issued a permit, the Department may either proceed to revoke or suspend the permit or may decide to wait until the land use appeals process is exhausted.
- A LUCS is not required for a permit renewal unless the renewal also involves a substantial modification that would in itself require a LUCS.
- A LUCS is required for a permit modification when conditions exist that constitute a substantial modification or intensification of the permitted activity as determined when: the permitted source or activity will be expanded or use additional property; the modification involves a significant increase in discharge to state waters or into the ground; the modification involves the relocation of an outfall outside of the source property; or, any physical or operational change that would result in a net significant emission rate increase.

Procedures for Other Actions Affecting Land Use - Procedures for actions other than permits that affect land use vary by action as depicted in Figure 2. These may include the submittal of a LUCS; submittal of written evidence of local government participation and approval; notification to local government before Department action is taken; or notice to local government of proposed rulemaking.

Procedures for Dispute Resolution - In efforts to resolve a land use dispute the Department will consider several options:

- 1) meetings and discussions with affected local government;
- 2) alternatives or modifications of the Department's SAC Program;
- 3) application for necessary local land use approval;
- 4) an appeal of the local government action; submittal request for local approval during periodic review; or
- 5) a request for Land Conservation and Development Commission (LCDC) mediation.

Goal Compliance and Plan Compatibility Procedures for New or Amended Rules - The Department will evaluate all proposed rules using the factors in Section III for determining if rules and programs affect land use. The DLCD and land use mailing list will receive a notice of all proposed rulemaking determined to affect land use.

State Permit Compliance and Compatibility Rule - The Department proposes one SAC program change that affects DLCD's OAR 660 Division 31. One new permit, the Waste Tire Storage Permit, has been included in the SAC program. The permit should be classified a Class B permit. All Department permits listed in Division 31 are identified as programs affecting land use. The Department relies on an affirmative LUCS for a determination of plan compatibility before a permit is issued.

Section V - Cooperation and Technical Assistance to Local Government

The Department provides information and technical assistance through all of its program areas. The Department will coordinate its activities affecting land use with local governments to prevent potential conflicts between local and state planning. Coordination and assistance may involve periodic review, technical assistance and plan amendments. Local requests should be initiated through the Intergovernmental Coordination office.

Involvement in Periodic Review - The Department will provide periodic review guidelines to local government upon request. As resources allow, Department staff will evaluate periodic review related plan or plan amendments upon request. The Department will participate in periodic review through the establishment of priority environmental concerns that relate to land use planning. This may involve emphasis on geographic areas or issue areas of high environmental priority.

The above provisions for cooperation, coordination and technical assistance also apply to coastal areas with a specific emphasis on Goal 16, Estuarine Resources and Goal 19, Ocean Resources.

Section VI - Coordination with State Agencies, Federal Agencies and Special Districts

The Department's authorities and areas of responsibility require on-going coordination with other agencies, particularly natural resource agencies and special service districts. In response to DLCD's rule requirement of agency coordination for providing services necessary for economic development, the Department shall coordinate with the Departments of Economic Development, Land Conservation and Development, Transportation, and Water Resources in the implementation of federal grant and state loan applications for wastewater pollution control and treatment facilities.

FIGURE 1

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
1989 - 1991

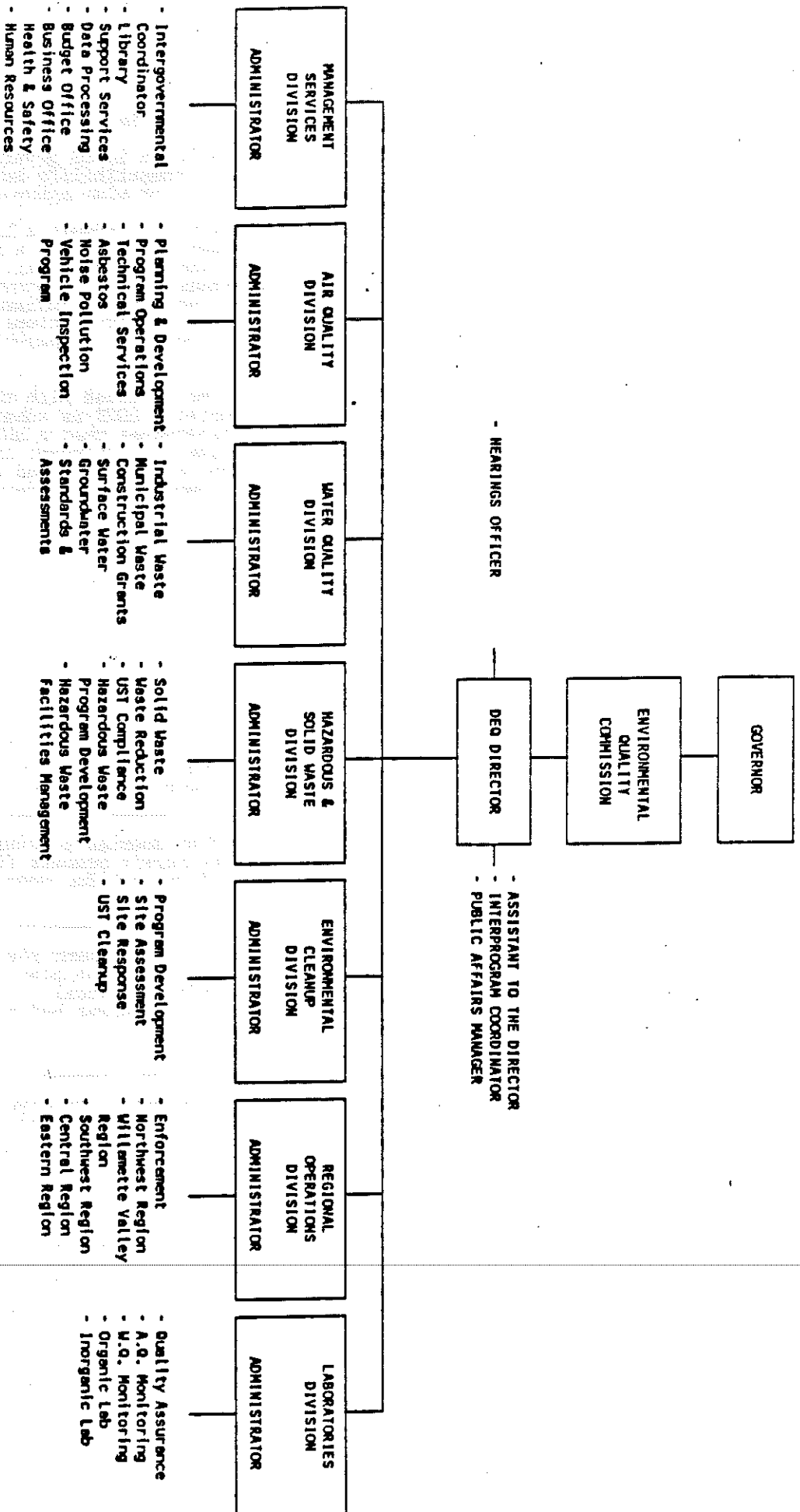


Figure 2

DEPARTMENT PROGRAMS/ACTIONS AFFECTING LAND USE
Goal Compliance/Plan Compatibility Procedures

<u>Actions Affecting Land Use</u>	<u>Consistency/Compatibility Mechanisms</u>
<ol style="list-style-type: none"> 1. Approval of Noise Impact Boundaries for Motor Racing Facilities 2. Approval of Airport Noise Abatement Program/Noise Impact Boundaries 3. Approval of Air Quality Notice of Construction 4. Issuance of Air Contaminant Discharge Permit 5. Issuance of Indirect Source Construction Permit 6. Approval of Parking and Traffic Circulation Plan 7. Issuance of Solid Waste Disposal Permit 8. Issuance of Waste Tire Storage Permit 9. Issuance of Hazardous Waste & PCB Storage, Treatment and Disposal Permits 10. Approval of Pollution Control Bond Fund Application 11. Approval of Wastewater System and Facility Plans 12. Approval of Construction Grant Program Application 13. Approval of State Revolving Loan Applications for Water Pollution Control Facilities 14. Issuance of On-Site Sewage Disposal Permit 15. Issuance of Federal and State Industrial Waste Discharge Permits (NPDES, WPCF) 16. *Certification of Water Quality Standards for Federal Permits or Licenses 	<p>The Department relies on a local government determination of plan compatibility before approving these permits or plan approvals.</p> <p>An applicant is required to submit a Land Use Compatibility Statement (LUCS) with a permit application or plan approval material. It is the applicant's responsibility to provide the LUCS to the local government of jurisdiction for review and sign off. With actions 2. and 6., other written evidence of compatibility may be provided.</p> <p>The Department will not proceed with these actions until a completed LUCS is submitted. If the Department determines that a LUCS review did not consider all relevant land use issues, the applicant may be required to provide additional compatibility information.</p>
<ol style="list-style-type: none"> 17. Issuance of Environmental Hazard Notice 	<p>Local government amends comprehensive plan to assure compatibility with the notice.</p>
<ol style="list-style-type: none"> 18. Development of Water Quality Wetland Protection Criteria 	<p>Compatibility for point sources is achieved through the discharge permit process (LUCS). Rules have not been developed for nonpoint application.</p>
<ol style="list-style-type: none"> 19. Requirement of Implementation Plan for Meeting Total Maximum Daily Load Requirements for Water Quality Limited Waterways 20. Development of Estuary Water Quality Plans 	<p>Written evidence that a Department plan or locally developed implementation plan is compatible with all affected local comprehensive plans, is required before plan approval.</p>
<ol style="list-style-type: none"> 21. Development of Action Plan for Declared Groundwater Management Plan 22. Development of Water Quality Nonpoint Source Plan 23. Development of Oil Spills Regulations 	<p>All affected local governments receive notice prior to Department initiation of actions. Opportunities are provided for local government participation and coordination on land use issues.</p>

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*Subject to limitations of Section 401 of the federal Clean Water Act.

SECTION I
INTRODUCTION

1. AUTHORITY FOR LAND USE COORDINATION

Oregon's land use laws mandate state agency responsibilities which include the submittal of a State Agency Coordination (SAC) program to the Land Conservation and Development Commission (LCDC) for approval. In 1986, LCDC revised its administrative rules to strengthen and clarify state agency coordination requirements. Under the revised rules, all agencies, including those with previously approved coordination programs, must submit a coordination program for LCDC approval by September, 1990. The current Department State Agency Coordination program was approved by LCDC in January 1983 as being in compliance with the requirements of ORS 197.180. This is the Department's second update of its SAC program.

2. STATUTORY ROLE OF DEQ

The Department of Environmental Quality evolved from the State Sanitary Authority by legislative direction in 1969. The agency reports to a Governor-appointed five member citizen commission, the Environmental Quality Commission (Commission).

The role of the Commission is to establish Department operational policies and to adopt rules and standards essential to the Department's functions.

The Department has broad authorities related to the maintenance, restoration, and preservation of the quality of Oregon's air and water resources and to the management of hazardous and solid wastes. These authorities are carried out by seven Departmental divisions.

The Director serves at the pleasure of the Commission and is responsible for overall agency management. The Director's office houses the agency's Public Affairs and Hearings sections. Agency divisions report to the Director and include:

Air Quality
Environmental Cleanup
Hazardous and Solid Waste
Laboratory & Applied Research

Management Services
Regional Operations
Water Quality

3. LAND USE PLANNING AND ENVIRONMENTAL QUALITY

Environmental quality may be narrowly interpreted as applying to our natural environment or, interpreted to include virtually every aspect of our living environment. The federal and state authorities governing environmental quality encompass the natural environment classifications such as air, water, sewage, solid waste and hazardous waste. From a local land use perspective, however, the environment may be perceived more expansively to include elements such as recreation, housing, transportation, and energy.

There are three governmental levels of control and regulation of environmental quality...federal, state, and local. The federal and state roles focus on the establishment of environmental quality standards and regulation and enforcement, with growing emphasis on the prevention of environmental degradation. Local government regulation to prevent environmental pollution and degradation is accomplished through a variety of mechanisms which may include the local comprehensive plan, related development ordinances and building codes.

State environmental regulation is continually changing in response to growth pressures on the state's natural resource assimilative capacity. The state can assist local government in furthering a local emphasis on prevention of environmental degradation. This can be most directly accomplished by providing current monitoring, assessment or other technical data to assist local government in managing future growth with accurate environmental-based decision making.

SECTION II

OVERVIEW OF DEPARTMENT PROGRAMS

1. ORGANIZATION

The Department's program areas are organized under its seven divisions. The information in this section is presented in accord with the agency's organization structure. Division management sections are established for each major program area; within each section there are a number of sub-programs, actions, or activities necessary for program implementation.

2. OFFICE OF THE DIRECTOR

The Director provides agency leadership and guidance in carrying out policy direction established by the Commission. The Office of the Director includes the Assistant to the Director, Public Affairs, Hearings Officer, and Administrative Support staff.

3. AIR QUALITY DIVISION

The Department is the designated agency responsible for the establishment and implementation of state air quality requirements under the federal Clean Air Act as well as state requirements. These responsibilities have been delegated by the Department to the Lane Regional Air Pollution Authority which assumes jurisdiction over most sources of air pollution in Lane County. The Air Quality Division oversees the development and implementation of state programs for the restoration and maintenance of the state's air resources, to facilitate cooperation among local government, and, to provide the means for air quality control through pollution abatement and prevention. The Division is also responsible for the development, implementation and enforcement of noise emission standards. These statutory responsibilities are carried out through the following programs:

Administration. Provides management and administrative support services to the various air quality program areas, and assists in obtaining federal funding for program areas.

Asbestos Control. Asbestos abatement is defined as any work which involves the handling, removal or disposal of any materials with potential of releasing asbestos fiber into the air. The Department regulates building owners and contractors through work practices, disposal requirements, training, and licensing of workers and contractors for all types of asbestos

abatement. Notification to the Department is required prior to any asbestos abatement project.

Fieldburning Smoke Management. Air emissions from agricultural burning practices are regulated by the Department in the Willamette Valley. Registration permits are issued yearly which identify the amount of acreage to be open burned in accord with burning criteria. The permit fees support the research and development of feasible alternatives to fieldburning. In 1990, the Department transferred some of its program responsibilities, through a Memorandum of Understanding, to the Oregon Department of Agriculture. The transferred responsibilities include assistance, monitoring and compliance, registration, and fee collection. The Department is responsible for enforcement activities.

Motor Vehicle Inspection. Vehicle emission testing program involves testing and inspection certification of motor vehicle emission control systems. A Certificate of Compliance is required in order to renew a vehicle's registration in the Portland and Medford areas. Vehicle inspection may be required if needed in any area that is not in compliance with carbon monoxide standards.

Noise Control. Develops and administers noise emission standards and regulations. Technical assistance, training, and equipment loans to local governments and other affected agencies are also provided. Specific noise control regulations apply to the following:

- o Sale of new motor vehicles.
- o New and existing industrial and commercial facilities.
- o Motor sports vehicles and (racing) facilities. The data and analysis used to determine the environmental noise impact boundaries for new facilities must be submitted to the Department for approval. Facilities located more than two miles from noise sensitive land uses are exempt from this requirement.
- o Noise abatement plans are required for airports which encompass noise sensitive property within the noise impact boundary. The submittal of noise impact contours for Department evaluation and approval is also required when a new airport master plan is developed.

Program Operations. The Program Operations role is to achieve and maintain a high level of sources operating in compliance with federal and state air quality rules, regulations, and permit conditions. The Section is responsible for the issuance of all new and renewed permits, permit modifications, and

provides technical assistance to the regulated sources and communities. This is accomplished through the administration and enforcement of ambient air emission standards as follows:

- o Submittal of a Notice of Construction (NC) to the Department is required before commencement of any construction or modification of an air contaminant source, unless an Air Contaminant Discharge Permit (ACDP) is required. The NC applies primarily to sources that emit less than 10 tons of any pollutant per year and to sources that do not have significant toxic air pollutant emissions.
- o An ACDP is required before the construction, major modification and operation of all significant air contaminant sources. Specific criteria requirements for an ACDP are determined by the amount of emissions per year or the type of source on pollutant emissions.

Permit criteria vary depending upon the type and level of emissions involved which may include: federally-based criteria for new sources that emit over 250 tons/year; growth increment strategies; state criteria governing the highest and best treatment and control practices; and, criteria for sources located in air quality nonattainment areas.
- o An emission permit is required for any activity in a wilderness area other than emergency or recreational which causes the emission of air contaminants, water pollutants or noise in excess of specified environmental standards. This permit is required in addition to other Department permit requirements.
- o The Department will, in response to new federal requirements, develop and implement air toxic controls for new and existing sources.

Planning and Development. Develops, plans, monitors and implements appropriate procedures to achieve and maintain compliance with air quality standards; and coordinates federal requirements with the state air quality programs. These are principally accomplished through the development and implementation of control strategies for attainment areas and nonattainment areas (Nonattainment areas include Portland-Vancouver, Salem, Eugene-Springfield, Medford-Ashland, Klamath Falls and Grants Pass). Specific actions are stated below:

- o Indirect Source Construction Permits (ISCP) are required for the construction and operation of certain types of parking facilities, airports, highways, and for other types of attractors of motor vehicles in certain parts of the state. Threshold levels vary

according to the amount of parking or other indicators.

- o Parking and Traffic Circulation Plans (PTCP) may be required for the control of motor vehicle emissions located in or projected to be in noncompliance areas. The plan requirement is based on the Department's or a regional air authority determination that the control of parking spaces and traffic circulation is necessary to ensure attainment of state and federal air standards.
- o The certification of new woodstoves offered for sale is required statewide for the control of air pollutants, including fine particulate emissions (PM₁₀). Retail stores are inspected for compliance with federal and state woodstove labeling regulations.
- o A visibility impact analysis is required of major air contaminant sources or major source modifications to prevent significant visual impairment in federal wilderness areas and national parks. These requirements are implemented through the ACDP process.
- o Open burning regulations prohibit industrial burning and regulate other classes of open burning statewide. Letter approvals may be issued for exceptions to prohibited burning activities. In areas and under circumstances where open burning is allowed, the local fire control entity has authority to issue a local burning permit. The Department coordinates with the Department of Forestry to assure slash burning regulations comply with state and federal air standards.
- o The Department regulates agricultural field burning in the Willamette Valley through the implementation of statutory limits on the maximum number of acres that can be open burned. These responsibilities are closely coordinated and shared with the Department of Agriculture.
- o Air contaminant sources with emissions of toxic air pollutants not currently regulated as standard criteria pollutants are subject to an interim policy regarding risk evaluation. The policy is implemented through the standard ACDP process.

4. ENVIRONMENTAL CLEANUP DIVISION

The Environmental Cleanup Division is authorized to eliminate or minimize adverse impacts to public health and the

environment by cleanup of hazardous substances that have been released or improperly disposed. Program implementation is carried out through the Division's five sections:

Administration. Consists of the Division Administrator, an environmental toxicologist, and division administrative support staff. The toxicologist provides technical assistance which includes the review of studies involving environmental risk analysis. The section is responsible for the coordination of cleanup activities associated with illegal drug labs and spills of hazardous substances.

Site Assessment. Responsible for developing a statewide list of facilities with a confirmed release of hazardous substances; establishing an inventory of facilities where a confirmed release may pose a significant threat to public health and safety of the environment; and, conducting preliminary assessments of facilities to determine the extent of a release and an appropriate course of action regarding further investigation and cleanup.

Site Response. If a preliminary assessment determines that a site poses a significant threat to the public health or environment, the site is transferred to the Site Response Section for further investigation and selection of a remedial action.

Investigations are typically referred to as "remedial investigations" and "feasibility studies." A remedial investigation is conducted to characterize the hazardous substances, determine the extent of contamination, and, to evaluate the potential or actual hazard to public health or the environment.

The next step involves a feasibility study to develop and evaluate remedial action options for site cleanup. Department rules direct that sites be cleaned up to background level or to the lowest concentration level feasible using the highest and best technology available. Remedial action may include removal of contaminants for off-site management or selection of an on-site cleanup action.

The cleanup level and remedial action for each site is, by law, determined by the Director. The remedial action must protect present and future public health, safety and welfare and the environment. To the extent possible, the remedial action must be cost effective and implementable, and must use permanent solutions and alternative technologies or resource recovery technologies.

In cases where cleanup technology is not feasible, measures other than cleanup may be necessary such as fencing, designed to prevent or minimize exposure by the public or wildlife.

The section also administers the state Hazardous Substance Remedial Action Fund which provides a state match for federal Superfund monies to clean up federally authorized hazardous substance sites.

Underground Storage Tank (UST) Cleanup. This section is responsible for the identification of sites, investigation, and cleanup oversight of leaking underground storage tanks containing petroleum. The federal Leaking Underground Storage Tank Trust Fund is used to investigate and clean up sites where the responsible parties are unknown. Of the approximately 19,000 underground storage tanks at 6,000 facilities in Oregon, there is an estimated 75% contamination rate. In comparison to the cleanup of sites with hazardous substance contamination, the cleanup of USTs is often relatively inexpensive and simple. In the majority of cases, cleanup involves soil excavation and disposal, and the cleanup and/or disposal of tanks.

Policy and Program Development. This section is responsible for development of the Division's rules, policies, budget, and data information systems. Other administrative functions include contractor procurement, management of federal Superfund assistance agreements, and development of coordination procedures for cleanup activities with other Department divisions.

- o The Commission is authorized to issue a Notice of Environmental Hazard to the affected local government for a disposal site that contains potential hazards to human health or the environment. The notice identifies the site, describes the contamination, states the use restrictions of the site, and contains findings supporting the decision to issue a notice. The affected local government is required by statute to include the notice in the comprehensive plan, in appropriate land use regulations, and on zoning maps.

5. HAZARDOUS AND SOLID WASTE DIVISION

The Hazardous Waste Program regulates the transportation, treatment, reduction, and disposal of hazardous wastes; the disposal of polychlorinated biphenyls (PCB); and the management of hazardous wastes by generators.

Solid waste responsibilities apply to the minimization, management and disposal of solid waste. The Department encourages the reuse of materials, the recycling of materials that cannot be reused, the recovery of energy from wastes that cannot be reused or recycled, and the proper disposal of wastes that cannot be reused, recycled, or recovered as energy by approved and regulated methods.

The Division carries out its responsibilities through eight program areas:

Administration. Provides division policy, management and administrative support services.

Hazardous Waste Technical Assistance. Responsible for development and maintenance of the hazardous waste database, providing technical assistance to the regulated community, developing hazardous waste policy and rules, coordinating and negotiating with the EPA, the reduction of hazardous waste, and for the development and monitoring of the hazardous waste biennial and operating budgets.

This program ensures that hazardous wastes generated in Oregon are reduced, reused, and recycled to the extent possible in line with statutory priorities. Regulations also require planning by businesses to reduce the quantity of toxic chemicals used and the amount of hazardous waste generated. Technical assistance is provided to businesses for development of reduction plans.

Beginning in 1991, every toxics user must submit an annual progress report to the Department on the status of its reduction plan and goals.

Hazardous Waste Permits and Compliance. Implements federal hazardous waste legislation in Oregon to ensure proper management from generation to disposal through the following mechanisms:

- o Hazardous waste permits are required for the storage, treatment, or disposal of hazardous waste, or for the modification of such practices.
- o A closure permit and plan is required for the closure of any hazardous waste disposal site.
- o Registration with the Department is required of all fully regulated and small quantity generators of hazardous waste. Field staff inspect generators for compliance with appropriate standards and regulations.

Underground Storage Tank (UST) Compliance. Responsible for assuring the underground storage of oil and hazardous materials is accomplished in a manner which prevents groundwater contamination or tank leakage into the environment. The following mechanisms are used to meet these responsibilities:

- o Department registration permits are required for tanks containing petroleum or other hazardous materials.

- o Any tank removal, modification, leak testing or detecting, or contaminated soil cleanups must receive prior approval from the Department.
- o Companies working on UST systems are required to be licensed and to employ Department certified supervisors.
- o The Department approves state grants and guaranteed loan funds to underground storage tank owners for tank testing, pollution control upgrades, and soil cleanups which are required by the EPA.

Solid Waste Permits and Compliance. This program ensures that municipal and industrial solid waste is properly disposed. These responsibilities are accomplished through the following mechanisms:

- o Engineering and design plans for the construction or modification of solid waste disposal facilities and/or sites must be reviewed for compliance with regulations, permit conditions and approved by the Department.
- o A solid waste disposal permit is required for the disposal of solid waste anywhere in the state.
- o A disposal site closure permit is required and must be initiated five years before anticipated closure of a site.
- o The Waste Tire Management Section addresses the generation and disposal of approximately two million waste tires annually in Oregon. The program regulates the collection, transport or storage of waste tires, and has established a state fund to partially reimburse businesses for using waste tires and to fund cleanup of existing disposal sites.
- o A waste tire permit is required for the transport and storage of waste tires. Persons transporting more than 5 waste tires for the purpose of storage or disposal must obtain a carrier permit. A permit is also required of a person who stores more than 100 waste tires at a site.
- o A fee is required on the sale of every new tire in the state. The fee revenue is placed in a waste tire recycling account to provide financial assistance for cleaning up waste tire disposal sites. The Department has authority to clean up these sites when the owner is unable or unwilling, and is authorized to seek reimbursement of cleanup costs from the site owner.

Solid Waste Reduction

Statutory priorities for the management of solid waste in Oregon are: reduce, reuse, recycle, recover energy, and landfill. These objectives are carried out through the following activities:

- o Approval of recycling grants and technical assistance to local government and the public.
- o The Department approves a required recycling report submitted by each designated watershed in the state.
- o Communities that ship more than 75,000 tons of solid waste per year to a regional disposal site must submit a waste reduction plan to the Department for approval.
- o The Department certifies carriers of recycled materials as eligible for special Public Utility Commission trucking rates.

6. LABORATORY AND APPLIED RESEARCH DIVISION

This Division provides chemical, biological and microbiological analysis, and sampling and monitoring services to the Department. The Division analyzes samples collected by its own monitoring groups, regional and program staff, and other state or federal agencies. It also provides analytical expertise to evaluate methods submitted for review or to develop such methods. The Division consists of the following program sections:

Administration. Provides division guidance, management and administrative support services, including data filing and distribution to users.

Air Monitoring. Maintains and operates a statewide ambient air sampling network for airborne particulate and meteorology, including wind speed, direction, and temperature; and a gaseous pollutant monitoring network for carbon monoxide, ozone, nitrogen oxides, and sulfur dioxide. Real-time monitoring and meteorology data is transmitted to the Laboratory via phone lines to a computer Data Acquisition System.

Water Monitoring. Collects water samples as part of statewide ambient and special monitoring projects. Groundwater monitoring is conducted at landfills, hazardous waste disposal sites, and for regional groundwater assessment studies. The section conducts Comprehensive Monitoring Evaluations on sources required to perform self-monitoring under federal law. Samples are collected to identify sources and determine extent

of contamination in Superfund actions, and to evaluate environmental impact of hazardous substance spills. Water monitoring includes biomonitoring which conducts bio-assessment of streams, laboratory bioassays on effluents, and biological characterization of water quality.

Organic Analysis. The Organic Laboratory section performs quantitative analyses for organic chemicals (volatiles, semi-volatiles, PCBs, polynuclear aromatics, pesticides, herbicides, phenols, cyanide) in air, water, waste, tissue and soil samples collected during ambient monitoring, complaint investigation, compliance monitoring, split samples, special studies, spill and superfund investigation and cleanup. Analytical data is used for strategy planning, measuring quality of environment, evaluating compliance, enforcement, identifying spills, determining need for and effectiveness of cleanup.

Inorganic Analysis. The Inorganic Laboratory section performs quantitative analysis for minerals, trace metals, non-metals and nutrients in air, water, waste, tissue, and soil samples collected during ambient monitoring, complaint investigation, compliance monitoring, split samples, special studies, spill and superfund investigation and cleanup, etc. Analytical data is used for strategy planning, measuring quality of environment, evaluating compliance, enforcement, identifying spills, determining need for and effectiveness of cleanup.

Quality Assurance. This section ensures Department laboratory data is documented and meets high data quality standards for precision and accuracy; provides sampling and analytical expertise and support to region personnel, sources, and other government agencies; evaluates results of split samples and audits regulated source labs; and audits emission self-monitoring activities by stationary sources. The section also annually inspects and evaluates laboratories participating in the Drinking Water Laboratory Certification Program for inorganic, trihalomethane and volatile organic analyses. This work is performed for the Oregon Health Division, which administers the program.

7. MANAGEMENT SERVICES DIVISION

This Division provides budgetary oversight, human resource services and administrative support services for the Department. Program areas and activities are organized into five sections:

Administration. This section consists of library services, employee health and safety, and intergovernmental coordination. Other responsibilities include the following:

- o The State Agency Coordination Program is administered through the Intergovernmental Coordination Office.

- o The Pollution Control Tax Credit Program is administered by the section for all divisions. This includes legislative oversight, rulemaking, the review and approval of division review reports, and the preparation of tax credit reports to the Environmental Quality Commission.

Tax relief is provided under this program to industry and businesses which have installed pollution control equipment in accordance with environmental requirements, or voluntarily installed equipment exclusively for pollution control or material recovery purposes.

Business and Finance Services. These sections are responsible for payroll and accounting services, and financial program management which includes the Pollution Control Bond Fund. The fund supports loans to local government for financing water or solid waste facility projects, or may be used to clean up hazardous substance orphan sites.

Budget. The Budget Section is responsible for the agency's budget, and provides budget-related assistance to the Department divisions.

Support Services. This section provides word processing, mail processing, photocopying, supplies, and messenger services.

Information Systems. This section provides department-wide information systems planning and programming services.

8. REGIONAL OPERATIONS DIVISION

Regional Operations is the primary compliance assurance and enforcement arm of the agency. It carries out its responsibilities through a network of five region offices, two branch offices, and an enforcement section. The Division consists of the following organizational structure.

Administration. Oversees division management and policies. Administrative support services are not provided centrally, but within each region office.

Enforcement. Responsible for processing most formal enforcement actions taken by the Department, including warning letters, civil penalties, and orders. There is ongoing interface between the region offices and the Enforcement Section.

Region Offices. Five region and two branch offices are responsible for drafting most air, water, and solid waste

permits; the inspection and enforcement of air, water, solid waste, and hazardous waste facilities; complaint response; and, oil and hazardous spill response. The field administration of the underground storage tank preventative program, and, regulatory elements of the leaking underground storage tank program are included in the region responsibilities. The region offices also provide technical assistance to the public, local government and regulated community.

9. WATER QUALITY DIVISION

This Division is responsible for the development and implementation of state programs to maintain, protect, and improve the quality of the state's surface and subsurface waters. Program priorities focus on public health and safety, and the protection of recognized beneficial uses of the state's waterbodies. Department mandates and policies are carried out through public awareness and cooperation, and through the regulation and enforcement of waste treatment and discharge practices through several program areas:

Administration. Provides management and administrative support services to the various program areas. This includes development of internal program plans, program budgets, negotiation of federal funding assistance, allocation of program components and coordination of program activities.

Municipal Waste Sewage. This program is responsible for regulating sewage collection and treatment/disposal systems, other than individual on-site systems, through the following:

- o All facility and engineering plans for the construction or expansion of domestic wastewater treatment facilities and sewer systems must be reviewed and approved by the Department prior to facility construction or modification.
- o A federal National Pollutant Discharge Elimination System (NPDES) permit is required of all systems that propose to discharge domestic sewage wastewater to public surface waters. The permit review includes the evaluation of sites for new or relocated effluent outfalls.
- o A state Water Pollution Control Facility (WPCF) permit is required prior to the construction of all new or modified systems that propose to dispose of sewage effluent on land, or injected into the ground with no direct discharge to surface waters.
- o Wastewater treatment systems that receive industrial waste subject to federal or state pretreatment

standards are required to develop and implement a pretreatment program. The requirement is designed to control the discharge of certain industrial wastes such as heavy metals, and to prevent treatment system impacts such as process upsets or the pass through of toxics or sludge contamination. This requirement is implemented through the water discharge permitting process.

- o A Sludge Management Plan is required of all wastewater treatment facilities that generate sludge. This plan is part of an overall sewerage facility plan and is administered through the water discharge permit process.
- o All owners of collection and treatment systems are required to have a certified operator at a grade level equal to or higher than the classification of the wastewater treatment system.
- o The Department provides technical assistance and training to sewage treatment plant operators.

Construction Grants. This section provides financial services through grants and loans for the construction of municipal treatment works. Program activities include:

- o The current construction grant priority list was developed in 1989 to govern the distribution of remaining federal construction grant funds. When necessary, the EPA prepares an environmental impact statement for proposed municipal treatment facilities. Environmental assessments are prepared by the Department when needed. The section also certifies that all requirements have been met through grant application review, and provides oversight of all construction management activities.
- o The State Revolving Fund provides loans to municipalities for water pollution control construction projects which include: sewage transportation and treatment facilities, infiltration and inflow correction, and nonpoint source control projects. This fund was created by the state Legislature to replace the federal construction grant program which is being phased out. A needs priority list is developed annually to govern the distribution of state loans.
- o Assessment deferral loans are available to cities where residents are required by a state order to connect to sewers. A city in turn provides loans to

low income property owners for payment of sewer assessments.

Industrial and On-Site Waste. This section manages industrial wastewater sources and on-site sewerage systems to assure compliance with federal and state water quality regulations.

Point source water quality regulation is accomplished through the evaluation of treatment and disposal systems or discharge of pollutants, the issuance of water discharge permits, the review of construction and design plans, the provision of technical assistance, enforcement action, and response to reported spills and complaints. Nonpoint discharge water quality control is primarily accomplished through Best Management Practices (BMP) or other management practices for the minimization of water quality impacts. Specific program implementation activities consist of the following:

- o A site evaluation and permit is required for all on-site sewage disposal systems. The permit approves the construction of an on-site system (septic tank), or standardized alternative system, to dispose of sewage without discharge to public waters. The Department contracts with 23 counties to conduct these evaluations and to issue permits for on-site systems.
- o An NPDES permit is required prior to construction of new or modified industrial waste treatment facilities that discharge into public waters. A WPCF permit is required for the discharge of wastes on land or injected into the ground.

Either permit may be issued as a general permit without reference to a specific source. The general permit is used for certain categories of minor sources where individual NPDES or WPCF are not necessary to adequately protect the environment. The sources involve the same or similar types of operation, discharges, and require the same monitoring requirements.

- o The Department coordinates with the Department of Agriculture in implementing the Confined Animal Feeding Operations waste management requirements. The location, construction, operation and maintenance of confined animal feeding or holding operations requires the use of best practical waste control technology. The requirements are implemented through the issuance of the WPCF discharge permit.
- o Water Quality strategies will be developed to eliminate water quality problems such as runoff from

container nurseries which may be implemented through the discharge permit process or stipulated consent order.

Standards and Assessments. This Section has overall responsibility for development of Department water quality standards, preparation of the state Water Quality Assessment Report, water quality planning which includes the protection of beneficial uses, and development of the ambient monitoring network. Program implementation activities include the following:

- o The state Instream Water Rights Program was established to maintain and support public users within natural streams and lakes. The Department of Water Resources is the responsible agency for program administration. Agencies authorized to submit instream water rights applications include State Parks, Fish and Wildlife, and Environmental Quality. These agencies are required to adopt rules describing their procedures, and methodologies for determining instream water rights. The Department will develop rules for the Department's approach in determining instream water rights for water quality protection.
- o The development of Total Maximum Daily Loads (TMDLS) restrictions are required for those waterways determined to be water quality limited. The capacity of a waterway is defined and an allocated waste load is distributed among point and nonpoint sources. The load restrictions translate into regulations relating to stormwater control and changes in agricultural or forestry practices. The TMDL restrictions are implemented through a management plan.
- o A Department certification for meeting state water quality standards is required for a federal license or permit to conduct any activity which may result in any discharge into the navigable waters of the state as required under Sections 401 and 404 of the Clean Water Act. This includes activities such as hydroelectric, and fill and dredge projects. The certification assures that designated beneficial uses in or adjacent to a waterway will not be adversely affected.
- o Ambient monitoring is conducted to assess basic water quality, water quality trends, waste characteristics, compliance, and to identify and assess problem areas. Due to limited Department resources, only the highest priority streams in the state are routinely monitored.

- o Individual water quality control strategies are to be developed for determining when toxics are causing violation of water quality standards. Strategies may involve additional treatment or controls at industrial point sources and will be implemented through the WPCF or NPDES permits.
- o The management of a Geographic Information System provides computerized mapping capabilities for geographic data analysis, and management of the water quality data.
- o Appropriate water quality standards for wetlands will be developed by the Department and a policy for the use of existing or constructed wetland for wastewater or stormwater treatment.
- o The completion of on-site system performance audits to assure proper protection of the ground and surface water where these systems are used.
- o The setting of program priorities with the use of the state Clean Water strategies.

Groundwater. Consistent and coordinated groundwater management is provided to ensure that preventive actions are considered before groundwater problems from point or nonpoint sources occur. The section coordinates all groundwater related regulations with other sections in Water Quality, the Hazardous and Solid Waste Division and the Environmental Cleanup Division, and the Water Resources Department. The section carries out groundwater protection activities required by the 1989 Groundwater Act; adopts rules establishing numerical reference levels for contaminants in groundwater; and develop and operates a statewide monitoring and assessment program. Specific activities include the following:

- o Groundwater monitoring is conducted to identify background water quality, trends in quality and critically impacted areas.
- o Appropriate groundwater protection requirements are included in the NPDES and WPCF permitting process which include monitoring requirements and concentration limits. When monitoring indicates a violation at a compliance point, a remedial investigation and feasibility study is required of the permittee and remedial action is determined.
- o The Department has groundwater protection responsibilities under the 1989 Groundwater Protection Act which establishes a state comprehensive groundwater management program. The

Act defines groundwater protection goals and policies with regard to groundwater quality; creates a Strategic Water Management Group (SWMG) responsible for systemic coordination of state agencies in responding to groundwater management issues; and requires the development and implementation of preventative groundwater protection programs, with an emphasis on non-regulatory programs. Department responsibilities under the Act include: the provision of staff support for SWMG activities, adoption of rules for the designation of "areas of groundwater concern", and "groundwater management areas", and establishment of a statewide groundwater assessment program. Rules have not yet been developed.

Surface Water. The primary purpose of this program is the development and implementation of the nonpoint source program responsibilities that relate primarily to forestry and agriculture practices and urban runoff. The section also provides oil spill planning, water quality assessments, and special projects involving public lakes restoration, estuaries, wetlands, and surface waters. Specific activities and implementation mechanisms include:

- o The development and maintenance of a statewide Nonpoint Source Assessment Management Plan. The plan contains strategies to achieve implementation of land management practices to control nonpoint source pollution resulting primarily from forestry, agriculture and range practices, and urban runoff. The plan emphasizes a voluntary, locally controlled, and incentive based implementation approach, but also focuses on interagency priorities and resources through agreements and action plans. The Department's role in management planning is to identify issues and problems; develop solutions and priorities; assist with funding of projects; and evaluate implementation efforts. Administrative rules to guide program implementation are currently being developed.
- o Section 319 of the federal Water Quality Act provides a grant fund to assist state efforts in controlling nonpoint source pollution. Projects are designed to reduce erosion, increase moisture-holding capacity of the soil, encourage native vegetation, or to encourage land management practices to improve the natural watershed productivity. These funds are available to cities, counties, state agencies and others subject to federal and state water quality regulations.

The federal funds are targeted at high priority sites or tributaries listed in the state nonpoint source

assessment plans and, to projects that demonstrate committed local support and multi-agency coordination.

- o The Surface Water Section supports designated management agencies in writing and implementing watershed management plans in conjunction with critical basin and TMDL activities.
- o The Department is responsible for water quality monitoring and assessment of the state's twenty-one major estuaries and nearshore environments. The EPA has initiated a pilot program to develop and implement innovative ways of managing water quality in estuary and ocean waters. Oregon was one of three states to participate in the federal project. The Coquille Estuary was selected as a demonstration project because of water quality and habitat concerns. The project has assisted the Department in developing a water quality plan for near coastal waters that can be a model for similar areas. The development of estuary plans for the rest of Oregon's estuaries like Yaquina, Coos and Columbia estuaries are contingent upon the availability of Department resources.
- o The development of an Emergency Oil Spill Contingency Plan for the Oregon Coast and its estuaries, the Columbia River and the Willamette River from its mouth to Oregon City. The plan will include strategies for the prevention of spills in coastal and ocean waters and will identify sufficient resources to oil spill contingency equipment and training activities. The planning is expected to be completed by July 1, 1991.
- o Continue coordination of federal clean lakes grants for lake assessment and restoration projects; continue the development of the voluntary clean lakes monitoring program.
- o The Department participates in the state's Ocean Resources Management Planning administered by DLCD, to address potential impacts of ocean-use activities on ocean and coastal resources. The plan is based on current regulatory responsibilities of participating agencies.

SECTION III

DEPARTMENT RULES, PROGRAMS AND ACTIONS AFFECTING LAND USE

1. INTRODUCTION

The Department has broad regulatory authorities to ensure the protection of the public health, safety and welfare of the citizens, and to preserve the state's natural resources which contribute to a high quality of life, a healthy environment, and a stable economic base. These authorities address air and water quality, noise, solid and hazardous waste. The Department's responsibilities are carried out through a variety of implementation strategies which include the application of regulatory and enforcement action, incentive based programs, the encouragement of voluntary cooperation, the provision of technical and advisory assistance, and intergovernmental coordination efforts. These strategies are utilized dependent upon the Department's mandate, health and safety implications, and the role and responsibilities of other agencies or local government.

Of the nineteen statewide land use goals, Goal 6 - Air, Water and Land Resources Quality, most directly relates to Department programs in that federal and state regulatory authorities governing these resources are vested in the Department and Commission. This goal requires that all waste and process discharges from development comply with state and federal environmental quality standards. However, other goals such as Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources; Goal 11 - Public Facilities and Services; Goal 16 - Estuarine Resources; and Goal 19 - Ocean Resources are also significant in that the implementation of these goals must involve the consideration of the carrying capacity and protection of air and water resources. In accordance with the State Agency Coordination rule requirements, the Department will comply with all applicable statewide goals.

2. PROGRAMS AND ACTIONS THAT AFFECT LAND USE

In accordance with the DLCD Administrative Rule 660-30-005, state agency rules and programs affect land use if they are:

- Specifically referenced in the statewide planning goals;
or
- Reasonably expected to have significant effects on

- a.) resources, objectives or areas identified in the statewide planning goals, or
- b.) on present or future land uses identified in acknowledged comprehensive plans.

Exceptions identified in the DLCD rule apply:

- If an applicable statute, constitutional provision or appellate court decision expressly exempts the requirement of compliance or compatibility; or
- If a program is not reasonably expected to have a significant effect on resources, objectives or areas identified in the goals or present or future land uses identified in acknowledged plans; or
- Agency property transactions that do not involve change in the use or area of the property.

Exempt Programs

Department authorities under ORS 222-840 to 222-915, are exempt from the statewide goals and acknowledged comprehensive plans (see Attorney General Opinion 6826).

Under ORS 222.860, the Oregon Health Division is authorized to require an affected area to annex to a city or special district if a danger to public health exists. The Division requires and reviews a jurisdiction plan to alleviate the conditions causing the danger to public health. When the source of the health problem is caused by conditions other than impure drinking water, the Environmental Quality Commission has responsibility for review and approval of the jurisdiction plan, or alternative plan.

The court, in West Side Sanitary District v. LCDC (#26780) held that in the Health Division's determination of whether a danger to public health exists, the sole issue involved is current health conditions and not future land use implications. The above cited opinion states that the Environmental Quality Commission has no discretion to apply land use planning goals in the review and approval of a jurisdiction or alternative plan for the removal or alleviation of a health hazard.

Programs Referenced in the Goals

The Department of Land Conservation and Development's (DLCD) administrative rule OAR 660-30-005 considers that an agency rule or program affects land use if, (1) it is specifically referenced in the statewide planning goals, or (2) it is reasonably expected to have significant effects on resources, objectives or areas identified in the goals or in acknowledged comprehensive plans. Under DLCD's first criterion, the implementation requirements of

Goal 16 direct state and federal agencies to ... "review, revise and implement their plans, actions, and management authorities to maintain water quality and minimize man-induced sedimentation in estuaries." The goal further direct local government to recognize these authorities rather than developing new or duplicatory management controls. The Department's nonpoint source discharge water quality program is specifically referenced as a state authorized management program for estuaries.

Goal 16 also identifies the Department's water quality and sewage disposal systems authorities as state authorities of special concern in estuarine areas. As such, agencies are to assure that their procedures and standards address the objectives of the goal.

Goal 19 speaks to the conservation of natural resources of the nearshore ocean and the continental shelf. The implementation requirements of this goal includes water quality permits and oil spillage regulation authorities as state authorities of special concern.

Programs Reasonably Expected to Have Significant Effects

All Department programs and actions have been evaluated against DLCD's "significant effects" criterion. As part of the evaluation, the following two Department guidelines were also relied upon to assist in defining land use programs and in interpreting "significance":

- The land use responsibilities of a program or action that involves more than one agency, are considered the responsibilities of the agency with primary authority.
- A determination of land use significance must consider the Department's mandate to protect public health and safety and the environment.

3. DEPARTMENT ACTIONS AFFECTING LAND USE

The following identifies Department actions determined to affect land use in accord with OAR 660-30-005, and includes a brief analysis of each action and description of the compatibility mechanism.

AIR QUALITY DIVISION

Noise Control Program - OAR 340 Division 35

1. Action: Approval of Environmental Noise Impact Boundaries for new motor racing facilities.

Authorities: ORS 467.030 and 035; OAR 340-35-040.

Analysis: Department approval of noise impact boundaries is required for new motor sports facilities with the exception of those located more than two miles from noise sensitive land uses. These facilities, if inappropriately located, may pose significant noise impacts for adjacent land uses and activities. Prior to construction, the facility owners must submit noise impact boundary information to the Department such as the data and analysis used to determine the boundary.

Land Use
Compatibility
Mechanism:

The facility owner is required to provide a Land Use Statement of Compatibility (LUCS) or written evidence that the local government has determined the proposed facility is compatible with the local plan. This information is to be provided to the Department as part of the noise impact boundary submitted information. The Department will conduct an evaluation of the boundary and will provide the local government with a copy of the Department's decision.

2. Action: Approval of Airport Noise Abatement Program/Noise Impact Boundaries.

Authorities: ORS 467.030; OAR 340-35-045.

Analysis: The Department reviews and approves a required noise abatement program and noise impact boundaries for all air carrier airports that include noise sensitive property. The abatement plan includes measures to prevent the creation of new noise impacts or the expansion of existing noise impacts. An analysis is conducted on the effects of aircraft noise emission regulations and land use controls.

Prior to construction, all new airports must also receive Department approval of the airport's Noise Impact Boundary. The Department has authority to require approval of the Noise Impact Boundary of non-air carrier airports in efforts to resolve an identified noise problem.

Land Use
Compatibility
Mechanism:

Within 12 months of the designation of an air carrier airport, the proprietor must submit the data and analysis used to determine the noise impact boundary to the Department for evaluation. For new air carrier airports, this information must be submitted prior to the construction, operation or local land use approval. After the Department conducts its evaluation, it notifies the affected local government of the evaluation results.

If an airport's noise impact boundary includes noise sensitive property, the proprietor is required to submit a proposed Airport Noise Abatement Program for Commission approval within 12 months of notification by the Director. A submitted airport noise abatement program must contain the following elements:

- Maps of the airport and supplemental information, including zoning and land use plan permitted uses and policies.
- An airport operational plan.
- A proposed land use and development control plan.

The airport proprietor must provide written evidence that the affected local government has participated in and has approved the airport related land use plan in terms of compatibility with the local comprehensive plan. The Department shall consult and coordinate with the Department of Transportation (Aeronautics Division) prior to the issuance of a notification for revision of a noise abatement program and regarding other airport noise related problems.

Operations Program - OAR 340 Divisions 14 and 20

3. Action: Approval of Notice of Construction (NC) for Air Pollution Sources.

Authorities: ORS 468.325; OAR 340-20-030.

Analysis: An NC is required before the construction of new minor sources or major alteration or modification of air contaminant emissions that are too small to require an Air Contaminant Discharge Permit (ACDP) or, for the modification of an existing source. These sources may have significant impacts on local plan policies and surrounding land uses if not sited in appropriately designated areas.

**Land Use
Compatibility
Mechanism:**

The permit applicant is required to submit a LUCS which contains the local government's determination of land use compatibility with the NC application. A LUCS is not required in cases where pollution control equipment is being added or substituted to an existing source and there is no operational change.

4. **Action:** Issuance of Air Contaminant Discharge Permit (ACDP).

Authorities: 40 CFR Parts 51 and 55; ORS 468.310 through 315; OAR 340-20-140 through 276.

Analysis: An ACDP is required of all air contaminant sources and modification of sources that emit significant air contaminants. The permit regulates the level and type of emissions. Permits may also specify emission monitoring and testing requirements, reporting requirements, emission control equipment requirements, and production limitations. The ACDP is also issued for sources with emissions of toxic pollutants that are not regulated as criteria pollutants. These sources may present significant impacts to adjacent land uses if not sited in appropriately designated areas.

Major new sources or major sources within designated attainment or unclassified areas are also subject to federal New Source Review, Prevention of Significant Deterioration (PSD) and Visibility Impact requirements as part of the ACDP procedure. The New Source Review evaluates the air quality impacts of new air contaminant sources. PSD standards are applied to prevent significant deterioration of air quality in areas that have cleaner air

quality than the minimum national ambient air standards require; and, visibility impact standards are applied to new major sources to ensure that the source will not contribute to significant impairment of visibility within any clean air area.

**Land Use
Compatibility
Mechanism:**

The applicant is required to submit a LUCS which contains the local government's determination of land use compatibility with the permit application.

Planning Development Program - OAR 340 Divisions 14 and 20

5. Action: Issuance of Indirect Source Construction Permit (ISCP).

Authorities: ORS 468.020 and 468.310; OAR 340-20-100 through 135.

Analysis:

An ISCP is required to reduce and control mobile source emissions from certain indirect air pollution sources such as highways, parking facilities, airports, recreation/activities, etc. The need for an ISCP is based on the type, location, size and operation of the indirect source.

There are potentially significant short-term and long-term impacts of indirect sources on adjacent land uses and/or local comprehensive plan policies relating to present and future land uses.

**Land Use
Compatibility
Mechanism:**

The applicant is required to submit a LUCS which contains the local government's determination of land use compatibility with the permit application.

6. Action: Approval of Parking and Traffic Circulation Plan (PTCP).

Authorities: ORS 468.020 and 320; OAR 340-20-120.

Analysis:

Parking and Traffic Circulation Plans may be required of local governments located in geographic areas determined or projected to be in noncompliance with federal air quality standards. The plan identifies parking space

capacity and other necessary measures to provide for the attainment of required standards.

**Land Use
Compatibility
Mechanism:**

Administrative rule 340-20-120 requires that a PTCP be developed in coordination with the local and regional comprehensive planning process. The Department requires written evidence that plan development was coordinated with the local comprehensive plan. The approved plan is to be implemented and annually reviewed by local government to determine if it continues to be adequate for the maintenance of air quality in the planning area.

ENVIRONMENTAL CLEANUP DIVISION

7. **Action:** Issuance of Environmental Hazard Notice.
- Authorities:** ORS 466.360-385; OAR 340-130-001 through 035.
- Analysis:** An environmental hazard notice is intended to ensure that a potentially hazardous site is not altered by land development without consideration of the impacts of the activity on public health, safety and the environment. The condition of a site after the cleanup of hazardous substances may have land use implications. If a site is not cleaned up to levels protective of human health and the environment, the site may not be suitable for certain uses. This situation may significantly affect land use if the site poses health or safety implications for some land uses.

**Land Use
Compatibility
Mechanism:**

OAR Chapter 340 Division 130, requires that the Department provide public notice of a hazardous site to the affected city or county which includes model language for amending the comprehensive plans to incorporate procedures to implement the environmental hazard notice.

The local government is required within 120 days of the receipt of a notice, to amend the

comprehensive plans and land use ordinances, including adjoining maps, in accordance with ORS 466.385 and the rule requirements.

A local government cannot approve a proposed use for a site under an Environmental Hazard Notice until the Department has been notified and has provided comments to the jurisdiction.

HAZARDOUS AND SOLID WASTE DIVISION

Solid Waste Program - OAR 340 Divisions 14, 61 and 64

8. Action: Issuance of Solid Waste Disposal Permit.

Authorities: ORS 459.205; OAR 340-61-020 and 025.

Analysis: A Solid Waste Disposal Permit is required to establish, operate, maintain, substantially alter, expand or improve a disposal site. Approval of engineering plans and specifications are required as part of the permitting process. Solid waste disposal sites must be appropriately sited to minimize impacts to adjacent land uses.

Land Use
Compatibility
Mechanism:

Division 61 requires that a permit application include recommendations of the local government in addition to a LUCS which contains a determination of compatibility with the local plan. A permit will not be issued without affirmative LUCS.

9. Action: Issuance of Waste Tire Storage Permits.

Authority: ORS 459.715; OAR 340-64-015 and 020.

Analysis: A Waste Tire Storage Permit is required for the storage of more than 100 tires at a site, with exceptions. The inappropriate storing of waste tires may violate local plan policies or zoning requirements.

Land Use
Compatibility
Mechanism:

Division 62 requires that an application contain the site's zone description and a LUCS which includes the local government's

determination of compatibility with the permit.

Hazardous Waste Facilities Management Program - OAR 340 Divisions 14, 120 and 130

10. **Action:** Issuance of Hazardous Waste and PCB Storage, Treatment and Disposal Permits.
- Authorities:** Title 40 CFR 260-266, 27 and Subpart A of 124; ORS 466.005 - 350; OAR 340-120-001 through 025.
- Analysis:** A three-step permitting procedure is required for permitting off-site hazardous waste and PCB treatment and disposal facilities which includes those that are located on-site more than 15 days per year.

**Land Use
Compatibility
Process; Goal
Compliance
Mechanism:**

A Request for Authorization to proceed is initially required to allow the Commission to determine whether there is a need for a new facility. Secondly, the applicant must submit a LUCS which contains a determination by the local government of land use compatibility with the local plan. The final step involves the actual submittal of an application.

The LUCS must include an affirmative determination of compatibility with written findings as specified in Division 120 which addresses: population density; site distances from sensitive land uses; site distances from historical and national resources; input on adjacent land uses; the provision of emergency services; and transportation access. If the local government chooses not to act on a LUCS, the Department will prepare findings for determining compliance with the statewide goals.

MANAGEMENT SERVICES DIVISION

Business & Financial Services - OAR 340 Divisions 81 and 82

11. Action: Pollution Control Bond Fund Applications

Authorities: ORS 468.195 through 225; OAR Division 82

Analysis: State financial assistance is provided through the Pollution Control Bond Fund to finance municipal water treatment or solid waste facility projects. Projects are evaluated using criteria which includes technical feasibility, the replacement of existing inadequate facilities, and a demonstrated need for state assistance.

Division staff is responsible for processing project applications; however, program oversight is provided by the Management Services Division Finance Section.

Land Use
Compatibility
Mechanism:

A project application submittal must include a LUCS which contains a local government determination of land use compatibility with the proposed project.

WATER QUALITY DIVISION

Municipal/Sewage Program - OAR 340 Divisions 14, 15, 41, 45, 49, 50 and 52

12. Action: Plan approval for wastewater system and facility plans.

Authority: ORS 468.742; OAR 340-41-030 through 120 and Division 52.

Analysis: Engineering reports and construction plan approval is required prior to the construction, installation, or modification of disposal systems and sewage works.

Land Use
Compatibility
Mechanism:

The submittal of proposed construction plans must include a LUCS which involves a

determination of the project compatibility with the local comprehensive plan.

If a jurisdiction submitting plans is the sole jurisdiction responsible for determining plan compatibility, the Department considers the submittal of plans as adequate evidence of compatibility with the local plan.

Construction Grant Program - OAR 340 Divisions 53 and 54

13. Action: Certification of applications for federal Sewerage Works Construction grants.

Authorities: 40 CFR 35.415; OAR 340-53-005.

Analysis: On an annual basis, the Department develops and adopts a project priority list to rank grant applications which govern the distribution of federal construction grant funds.

When necessary, the Department requires local government to prepare environmental assessments for grant applications and must certify that state and federal requirements are met. The Department also monitors the distribution of grant funds to a community.

Grant applications may be submitted for funding after a project is on the priority list. This federal program is phasing out and will be replaced by the State Revolving Loan Fund.

Land Use
Compatibility
Mechanism:

The applicant must submit a LUCS with the final grant application which includes a local government determination of plan compatibility with the grant application.

14. Action: Approval of State Revolving Fund Loan Applications.

Authorities: ORS 423.440; OAR Division 54.

Analysis: The State Revolving Fund was established to provide state financial assistance through loans to municipalities to plan, design, and construct water pollution control facilities. The facility projects should be identified in the local government's public facility plan.

An annual priority list is maintained to govern the distribution of loan funds.

**Land Use
Compatibility
Mechanism:**

A loan application for construction or design and construction projects must include a LUCS which provides a local government determination of plan compatibility with the loan application. Loan approval will not be provided without the approved LUCS which demonstrates project compatibility with the local comprehensive plan.

Industrial and Commercial Waste Program - OAR 340 Divisions 14, 15, 44, 45 and 71

15. **Action:** Issuance of On-site Sewage Disposal Permit.

Authorities: PL 92-500 Sec. 401; ORS 468.020, 035, 615; OAR Division 71.

Analysis:

The Department or contract counties issue permits for the construction of sewer systems on the site where the waste is generated and where there is no discharge to public waters. Permits can be issued for conventional septic tank systems or for selected alternative or experimental systems. The permits are issued for disposal systems of land use activities compatible with the local comprehensive plan.

**Land Use
Compatibility
Mechanism:**

Division 71 requires that a permit application include a LUCS which includes a local government determination of compatibility with the local plan.

16. **Action:** Issuance of Industrial Waste Discharge Permit.

Authorities: ORS 468.065 through 740; OAR 340 Divisions 14, 15 and 45.

Analysis:

An NPDES or WPCF is issued for the construction and operation of new or modified industrial waste treatment facilities or, for the treatment and related disposal of sludge. The permits are only issued for industrial sources that are located in properly zoned areas.

**Land Use
Compatibility
Mechanism:**

An application for a NPDES or WPCF permit must include a LUCS which includes a local government determination of compatibility with the local plan.

Standards and Assessments Program - OAR 340 Divisions 40, 41 and 48.

17. **Action:** Development of Water Quality Wetland Protection Criteria.
- Authorities:** PL 92-500, Sections 303, 305(b), 319 and 401; ORS 468; OAR 340 Divisions 41 and 48.
- Analysis:** The development of water quality wetland protection criteria is a cooperative effort with the Division of State Lands and Department of Fish and Wildlife and will focus on the development of water quality standards and assessment procedures applicable to state wetlands. The Division of State Lands is the primary state agency responsible for the overall policy regarding state wetlands. These strategies will include an inventory of the state's wetlands in relation to water quality; the incorporation of cumulative impact assessment techniques into the 404 certification process; and, the development of guidelines for constructed wetlands in wastewater treatment.

**Land Use
Compatibility
Mechanism:**

The implementation of wetland criteria for point sources will be conducted through the permitting process. Rules for implementation have not been developed.

18. **Action:** Requirement for Implementation Plan to meet Total Maximum Daily Loads (TMDLS) Restrictions for Water Quality Limited Waterways.
- Authorities:** PL 92-500 Sec. 303; ORS Chapter 468; OAR 340 Division 41.
- Analysis:** To improve water quality in subbasins that are identified as water quality limited, the Commission adopts special requirements for TMDLS stream allocations and requires the development of an implementation plan. The load restrictions may necessitate a change in

identifying of problems, development of solutions and project prioritization.

Statewide Goal 16 - Estuarine Resources directs local governments to recognize the Department's nonpoint source program authorities to maintain water quality and minimize non-induced sedimentation in estuaries rather than developing duplicatory management controls.

Land Use
Compatibility
Mechanism:

The Nonpoint Source Management Plan is developed for a five year planning period. Cities and counties are notified in writing at the time the Department reviews or updates the plan and provided an opportunity for input to the planning process.

The Department will provide written notice to affected local governments of nonpoint program actions. Local issues and concerns will be coordinated and accommodated by the Department to the fullest degree possible.

22. Action: Development of Estuary Water Quality Plans.

Authorities: PL 92-500 Section 303; OAR 340 Division 41.

Analysis: As a participant in a federal pilot program, the Department developed the Near Coastal Waters Pilot Project for the Coquille Basin. Through this project, the Department is working closely with local government to identify and implement effective pollution control methods to improve water quality and to meet designed land restrictions.

In the estuary planning process, the Department is concerned with evaluating the link between land uses and water quality and coordinates closely with DLCD in the development of estuary management plans.

Plans will be developed for other estuaries and near coastal waters that fail to meet water quality standards. Through these plans a basin wide approach will be used to manage point and nonpoint sources.

Land Use
Compatibility
Mechanism:

Affected local governments are notified of proposed estuary planning and asked to provide relevant information from the comprehensive plan, and to actively participate in the planning process.

A key participating mechanism is a task force which is comprised of local government, special district, affected agencies and special interests. The local government will be asked to provide evidence that the plan or related implementation plans are compatible with the local comprehensive plans before adoption by the Commission.

23. Action: Development of Oil Spills Regulations.
- Authorities: ORS 468.780-833; OAR 340 Division 47
- Analysis: The Department's regulation of oil spills and spill cleanup are integrated with the Oregon Emergency Operations Plan which is administered through the Emergency Management Division.

Land Use
Compatibility
Mechanism

In the development and revision of oil spill regulations and related planning, the Department shall request input and participation from affected cities and counties and affected state agencies. If the local government does not respond to the notice, the Department shall assume there are no land use incompatibilities or issues.

SECTION IV

PROCEDURES FOR ASSURING STATEWIDE GOAL COMPLIANCE AND COMPATIBILITY WITH ACKNOWLEDGED PLANS

1. INTRODUCTION

This section provides an overall discussion of the Department's procedures for assuring that actions that affect land use are in compliance with the statewide goals and compatible with local comprehensive plans.

2. PROCEDURES FOR COMPLIANCE WITH STATEWIDE GOALS

OAR 660-30-065 describes the circumstances for a state agency to directly determine compliance with the goals. Generally, the Department relies on acknowledged local plan compatibility to assure goal compliance. However, agencies are directed to adopt goal findings when one or more of the following applies:

1. The agency's program/action relates to an area that is not subject to an acknowledged plan.
2. The agency takes an action that is not compatible with the acknowledged plan after exhausting the agency's compatibility procedures.
3. The acknowledged plan does not contain:
 - Provisions applicable to the agency's land use program; or
 - General provisions which would be substantially affected by the agency's action.
4. A statewide goal or interpretative rule adopted under OAR Chapter 660 establishes a compliance requirement directly applicable to the agency.
5. The acknowledged plan permits a use contingent upon case-by-case goal findings by an agency.
6. The agency action is exempt from compatibility with local acknowledged plans.
7. An agency carries out goal compliance requirements on behalf of local government.

When it is necessary for the Department to demonstrate compliance with the statewide goals for Department actions, the following procedure will be followed:

1. Identification of applicable goals.
2. If necessary, request advice from DLCD and/or Attorney General's office.
3. Consultation with affected local government.
4. Adoption of goal findings.

3. PROCEDURES FOR ACKNOWLEDGED PLAN COMPATIBILITY

Section III contains a description of Department programs and actions that affect land use pursuant to OAR 660-30-005. Figure 3 lists the actions that affect land use and provides a summary of the compatibility mechanism.

A. Local Government Compatibility Determinations through the LUCS.

The LUCS is the key mechanism the Department uses to assure local comprehensive plan compatibility with Department-issued permits and other site-specific actions that affect land use which include:

- Approval of Noise Impact Boundaries for Motor Racing Facilities
- Approval of Airport Abatement Plan/Noise Impact Boundaries
- Approval of Notice of Construction for Air Contaminant Source
- Issuance of Air Contaminant Discharge Permit
- Issuance of Air Indirect Source Construction Permit
- Issuance of Parking and Traffic Circulation Plan
- Issuance of Parking and Traffic
- Issuance of Solid Waste Disposal Permit
- Issuance of Waste Tire Storage Permit
- Issuance of Hazardous Waste and PCB Storage, Treatment, and Disposal Permit
- Approval of Pollution Control Bond Fund Application
- Approval of Waste System Facility/Sewer System Plan
- Approval of Waste Water Treatment Construction Grant Applications
- Approval of State Revolving Loan Application for Municipal Waste Water Treatment Systems
- Certification of Water Quality standards for Federal Permits, Licenses
- Issuance of On-site Sewer Permit
- Issuance of Water Discharge Permits (NPDES/WPCF/General)

1) Procedures for submitting the LUCS include:

- (a) An applicant must provide a LUCS that has been acted on by the affected local government before the Department can accept the application as complete for processing. The completed LUCS must state if the proposed project is compatible with the acknowledged local comprehensive plan.

If the Department does not receive an affirmative LUCS with a permit application or required submittal information, the applicant will be notified that the Department is unable to process the application, unless otherwise obligated by law.

- (b) When the Department receives an affirmative LUCS and determines it complete, the Department will rely on it as a determination of compatibility with the acknowledged local comprehensive plan, unless otherwise obligated by state law.
- (c) If the Department concludes a local government LUCS review and determination may not be legally sufficient, the Department may deny the permit application and provide notice to the applicant. In the alternative, when the applicant and local government express a willingness to reconsider the land use determination, the Department may hold the permit application in abeyance until the reconsideration is made.
- (d) If a negative LUCS is submitted to the Department stating that the project is incompatible with the acknowledged plan, the Department will notify the applicant that a permit cannot be issued.
- (e) Where more than one local jurisdiction has planning authority regarding a specific action, the Department will require a LUCS from each jurisdiction (e.g., city/county in urbanizing area).
- (f) A local government may withdraw or modify its compatibility determination any time prior to the issuance of a permit.
- (g) If a local government land use compatibility determination or underlying land use decision is appealed after the Department has determined the LUCS complete, the permit process will proceed and a permit may be issued except when the LUCS has been stayed or invalidated by the Land Use Board of Appeals or other court of law. If a LUCS is successfully appealed on a permit that has already been issued, the Department may either proceed to

revoke or suspend the permit or may decide to wait until the appeals process is exhausted.

2) Procedures for the renewal or modification of permits

(a) Permit Renewals:

Department permits are generally renewed every five years. Discharge or emission limits are not normally increased in a permit renewal. However, the emission limits may be reduced. The exception may be a circumstance where proposed changes that typically would be addressed through a permit modification coincide with the permit renewal. Permit renewals require a LUCS for renewals that involve substantial modification or intensification of the permitted activity as required under OAR 660-31-040 and as defined through the Department's permit modification criteria.

(b) Permit Modifications:

A permit modification applies to the revision of a permit for a source or activity to reflect a significant change in the nature of the activity that results in increased emission or discharge of pollutants, or the initiation of discharge of new pollutants. This might involve an expansion of production capacity, or a change in product or production methods that require major construction, significant changes in the raw materials used, or increases in the discharge of existing pollutants above existing permitted levels. A modification would not include maintenance replacement, modernization of production equipment with no increase in contemplated discharges, or increases in production that are possible with the current installed production capacity and within current permit limits.

A permit modification constituting a substantial modification or intensification of the permitted activity as defined in OAR 660-31-040 requires a LUCS when one or more of the following conditions exist:

- The permitted source or activity will be expanded or use additional property. The LUCS would only apply to the physical changes on the land, not to already approved permit conditions.
- The modification involves a significant increase in discharge to state waters or into the ground.
- The modification involves the relocation of an outfall outside of the source property.

- Any physical change or change of operation of an air contaminant source that should result in a net significant emission rate increase as defined in OAR 340-20-225(25).

B. Procedures for Planning Actions of Area-Wide Application that Affect Land Use.

There are a number of Department actions or planning activities that affect land use which have individual compatibility procedures:

- 1) Hazardous Notice Requirements. Local government takes necessary action to assure notice implementation.
- 2) Development of Water Quality Wetland Protection Criteria. The application of water quality wetland protection criteria is coordinated with the Division of State Lands which has primary authority over state wetlands which includes responsibilities for local land use compatibility.
- 3) Requirement for Implementation Plan to Meet Load Restrictions on Water Quality Limited Waterways. The Department requires written evidence that a locally developed TMDL implementation plan is coordinated with affected local planning entities to assure compatibility.
- 4) Planning Activities. The Department provides notice to affected local governments prior to initiating planning activities. The Department provides notice to local governments prior to initiating land use planning actions of statewide application, or notice to affected local governments prior to an action of site specific or area-wide application. The notice requests relevant comprehensive plan policy or processing regarding the proposed activity. The Department will work with local government to accommodate local concerns to the degree possible. When necessary, dispute resolution procedures will be used to resolve conflicts.

This procedure applies to:

- Development of Action Plan for Declared Groundwater Management Area;
- Development of Water Quality Nonpoint Source Planning.
- Development of Estuary Water Quality Planning.
- Development of Regulations for Oil Spills.

4. PROCEDURES FOR RESOLUTION OF LAND USE DISPUTES

OAR 660 Division 30 requires state agencies to adopt procedures to resolve conflicts or disputes that may develop between state agencies and local governments.

The potential for conflict exists in part because of a lack of definition in the statutory authorities relating to land use and environmental protection. The Department and local government share to some degree, the management responsibilities for air, water, and land resources. The Legislature established the Department for the purpose of administering and enforcing the state's (and federal) environmental quality laws and, carrying out statewide policy on environmental quality. Comprehensive planning responsibilities require cities and counties to prepare comprehensive plans to regulate the development of land within local jurisdictions, and to coordinate the plan with the needs of other levels of government. This creates the potential for conflicts.

The Department's dispute resolution process requires that the following be considered by the Department in efforts to resolve disputes with local government:

1. Initiate a meeting between the Department and the affected local government to discuss resolution alternatives.
 2. Seek compatibility through an application for necessary local land use approvals.
 3. Appeal the local government's denial of the land use approval.
 4. Submit a request for local land use approval or necessary plan amendment at the time of the local government's periodic review of the comprehensive plan.
 5. Request informal LCDC mediation in accord with OAR 660-30-070.
 6. Proceed with agency action and provide compliance with the statewide goals if action is justified by the Department's statutory responsibilities.
5. STATEWIDE GOAL COMPLIANCE AND ACKNOWLEDGED PLAN COMPATIBILITY FOR NEW OR AMENDED RULES OR PROGRAMS AFFECTING LAND USE.

New or amended rules will be evaluated to determine if they affect land use using the DLCD guidelines pursuant to

OAR 660-30-075(2). The Department will provide DLCD and the Department's land use mailing list notice of new rules, amended programs or actions that affect land use. The notice shall include the following information:

1. Evidence that the rule or program is a land use program; or
2. Evidence that the rule or program affects land use and is covered under the Department's Certified State Agency Coordination Program; or
3. Evidence that the rule or program is a land use program including an explanation of how goal compliance and plan compatibility will be achieved.

6. DIVISION 31 - STATE PERMIT COMPLIANCE COMPATIBILITY

In addition to the requirements of the LCDC State Agency Coordination Rule, state agencies must also address procedures and standards under OAR 660 Division 31 prior to approving state permits. The rule classifies state agency permits based on public notice and public hearing requirements. The rule's Class A permits include the Department's Hazardous Waste Disposal collection or storage permit.

The permit consistency rule allows state agencies to rely on local government compatibility determinations with acknowledged plans. A local government determination of goal compliance is also acceptable if affirmative findings are provided.

The Department proposes to classify the only permit addition to the SAC Program, the Waste Tire Storage Permit, as a Class B permit under OAR 340 Division 31. All permits listed in Division 31 are identified as programs affecting land use.

Figure 3

Division Actions Affecting Land Use

Goal Compliance/Plan
Compatibility Procedures

<u>Action</u>	<u>Procedure Mechanism</u>
<u>AIR DIVISION</u>	
1. Approval of Noise Impact Boundaries for Motor Racing Facilities	LUCS required with the submitted boundary data.
2. Approval of Airport Noise Abatement Plan/Noise Impact Boundaries	LUCS or written evidence submitted with plan that local government has participated in and determined plan compatibility.
3. Issuance of Notice of Construction Approval	LUCS required with application.
4. Issuance of Air Contaminant Discharge Permit	LUCS required with application.
5. Issuance of Indirect Source Construction Permit	LUCS required with application.
6. Approval of Parking and Traffic Circulation Plan	LUCS written evidence of local government participation and local plan compatibility.
<u>ECD DIVISION</u>	
* 7. Issuance of Environmental Hazard Notice	Notice provided to local government and information on land use requirements or restrictions.

ActionProcedureHSW DIVISION

- | | |
|--|---------------------------------|
| 8. Issuance of Solid Waste Disposal Permit | LUCS required with application. |
| * 9. Issuance of Waste Tire Storage Permit | LUCS required with application. |
| 10. Issuance of HW & PCB Storage Disposal Permit | LUCS required with application. |

MSD DIVISION

- | | |
|---|---------------------------------|
| 11. Approval of Pollution Control Bond Fund Application | LUCS required with application. |
|---|---------------------------------|

WQ DIVISION

- | | |
|--|---|
| 12. Approval of Waste Water System and Facility Plans. | LUCS required with plans. |
| 13. Approval of Construction Grant Program Application | LUCS required with application. |
| *14. Approval of State Revolving Loan Application | LUCS required with application. |
| 15. Issuance of On-site Sewage Disposal Permit | LUCS required with application. |
| 16. Issuance of Industrial Waste Discharge Permit NPDES/WPCF | LUCS required with application. |
| *17. Development of Water Quality Wetland Protection Criteria | Compatibility for point sources achieved through LUCS process. Rulemaking not completed. |
| *18. Requirement for Implementation Plan to meet TMDL Restrictions on Water Quality Limited Waterways. | Requires written evidence that TMDL implementation plan and comprehensive plans are compatible. |

Action	Procedure
**19. Certification of Water Quality Standards for Federal Permits or Licenses	Requires LUCS with application.
*20. Development of Action Plan for Declared Ground Water Management Area	Provide notice to affected local governments prior to Department action. Coordinate with local government on land use issues.
*21. Development of Nonpoint Source Management Plan	Provide notice to affected local governments prior to Department action. Coordinate with local government on land use issues.
*22. Development of Estuary Water Quality Plan	Request affected local governments to provide evidence of compatibility with the local comprehensive plan prior to Department action. Coordinate with local government on land use issues.
*23. Development of Oil Spill Regulations	Provide notice to affected local governments prior to Department action. Coordinate with local government on land use issues.

- * New SAC Programs
- ** Subject to limitations of Section 401 of the federal Clean Water Act

SECTION V

Cooperation and Technical Assistance to Local Government

Cooperation with and technical assistance to cities and counties is instrumental in fulfilling the agency's environmental responsibilities and furthering the state's environmental objectives. Local government participation is necessary in fostering public awareness of the quality of the state's environment, promoting educational efforts aimed at the prevention of environmental pollution, and for assuring that local governments and the Department are striving towards the same environmental objectives.

With respect to Department programs that are technically not subject to land use such as those relating to the Health Abatement and Drinking Water Laws, the Department will provide local governments with requested information and technical assistance within its capabilities.

Provision of Information/Technical Assistance

Participation in local land use planning is only one aspect of Department's coordination with local government. As staffing and funding resources allow, the Department provides technical assistance or information for land use planning purposes through the following:

1. Department publications, studies and planning documents are available to the public upon request. Each division maintains a local government mailing list for the distribution of new publications.
2. Technical data and assistance on a jurisdictional basis may be available for:
 - Noise control/airport standards.
 - Air quality monitoring data.
 - Air quality standards and regulations.
 - Noise impact boundary regulations for airports.
 - Hazardous Substance contamination sites/inventory of confirmed releases.
 - Hazardous waste generators.
 - Solid waste disposal standards and regulations.
 - Hazardous waste facilities management standards and regulations.
 - Waste tires regulations for storage permits.
 - Pollution Control Bond Fund application process.
 - Municipal waste sewage collection, treatment, disposal requirements.
 - Financial assistance information for loans to construct municipal treatment works.

- Nonpoint source/groundwater water quality problems.
 - Total maximum daily local restrictions on specific waterways.
 - Ambient water quality monitoring data.
3. Provide copies of Department statutes and administrative rules.
 4. Notice of proposed rules affecting land use for non-site specific items such as statewide plans, grants, programs or other issues affecting local government will be sent to all affected cities and counties. Notice of rulemaking which affects specific jurisdictions or geographic areas will be provided to the affected cities and counties.

Technical assistance should be requested of the Department's Intergovernmental Coordination Office. Division or Region staff will assist in coordinating the delivery of local government requests. Requests for informational material or publications should also be directed to the Intergovernmental Coordination Office of the Management Services Division.

Involvement in Periodic Review

The Department is committed to an active role in the periodic review process, within the constraints of the Department's resources. The assistance and information that may be provided to local governments consist of the following:

1. Periodic Review Guidelines will be prepared and provided to local governments upon request. The following information will be provided in the guidelines:
 - Summary of existing Department programs/actions affecting land use and recommendations on how they should be addressed in local plans;
 - New programs, rules, or actions that affect land use and recommendations for addressing them in local plans.
 - List of Department publications and technical data available upon request.
 - New revisions to the Department Land Use Coordination Program.
 - The identification of priority Department activities that may affect local planning such as upcoming studies or plans.
 - Recommendations for city and county actions that would contribute to the prevention of environmental degradation or pollution.
2. Department staff will review local government periodic plan update or plan amendments upon request and within the Department's resource capabilities.

3. The Department will participate in DLCD's periodic review process through the establishment of "priority environmental concerns" that affect local planning. This may involve emphasis on geographic areas or issue areas of high environmental priority.

Assistance to Coastal Jurisdictions

The above provisions for technical assistance and information apply as well to all coastal jurisdictions. However, specific emphasis will be placed on technical assistance to coastal jurisdictions - issues that relate to Goal 16, Estuarine Resources; and Goal 19, Ocean Resources. Specific Department program areas include estuary plans, the regulations of oil spills, participation in Oregon Coastal Zone Management Program process and Ocean Management Planning process.

SECTION VI

COORDINATION WITH STATE AGENCIES, FEDERAL AGENCIES AND SPECIAL DISTRICTS

The Department strongly believes that ongoing interagency involvement and cooperation is essential to effectively carry out Department mandates. This involvement is an integral element of all agency activities. The basis for the Department's commitment to interagency involvement is multi-fold. There are obvious overlaps and interrelationships between the Department's responsibilities with those of other federal and state agencies. Many of the Department's statutory directives require specific intergovernmental efforts. It is also the agency's firm conviction that accomplishments are heavily influenced by the amount of effort placed on intergovernmental relations.

Intergovernmental coordination as applicable to programs and actions that affect land use is implemented through each of the agency's divisions. From an administrative and organizational perspective, the coordination of land use matters is integrated throughout the Department's structure.

In an effort to improve agency coordination as it relates to improving opportunities for economic development pursuant to ORS 197.712, the agency shall provide the Department's of Economic Development, Transportation, and Water Resources notice of all Department's proposed priority list of potential eligible projects for wastewater collecting disposal and treatment facilities.

When appropriate, land use issues involving more than one division or involving multiple agencies, are coordinated through the Intergovernmental Coordination Office in the Management Services Division. Most of the Department's coordination, however, is conducted through the responsible program area.

The Oregon Coastal Management Program (OCMP) is part of Oregon's program for coordinated land use programs. The program is a partnership among local, state, and federal agencies to resolve general and often conflicting interests through comprehensive plans and land use regulations for all lands in Oregon's coastal zones. The OCMP is based upon specific resource management authorities contained in Oregon Revised Statutes. The Department's involvement is based on:

ORS Chapter 468: Application and administration of air and water pollution; oil spill regulations.

ORS Chapter 454: Application and administration of
sewage treatment works.

The Department will participate with DLCD and other OCMP agencies, as resources permit, to develop and update a five-year strategic plan for Oregon's coastal zone.

The Department will continue to be an active participant in the ocean resources management process. Following adoption of the Oregon Ocean Management Plan by LCDC, the Department will consider incorporating into the appropriate Department rules and programs those aspects of the Ocean Plan which the Department has authority to implement.

Notice of all Department proposed rulemaking that affects land use and which relates to other agency authorities is provided to the appropriate agency or special district for input.

A list of those federal and state agencies and special districts that the Department coordinates with on an on-going basis follows:

1. Air Quality Division

Federal Agencies

Bureau of Reclamation

Program Area

Rules/actions involving impacts to Forest Service lands.

Environmental Protection Agency

Rules/programs involving federal mandates.

Forest Service

Actions involving impacts to Forest Service lands.

State Agencies

Agriculture

Field/slash burning.

Division of State Lands

Sand and gravel removal operations from streams.

Economic Development

Air Quality programs affecting land use.

Forestry

Slash burning.

Land Conservation & Development

All rules affecting land use; site specific issues.

Marine Board

Motorboat racing noise enforcement.

Transportation

Noise Abatement for airports.

ISCP permits; parking and traffic circulation plans.

Special Service Districts/Other Agencies

Lane Regional Air Pollution Authority

All major air quality sources except field/burning and motor vehicles.

Metro

Participates in carbon monoxide and ozone control strategy development.

Councils of Governments

Participates in carbon monoxide and ozone control strategy development.

2. Environmental Cleanup Division

Federal Agencies

Program Area

Environmental Protection Agency

Rules/programs involving federal mandates.

State Agencies

Land Conservation & Development

All rules/actions affecting land use; site specific issues.

3. Hazardous and Solid Waste Division

Federal Agencies

Program Area

Army Corp of Engineers

Siting of solid waste. Disposal sites.

Bureau of Land Management

Siting of solid waste disposal sites.

Environmental Protection Agency

Rules/programs involving federal mandates.

Forest Service

Siting of solid waste disposal sites.

State Agencies

Agriculture

Hazardous waste
pesticide program

Applicable Agencies

Siting of solid waste
disposal sites on
public lands.

Land Conservation & Development

All rules affecting
land use; site specific
issues.

Water Resources

Siting of new
facilities.

4. Management Services Division

Federal Agencies

Program Area

State Agencies

Executive (Intergovernmental
Relations)

Review of projects
involving federal
funds.

5. Regional Operations Division

Federal Agencies

Program Area

State Agencies

Applicable Agencies

Site-Specific actions
that affect state
agencies.

Special Service Districts

Applicable Special Districts

Site-Specific actions that affect special service districts.

6. Water Quality Division

Federal Agencies

Program Area

Bureau of Land Management

Nonpoint source rules/actions.

Coast Guard

Rules/actions involving oil spills.

Corps of Engineers

Section 401 permits.

Environmental Protection Agency

Rules/programs involving federal mandates.

Forest Service

Rules/nonpoint source site-specific actions.

State Agencies

Agriculture

Nonpoint source rules/actions.

Columbia Gorge Bi-State Commission

Rules/issues Columbia Gorge National Scenic Area.

Columbia South Slough Commission

Nonpoint/groundwater rules/actions.

Division of State Lands

Fill and removal activities.

Economic Development

Grants/Loans for public wastewater treatment facilities.

Fish and Wildlife

Water quality
rules/actions that
affect fish; instream
water rights; oil spill
planning.

Forestry

Nonpoint source
rules/actions.

Land Conservation and Development

All rules affecting
land use; site-specific
issues; ocean resources
planning issues.

Parks

Rules/actions involving
scenic waterways;
instream water rights.

Regional Response Team

Oil spills.

Transportation

Nonpoint source
rules/actions.

Water Resources

Rules/issues relating
to groundwater
protection;
instream water rights.

Special Service Districts

Water Improvement Special Districts

Rules/actions
affecting land use;
planning studies.

Department procedure for site-specific intergovernmental coordination is basically determined on a case-by-case basis. All affected agencies are invited to review proposed rulemaking that affects land use. Many agencies are involved through Task Forces, Advisory Committees, or assist DEQ in developing rules/programs.

Other

Northwest Power Planning Council

Section 401 permits.

Strategic Water Management Group

Water policy issues.

STATE LEGAL AUTHORITIES

STATE AUTHORITIES

The Department of Environmental Quality carries out its statutory authorities under Oregon Revised Chapters 448, 453, 454, 459, 465, 466, 467, and 468.

- Chapter 448: 448.410 - 415 provides the EQC with authority to classify sewage treatment works and certify operators of all sewage treatment works.
- Chapter 453: 453.510 - 527 directs the establishment of the Interagency Hazard Communication Council. The role of the Council is to develop a state comprehensive emergency response plan. The Director of DEQ is a designated member of the 21-member Council.
- Chapter 454: This chapter provides DEQ regulatory authority over sewage treatment works; provides municipalities authority to finance, construct and own sewage disposal systems; authorizes EQC review and approval of proposed construction of sewage treatment works; establishes a State Sewage Treatment Works Construction Account; and, provides DEQ authority to regulate subsurface sewage disposal.
- Chapter 459: This chapter provides DEQ's regulatory authorities for the control of solid waste: Directs the planning, development and operation of recycling programs; establishes Oregon Solid Waste Regional Policy Commission; requires counties to develop solid waste management plans; requires permitting of landfill disposal sites; provides for local governments to enter into intergovernmental agreements in carrying out solid waste control provisions; directs EQC to adopt rules on waste disposal and recycling; establishes statewide mandatory recycling opportunities; directs DEQ regulations of landfill site closures; provides for enforcement authority; regulates disposal of infectious waste; establishes pilot project for household hazardous waste; regulates disposal of lead-acid batteries; directs regulation of the storage and disposal of waste tires; and, directs the EQC to

promote the use of reusable containers in the state.

- Chapter 465: ORS 465.003 - 037 provides authorities for the reduction of use of toxic substances and hazardous waste generation through the development of user waste reduction plans. ORS 465.200 - 980 contains authorities to undertake hazardous substance removal or remedial action; provides state financial assistance through Hazardous Substance Remedial Action Fund; establish Orphan Site Account for removal or remedial action of sites where the responsible party is unknown.
- Chapter 466: This chapter contains DEQ's authorities relating to hazardous waste and hazardous materials. Through these authorities, the DEQ is directed to regulate the storage, treatment and disposal of hazardous waste and PCB; the EQC is authorized to give local government notice of potential hazardous waste conditions on sites; enacts the Pacific States Agreement on Radioactive Materials Transportation Management; directs remedial action or removal to clean up contaminated sites; directs EQC policy for the cleanup of oil or hazardous materials; directs EQC to adopt a state program for the prevention, reporting of releases, and corrective action from releases from underground storage tanks; provides financial assistance for remedial action; provides authority to establish a loan guaranty program for compliance and corrective action on underground storage tanks; and, provides authorization for civil penalties.
- Chapter 467: The Environmental Quality Commission is provided with authority to adopt standards for noise emissions and to enforce compliance. Cities and counties are authorized to regulate noise sources including agricultural operations and forestry operations which are exempt from state regulation.
- Chapter 468: Chapter 468 contains the bulk of the statutory authorities on pollution control. ORS 468.005 - 468.272 provides general administrative provisions for the EQC and Department; provides the Department with enforcement and investigation authorities; provides the EQC authority to adopt rules for issuance of pollution control tax credit certification; establishes pollution control fund and provides

EQC authority to grant funds for eligible projects; provides counties bonding authority for purpose of emergency installation of antipollution devices.

ORS 468.275 - 468.655 provide broad authorities for restoration and protection of air resources and directs development of a state program of air quality control; requires certification of motor vehicle pollution control systems and inspection of motor vehicles; directs the Department to regulate fieldburning and conduct a smoke management plan; provides for the formation of regional air quality control authorities; prohibits the use of aerosol sprays containing certain propellants; controls the use of chlorofluorocarbons and halons; directs EQC to establish emissions performance standards for woodstoves and to develop a woodstove certification program.

ORS 468.423 - 440 establishes a Water Pollution Control Revolving Fund to provide state financial assistance for treatment works and the management of nonpoint sources of pollution.

468.686 - 883 provides EQC authorities for the prevention, abatement and control of new or existing water pollution; requires regulation of discharge from confined animal feeding operations; requires certification of federally licensed or permitted activity related to hydroelectric power development; and prohibits entry of oil into state waters from ship, fixed or mobile/activity located on shore or off shore.

ORS 468.659 - 685 establishes a Resource Conservation Trust Fund to support projects relating to habitat conservation and waste reduction. The DEQ would oversee the waste reduction responsibilities if the Legislature provides support funding.

ORS 468.850 - 871 directs Department to conduct a public education program on benefits of collecting and recycling used oil. ORS 468.875 - 899 requires the licensing for asbestos abatement. ORS 468.925 - 965 authorizes the EQC to provide tax credit certification for capital investments to manufacture a reclaim/plastic product. ORS 468.970 establishes the Assessment Deferral Loan Program to provide assistance to

property owners who will experience financial hardship from paying assessed costs for the construction of required treatment works.

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STATE AGENCY
COORDINATION PROGRAM

Purpose

340-18-000 In accordance with ORS 197.180, this rule establishes Department policy and procedures to assure that Department activities determined to significantly affect land use are carried out in a manner that complies with the statewide land use goals and are compatible with acknowledged comprehensive plans. There are limited situations such as those related to the Health Abatement Act and Threat to Drinking Water Act where the applicable statutes obligate the Department to make decisions based exclusively on environmental, public health and safety considerations, and nothing in this program is intended to affect these responsibilities. Division 18 shall control over any inconsistent rule provisions relating to land use compliance and compatibility in OAR 340 Divisions 20, 35, 52, 61, 71, and 120.

Stat. Auth.: ORS Ch. 197
Hist.: DEQ 36-1990, f. & cert. ef. 8-28-90

Policy

340-18-010 It is the Commission's policy to coordinate the Department's programs, rules and actions that affect land use with local acknowledged plans to the fullest degree possible.

Stat. Auth.: ORS Ch. 197
Hist.: DEQ 36-1990, f. & cert. ef. 8-28-90

Definitions

340-18-020 As used in these rules:

(1) "Acknowledged comprehensive plan" means a city or county comprehensive land use plan that has been approved by the Land Conservation and Development Commission.

(2) "Affected local government" means a city or county government that has land use planning jurisdiction.

(3) "Commission" means the Environmental Quality Commission.

(4) "Department" means the Department of Environmental Quality.

(5) "Director" means the Director of the Department of Environmental Quality.

(6) "DLCD" means the Department of Land Conservation and Development.

(7) "Land use action" means a Department rule, program or activity which has been determined to affect land use as defined by OAR 660-30-005.

(8) "Land use dispute" means a difference of opinion between the Department and local government as to the compatibility of a Department land use action with the provisions of an acknowledged comprehensive plan.

(9) "Local government" means an incorporated city or county.

(10) "LUBA" means the Land Use Board of Appeals.

(11) "LUCS" means a land use compatibility statement.

(12) "NPDES" means a wastewater discharge permit issued in accordance with requirements and

procedures of the National Pollutant Discharge Elimination System.

(13) "SAC Program document" means the Department's State Agency Coordination Program document developed pursuant to ORS 197.180.

(14) "Statewide goals" means Oregon's Statewide Planning Goals adopted by the Land Conservation and Development Commission pursuant to ORS 197.222.

(15) "TMDL" means Total Maximum Daily Load, the sum of a wasteload allocation for point and nonpoint sources.

(16) "WPCF" means a state Water Pollution Control Facilities Permit.

Stat. Auth.: ORS Ch. 197
Hist.: DEQ 36-1990, f. & cert. ef. 8-28-90

Applicability

340-18-030 The provisions of this rule, OAR 340-18-000 through 340-18-200 apply to Department programs and actions subsequently determined to have significant effects on land use pursuant to ORS 197.180 and OAR 660-30-075. Department land use actions are identified below:

(1) Air Quality Division:

(a) Approval of Noise Impact Boundaries for Motor Racing Facilities;

(b) Approval of Airport Noise Abatement Program and Noise Impact Boundaries;

(c) Approval of Notice of Construction;

(d) Issuance of Air Contaminant Discharge Permit;

(e) Issuance of Indirect Source Construction Permit;

(f) Approval of Parking and Traffic Circulation Plan.

(2) Environmental Cleanup Division: Issuance of Environmental Hazard Notice.

(3) Hazardous and Solid Waste Division:

(a) Issuance of Solid Waste Disposal Permit;

(b) Issuance of Waste Tire Storage Permit; and

(c) Issuance of Hazardous Waste and PCB Storage, Treatment and Disposal Permit.

(4) Management Services Division: Approval of Pollution Control Bond Fund Application.

(5) Water Quality Division:

(a) Approval of Wastewater System and Facility Plans;

(b) Approval of Construction Grant Program Application;

(c) Approval of State Revolving Loan Application;

(d) Issuance of On-site Sewer Permit;

(e) Issuance of NPDES and WPCF Permits;

(f) Development of Water Quality Wetland Protection Criteria;

(g) Requirement of an Implementation Plan to Meet Restrictions for Waste Load Allocations on Water Quality Limited Waterways (TMDLS);

(h) Certification of Water Quality Standards for Federal Permits, Licenses;

(i) Development of Action Plan for Declared Ground Water Management Area;

(j) Development of Nonpoint Source Management Plan;

(k) Development of Estuary Plans;

(l) Development of Oil Spill Regulations.

Stat. Auth.: ORS Ch. 197

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Hist.: DEQ 36-1990, f. & cert. ef. 8-28-90

Compliance with Statewide Planning Goals

340-18-040 (1) The Department shall to the extent required by law, achieve goal compliance for land use programs and actions identified in OAR 340-18-030 by assuring compatibility with acknowledged comprehensive plans, except as provided in section (3) of this rule.

(2) The Department shall consider a land use action to be in compliance with the goals when the action is determined compatible with the comprehensive plan.

(3) The Department shall assure statewide goal compliance when necessary through the adoption of findings pursuant to OAR 660-30-065(3) through the following process:

- (a) The identification of applicable goals;
- (b) Request for advice from DLCD or the Attorney General's office when necessary;
- (c) Consultation with the affected local government; and
- (d) The adoption of necessary findings.

(4) Department statutory responsibilities under ORS 222.840, the Health Abatement Law, are exempt from compliance with the statewide goals and compatibility with local comprehensive plans.

Stat. Auth.: ORS Ch. 197

Hist.: DEQ 36-1990, f. & cert. ef. 8-28-90

Compatibility with Acknowledged Comprehensive Plans

340-18-050 (1) Commission or Department actions under OAR 340-18-030 shall be compatible with local government acknowledged comprehensive plans to the extent required by law.

(2) The Department shall rely on the compatibility procedures described in Section III - subsection (3), and Section IV - subsections (2), (3), and (4) of the SAC Program document to assure compatibility with an acknowledged comprehensive plan, which include but may not be limited to the procedures described below:

(a) An applicant's submittal of a LUCS which provides the affected local government's determination of compatibility:

(A) A LUCS shall be submitted with a Department application or required submittal information;

(B) The Department shall rely on an affirmative LUCS as a determination of compatibility with the acknowledged comprehensive plan unless otherwise obligated by statute;

(C) If the Department concludes a local government LUCS review and determination may not be legally sufficient, the Department may deny the permit application and provide notice to the applicant. In the alternative, when the applicant and local government express a willingness to reconsider the land use determination, the Department may hold the permit application in abeyance until the reconsideration is made;

(D) If the Department receives a LUCS which states that the proposed action is incompatible with the acknowledged comprehensive plan, the Department shall notify the applicant that the application cannot be processed;

(E) A local government may withdraw or modify

its compatibility determination any time prior to the issuance of a permit;

(F) If more than one local government has jurisdiction related to a Department action, a LUCS review will be required from each affected local government;

(G) If a local government land use compatibility determination or underlying land use decision is appealed subsequent to the Department's receipt of the LUCS, the Department shall continue to process the action unless ordered otherwise by LUBA or a court of law stays or invalidates a local action;

(H) If a LUCS is successfully appealed after the Department has issued a permit, the Department may either proceed to revoke or suspend the permit or may decide to wait until the land use appeals process is exhausted.

(b) An applicant's submittal of a LUCS is required for the renewal or modification of the permits identified in OAR 340-18-030 if the Department determines the permit involves a substantial modification or intensification of the permitted activity:

(A) Renewal permits require a LUCS if a permit renewal involves a modification that requires a LUCS under paragraph (B) of this subsection;

(B) Modification permits require a LUCS if:

(i) The permitted source or activity relates to the use of additional property or a physical expansion on the existing property. The LUCS applies to physical changes on the property not to existing permit conditions;

(ii) The permitted source or activity involves a significant increase in discharge to state waters or into the ground;

(iii) The permitted source or activity involves the relocation of an outfall outside of the source property;

(iv) For a major modification of an air contaminant discharge permit which means any physical change or change of operation of a source that results in a net significant emission rate increase as defined in OAR 340-20-225(25).

(c) An applicant's submittal of evidence that a Department action has been reviewed by the affected local government and determined compatible with the local comprehensive plan;

(d) The Department provides notice to local government prior to initiating land use planning actions of statewide application, or notice to affected local governments prior to initiating an action of site-specific or area-wide application. Dispute resolution procedures pursuant to OAR 340-18-060 are applied when the Department and local government disagree on plan compatibility;

(e) The Department provides notice to the affected local government of a Department land use action, which may include a request for local government action to assure local plan compatibility with the Department's action.

Stat. Auth.: ORS Ch. 197

Hist.: DEQ 36-1990, f. & cert. ef. 8-28-90

Land Use Dispute Resolution

340-18-060 The Department's preference for resolving a dispute over land use compatibility is to work directly with local government until

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resolution is accomplished. In resolving a land use dispute, the Department shall consider one or more of the following mechanisms:

- (1) Initiate meetings between the Department and affected local government to pursue resolution alternatives.
- (2) Provide an application for a necessary local land use approval.
- (3) Initiate an appeal of the local government's denial of land use approval.
- (4) Submit a request for local land use approval at the local government's periodic review of its comprehensive plan.
- (5) Request informal LCDC mediation in accord with OAR 660-30-070.
- (6) Proceed with an agency action and provide compliance with the statewide goals in accord with OAR 660-30-065(3).

Stat. Auth.: ORS Ch. 197
Hist.: DEQ 36-1990, f. & cert. ef. 8-28-90

Statewide Goal Compliance and Acknowledged Plan Compatibility For New or Amended Rules and Programs Significantly Affecting Land Use

340-18-070 (1) New or amended rules and programs shall be evaluated in terms of compliance with ORS 197.180 and OAR Chapter 660, Division 30, with the exception of temporary rules.

(2) The Department shall determine if new or amended rules and programs affect land use pursuant to OAR 660-30-075(2) and Section III, subsection 2 of the Department's State Agency Coordination Program document.

(3) Notice of new or amended rules and programs that affect land use shall be provided to DLCD and the land use mailing list and shall include the following information:

- (a) Evidence that the rule or program is a land use program; or
- (b) Evidence that the rule or program affects land use and is covered under the Department's certified State Agency Coordination Program; or
- (c) Evidence that the rule or program is a land use program including an explanation of how goal compliance and plan compatibility will be assured.

Stat. Auth.: ORS Ch. 197
Hist.: DEQ 36-1990, f. & cert. ef. 8-28-90

Compliance with DLCD Permit Compliance and Compatibility Rule

340-18-080 The Department's Waste Tire Storage Permit is classified a Class B permit pursuant to OAR 660 Division 31. This permit is subject to the procedures of OAR 340-18-040 and 340-18-050 to assure statewide goal compliance and acknowledged plan compatibility.

Stat. Auth.: ORS Ch. 197
Hist.: DEQ 36-1990, f. & cert. ef. 8-28-90

Coordination With Affected State and Federal Agencies and Special Districts

340-18-090 The Department shall coordinate with the appropriate federal agencies and special districts on all rules and programs affecting land use as described in OAR 340-18-030.

Stat. Auth.: ORS Ch. 197
Hist.: DEQ 36-1990, f. & cert. ef. 8-28-90

Cooperation with and Technical Assistance to Local Government

340-18-200 The Department is committed to cooperate with and provide local government with environmental quality technical assistance and data for local government land use planning purposes within Department funding and staffing capabilities.

(1) Cooperation and technical assistance may include but not be limited to the following:

- (a) The provision of notice to local government of proposed rules and programs determined to affect land use;
- (b) Participation in the periodic review, plan update or plan amendment process;
- (c) The provision of environmental technical or scientific interpretative assistance and data.

(2) The Department's Intergovernmental Coordination Office is the initial contact point for local government. Department cooperation and assistance will be coordinated and provided as appropriate by the Department's division and region offices.

(3) The provisions and referenced provisions of this section shall apply to all local governments including those local governments recognized under the state's Coastal Zone Management Program.

Stat. Auth.: ORS Ch. 197
Hist.: DEQ 36-1990, f. & cert. ef. 8-28-90

