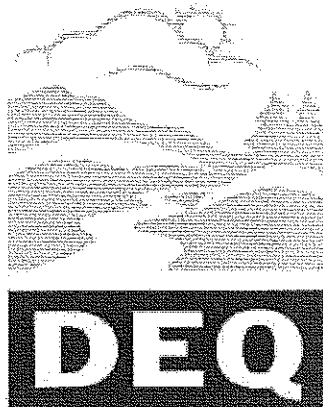


6/25/1976
EQC

EQC Agenda Items, June 25, 1976

6/25/1976

**OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS**



**State of Oregon
Department of
Environmental
Quality**

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AGENDA

Environmental Quality Commission Meeting

June 25, 1976
City Council Chambers
1220 S.W. 5th Avenue, Portland

1:30 p.m.

- A. Minutes of May 14, 1976 and April 30, 1976 EQC Meetings
- B. Monthly Activity Reports for April and May, 1976
- C. Northern Wasco County Landfill, Inc. - Requested extension of variance to allow continuation of open burning for 2 years
- D. Reichhold Chemical Co., Columbia County - Requested extension of variance for 1 year to allow continued study of prill tower emissions control
- E. Kraft Pulp Mill Rules - Request authorization to hold a public hearing re: proposed rules changes
- F. Administrative Procedure Rules - Proposed adoption of Revised Rules (Public Hearing held February 17, 1976)
- G. Motor Vehicle Emission Control Inspection Test Criteria, Methods and Standards - Proposed adoption of temporary rule to extend enforcement tolerance through June 1977
- H. Noise Emissions from new and in-use Motor Vehicles - Request authorization to hold a public hearing to consider:
 - 1) Petition from motorcycle industry to amend noise rules pertaining to motorcycles
 - 2) Need for revising noise rules for new and in-use automobiles
 - 3) Staff recommendations for "housekeeping" amendments
- I. Subsurface Sewage Disposal Rules - Consideration of amendments pertaining to seepage pits
- J. S.D. Spencer & Son - Request for variance to open burn 2.7 miles of Highway 99 right-of-way near Drain, Oregon, Douglas County
- K. Tax Credit Applications

Because of the uncertain time spans involved, the Commission reserves the right to deal with any item at any time in the meeting.

MINUTES OF THE SEVENTY-SEVENTH MEETING
OF THE
ENVIRONMENTAL QUALITY COMMISSION
June 25, 1976

At 1:30 p.m. on June 25, 1976 the seventy-seventh regular meeting of the Environmental Quality Commission convened in the Portland City Council Chambers.

Present were all five Commission members: Joe B. Richards, Chairman; Morris K. Crothers, Vice Chairman; Grace S. Phinney; Jacklyn L. Hallock; and Ronald M. Somers. Present on behalf of the Department were Mr. Loren (Bud) Kramer, Director; Mr. E.J. Weathersbee, Coordinator of Technical Programs; and several additional staff members. Present also was Mr. Raymond Underwood, Counsel to the Commission.

MINUTES: April 30 and May 14 Commission Meetings of 1976

It was MOVED by Commissioner Crothers, seconded by Commissioner Phinney, and carried that the minutes of the April 30 and May 14 meetings be approved as distributed to the Commission. The motion was supported by all except Commissioner Somers who had not yet arrived.

PROGRAM ACTIVITY REPORT FOR APRIL AND MAY, 1976

After brief discussion during which Mr. E.J. Weathersbee, coordinator of technical programs, reminded the Commission that approval of plans and specifications for air contaminant discharge sources was statutorily a function of the Commission, it was MOVED by Commissioner Hallock, seconded by Commissioner Phinney, and carried with the support of all Commissioners present that the Director's recommendation be adopted to approve the Program Activity Report for April and May of 1976. The motion was supported by all four Commissioners present.

CONTESTED CASE REVIEW: LAHTI & SON INC. v. DEPARTMENT

Mr. Raymond Rask, Counsel for Petitioner, Lahti & Son Inc. presented oral argument on behalf of his client and Mr. Robert Haskins, counsel for the Department, presented oral argument on behalf of the Department. To afford its members additional time to study recently submitted additions to the record, the Commission agreed to defer action until June 30. It was further decided that a decision as to the appropriate length of time necessary to allow Petitioner to make application for a permit under the "prior approvals" provision, should Petitioner prevail, should be deferred also.

CONTESTED CASE REVIEW: KIRKWOOD ET AL v. DEPARTMENT

Mr. Bruce Anderson, Counsel for David Kirkwood et. al., presented oral argument on behalf of his clients. Mr. Raymond Underwood informed the Commission that the Department of Justice was without opposition to the relief sought by Petitioners and suggested that the issue of extending the time of application beyond that specified in the "prior approvals" rule could be resolved with two acceptable alternatives (Commissioner Somers had indicated his concern as to the Commission's power to grant relief which tended to override the Commission's rules).

It was agreed that further study should precede a Commission decision to be handed down on June 30. It was decided through the motion of Commissioner Crothers, as seconded by Commissioner Hallock, that the Commission should grant additional time through whatever legal means might be found appropriate by counsel. Such time was to be granted to those who might prevail in their quest for Commission recognition of "prior approval" status to install subsurface sewage disposal systems.

The motion was carried with the unanimous support of the entire Commission.

Both Mr. Anderson and Mr. Rask expressed qualified satisfaction with regard to the Commission action, noting that the merits of the respective cases were yet unresolved. Mr. Anderson noted for the record both that he had requested more than the 90 day time extension to which the Commission had agreed and that he would call for a full transcript before the Commission prior to any decision by the Commission to reverse the proposal of its hearing officer.

NORTHERN WASCO COUNTY LANDFILL, INC. - REQUESTED EXTENSION OF VARIANCE TO ALLOW CONTINUATION OF OPEN BURNING FOR TWO YEARS

It was MOVED by Commissioner Somers, seconded by Commissioner Phinney, and unanimously carried that the Director's recommendation be adopted. The Director's recommendation was as follows:

It is recommended that the Environmental Quality Commission enter a finding that strict compliance with OAR 340-23-010(2) is inappropriate because no other practical alternative facility or method of disposal is available. The Director also recommends that the Commission grant Northern Wasco County Landfill, Inc. a variance from strict compliance with OAR 340-23-010(2) for the period April 30, 1976 through April 30, 1978 under the following conditions:

1. Burning shall be limited to the periods November 1, 1976 through April 30, 1977 and November 1, 1977 through April 30, 1978.
2. Burning shall be limited to three separate burn periods per year, to encompass no more than three continuous days each.

3. Burning shall be conducted at the present stockpile location in lieu of the wigwam waste burner.
4. Burning shall comply with all local fire permit regulations.
5. Burning days and hours must be approved by the Chief of The Dalles Fire Department.
6. Burning of rubber, plastics, paints, solvents, or burning for the purpose of salvage is prohibited.
7. Northern Wasco County Landfill, Inc. shall notify the Department of Environmental Quality, Bend Office (Phone 382-6446) and the Portland Office (Phone 229-5365) on the day preceding each of the three annual burn periods.
8. This variance may be revoked if the Department determines that any of the above conditions are violated, or that the open burning causes local nuisance conditions. The Department will notify the Company in writing within seven days of the revocation, if revocation becomes necessary.

KRAFT PULP MILL RULES - REQUEST AUTHORIZATION TO HOLD A PUBLIC HEARING
RE: PROPOSED RULES CHANGES

NOISE EMISSIONS FROM NEW AND IN-USE MOTOR VEHICLES - REQUEST AUTHORIZATION
TO HOLD A PUBLIC HEARING TO CONSIDER: 1) PETITION FROM MOTORCYCLE INDUSTRY
TO AMEND NOISE RULES PERTAINING TO MOTORCYCLES; 2) NEED FOR REVISING NOISE
RULES FOR NEW AND IN-USE AUTOMOBILES; 3) STAFF RECOMMENDATIONS FOR "HOUSE-
KEEPING" AMENDMENTS

It was MOVED by Commissioner Somers and seconded by Commissioner Hallock, that the Director's recommendation be accepted on the above-mentioned agenda items. The Department's Mr. John Hector addressed the Commission with regard to agenda item H, dealing with a proposal to conduct a public hearing concerning certain rules proposed with regard to noise regulation of vehicles. He pointed out that the Department had recently received a petition from General Motors Corporation to amend certain rules dealing with vehicle noise and requested Commission authorization to hold a public hearing whose scope would include the proposals of General Motors as well as those of the Motorcycle Industry Council and the Department. Commissioner Somers amended his motion to conform with Mr. Hector's request.

The motion was carried with unanimous support.

The Director's recommendations on items E and H were as follows:

- (E) It is the Director's recommendation that the Environmental Quality Commission authorize the Director to schedule public hearings at times and places to be determined for the purpose of receiving testimony relevant to the revising of the kraft pulp mill regulations.

(H) It is the Director's recommendation that the Commission authorize the Department to hold a public hearing, before a hearings officer, at a time and location to be set by the Director. The hearings officer will receive testimony limited to:

- 1) Petition from the Motorcycle Industry Council to amend the noise rules pertaining to motorcycles;
- 2) Needs expressed by automotive manufacturers to revise the noise rules for new and in-use automobiles and light trucks; and
- 3) Staff recommendations for "housekeeping" amendments.

VARIANCE REQUEST: REICHHOLD CHEMICALS, INC.

Mr. Stephen Willingham of the Department's Portland Regional Office informed the Commission that the applicant, Reichhold Chemicals, Inc. had conducted a year's testing only to discover that more time was needed in which to correlate data which had been gathered with regard to the opacity problem being experienced at the urea prill tower of the company's St. Helens fertilizer plant. It was explained that the problem was a unique one which would justify, in the Department's view the extension of the company's variance from the 20% opacity standard for an additional year to allow further research.

It was the Director's recommendation that a variance be granted with conditions requiring further study of the problem and progress reporting to the Department.

It was MOVED by Commissioner Hallock, seconded by Commissioner Phinney and unanimously carried that the Director's recommendation be adopted.

RULE ADOPTION: RULES GOVERNING ADMINISTRATIVE PROCEDURE OF THE AGENCY

After brief discussion the Commission unanimously carried the MOTION of Commissioner Crothers, as seconded by Commissioner Hallock, that the Commission defer for thirty days any action on the proposals other than with regard to proposals dealing with the record before the Commission in contested case matters. The purpose of the motion was to allow further consideration of suggestions made by the Oregon Environmental Council through Mr. Thomas Guilbert. It was MOVED by Commissioner Crothers, seconded by Commissioner Hallock, and carried that the Commission adopt the proposed amendment to OAR Chapter 340, section 11-132 (regarding the hearing officer's proposal and the record in contested case matters). The motion was supported by all except Commissioner Somers who was absent.

TEMPORARY RULE ADOPTION - MOTOR VEHICLE EMISSION CONTROL TEST CRITERIA

Mr. Ronald Householder of the Department's Air Quality Control Division presented the staff report and Director's recommendation that the Commission enter findings that failure to act promptly would prejudice the public interest and adopt a temporary rule allowing the retention of enforcement

tolerances in the Vehicle Emission Inspection Program which would otherwise expire on June 30 of 1976. It was planned to have a public hearing on adoption of the rule, along with other changes, as a permanent rule. It was MOVED by Commissioner Hallock, seconded by Commissioner Phinney and carried that the Director's recommendation be adopted. The motion was supported by all but Commissioner Somers who was absent during the vote.

RULE ADOPTION: SEEPAGE PITS IN WASCO COUNTY

Mr. Kenneth Spies of the Department's Land Quality Division addressed the Commission. It was reported that a meeting with residents of a large subdivision in Wasco County had disclosed a history of difficulty with seepage pits. This information was reported to have been previously unknown to the County and the Department. It was reported that thirty of 125 systems had failed at least once. It was reported that some of the soils in the county are permeable enough to allow the use of seepage pits but not without some danger of contaminating underground aquifers. It was noted that there are formations in Wasco County, in neighboring counties, and along the Oregon Coast with sufficient clean, coarse sand underlayers which would both facilitate seepage pits and not endanger ground water. It was noted that east Multnomah County, the only place where cesspools were known to be in use, had thousands of cesspools. Their aggregate effect had been an increase in nitrate concentrations in the ground water. This ground water was, Mr. Spies reported, a source of community water supply. It was the Director's recommendation that the Commission authorize the Department to hold a public hearing to consider rule amendments which would ban further use of cesspools and seepage pits with the exception of such seepage pits as might specifically be allowed under the variance procedure.

It was MOVED by Commissioner Somers, (who had indicated his support of the proposal based on new information he had received with regard to both Wasco and Multnomah Counties), seconded by Commissioner Hallock, and unanimously carried that the Director's recommendation be adopted.

VARIANCE: REQUEST TO OPEN BURN LAND CLEARING DEBRIS

It was MOVED by Commissioner Somers, seconded by Commissioner Crothers, and unanimously carried that the Commission adopt the Director's recommendation to extend a variance from the Commission's open burning rules which would permit conditioned open burning of brush and trees by the S.D. Spencer and Son Construction Company. The burning would pertain to materials cleared from 2.7 miles of right-of-way for improvement to State Highway 99 beginning immediately north of the City of Drain in Douglas County.

TAX CREDIT APPLICATION

With regard to the recommendation to deny application T-757, it was reported by Mr. Jack Weathersbee that the applicant (Columbia Corporation), had commenced construction of the proposed facility without the preliminary certification required by ORS 468.175. This should be added, he reported, to the Director's reasons for denial.

Mr. John Chesnutt a corporate tax accountant for Columbia Corporation argued orally and in writing to the Commission that the Department's refusal to recognize as waste materials which had been sold as a matter of custom was not an interpretation supported by the statute.

He argued further that the facility was effective to abate air pollution formerly caused by wind blown particles. He stated that the DEQ, to his knowledge, had made various visits to the Cascade Locks mill and had been aware of the air pollution problem caused by the wind going down the gorge. Asked by Commissioner Somers if anyone from the Department had advised the applicant to construct the facility claimed in the application, Mr. Chesnutt replied in the negative. He stated that the files in the Department's office did indicate that the Department was aware that the system was being constructed.

Mr. John Borden of the Department's Central Region Office addressed the Commission. He stated his correspondence had also addressed the problem of chips floating on the water. He stated that no solution to this had been discussed other than barge repair. He told Commissioner Somers the files in his office, to his knowledge, contained no correspondence indicating that the facility was being built.

Mr. Borden indicated that there was a pollution problem at that plant but that he would be unable to state whether the problem had been resolved.

It was the feeling of both Commissioners Crothers and Somers that, if at all possible within the framework of the law, the applicant should receive recognition if he did, in fact, install a device which abated a pollution problem. It was the opinion of Counsel that unless there was either a formal certificate or something which could be interpreted as preliminary certification in the agency's files, the facility could not be approved under the law.

With regard to application T-765 filed by Ostrander Construction Company, Mr. Weathersbee had mentioned that the reviewer had intended to disallow costs for hogged fuel boiler rebricking in the sum of \$16,798.74. Mr. Weathersbee informed that the Director's recommendation should be revised to allow only \$164,637.26 for the facility.

It was MOVED by Commissioner Somers, seconded by Commissioner Crothers, and unanimously carried that the Commission adopt the Director's recommendation to act as follows:

- (1) Grant applications T-722R, T-739, T-754, T-755, T-760, T-762, T-763, T-764R, and T-765 (as amended to the sum of \$164,637.26).
- (2) Deny application T-725.
- (3) Defer application T-757 for further study.

Mr. Harold Patterson of the Department's Air Quality Control Division reported that there had been discovered an error in the Director's recommendation with regard to application T-763 (applicant: Eugene F. Burril Lumber Company). It was reported that \$4,850 should be subtracted from the amount of the certificate recommended. It was MOVED by Commissioner Somers, seconded by Commissioner Hallock, and carried unanimously that the certificate for application T-763 be awarded in the reduced sum of \$33,394.

There being no further business, the meeting was adjourned.



ENVIRONMENTAL QUALITY COMMISSION

1234 S.W. MORRISON STREET • PORTLAND, ORE. 97205 • Telephone (503) 229-5696

ROBERT W. STRAUB
GOVERNOR

MEMORANDUM

To: Environmental Quality Commission
From: Director
Subject: Agenda Item B, June 25, 1976, EQC Meeting
April and May 1976 Program Activity Reports

Discussion

Attached are the April and May 1976 Program Activity Reports.

ORS 468.325 provides for approval or disapproval of Air Quality plans and specifications by the Environmental Quality Commission. Water and Solid Waste facility plans and specification approvals or disapprovals and issuance, denials, modifications and revocations of permits are prescribed by statutes to be functions of the Department, subject to appeal to the Commission.

The purposes of this report are to provide information to the Commission regarding status of the reported program activities, to provide a historical record of project plan and permit actions, and to obtain the confirming approval of the Commission of actions taken by the Department relative to air quality plans and specifications.

Recommendation

It is the Director's recommendation that the Commission take notice of the reported program activities and give confirming approval to the Department's actions relative to air quality project plans and specifications as described on pages 11 and 12 of the April 1976 report (Appendix A) and on pages 14 and 15 of the May 1976 report (Appendix B).

A handwritten signature in black ink, appearing to read "Loren Kramer", with a long horizontal stroke extending to the right.

LOREN KRAMER
Director



RLF:eve
6/14/76

APPENDIX A

Department of Environmental Quality
Technical Programs

Permit and Plan Actions

April 1976

<u>Water Quality Division</u>	<u>Page</u>
74 Plan Actions Completed - Summary	1
Plan Actions Completed - Listing	2
70 Plan Actions Pending - Summary	1
37 Permit Actions Completed - Summary	7
Permit Actions Completed - Listing	8
209 Permit Actions Pending - Summary	7
 <u>Air Quality Division</u>	
13 Plan Actions Completed - Summary	1
Plan Actions Completed - Listing	11
24 Plan Actions Pending - Summary	1
23 Permit Actions Completed - Summary	13
Permit Actions Completed - Listing	14
179 Permit Actions Pending - Summary	13
 <u>Land Quality Division</u>	
6 Plan Actions Completed - Summary	1
Plan Actions Completed - Listing	16
21 Plan Actions Pending - Summary	1
13 Permit Actions Completed - Summary	17
Permit Actions Completed - Listing	18
92 Permit Actions Pending - Summary	17

DEPARTMENT OF ENVIRONMENTAL QUALITY
TECHNICAL PROGRAMS

MONTHLY ACTIVITY REPORT

Air, Water and Land

Quality Divisions

(Reporting Unit)

April 1976

(Month and Year)

SUMMARY OF PLAN ACTIONS

	Plans Received		Plans Approved		Plans Disapproved		Plans Pending
	Month	Fis.Yr.	Month	Fis.Yr.	Month	Fis.Yr.	
<u>Air</u>							
Direct Sources	12	113	13	118			24
Indirect Sources							
Total	12	113	13	118			24
<u>Water</u>							
Municipal	103	746	66	727			61
Industrial	8	143	8	129		8	9
Total	111	889	74	856		8	70
<u>Solid Waste</u>							
General Refuse	7	62	5	73		1	16
Demolition		3		3		1	1
Industrial	3	22	1	29			4
Sludge		3		4		1	
Total	10	90	6	109		3	21
<u>Hazardous Wastes</u>							
<u>GRAND TOTAL</u>	133	1092	93	1083		11	115

DEPARTMENT OF ENVIRONMENTAL QUALITY
TECHNICAL PROGRAMS

MONTHLY ACTIVITY REPORT

Water Quality Division
(Reporting Unit)

April 1976
(Month and Year)

PLAN ACTIONS COMPLETED - 74

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
<u>Municipal Sewerage Projects - 66</u>			
Washington	USA (Durham) C.O. #19 STP Project	4/1/76	Approved
Marion	Salem (Wallace Rd.) Glen Creek Interceptor	4/1/76	Provisional Approval
Coos	Eastside - Vanderhoof Addn. Sewers	4/5/76	Provisional Approval
Douglas	Sutherlin - Jim Strickland Subdn. Sewers	4/5/76	Provisional Approval
Klamath	South Suburban S.D. Tract 1120 - 2nd Addn. to East Hills Est. Sewers	4/5/76	Provisional Approval
Umatilla	Pendleton - Emergency Power Facility - STP	4/5/76	Provisional Approval
Klamath	Malin - Washington Ave. Sewer	4/7/76	Provisional Approval
Multnomah	Portland - C.O. #13 STP Contract	4/7/76	Approved
Lincoln	Newport - Canyon Way Sewer Separation	4/7/76	Provisional Approval
Marion	Keizer S.D. #1 - Chemawa Estates No. 2 Sewer	4/7/76	Provisional Approval
Coos	Powers - Myrtle Drive Sewer	4/7/76	Provisional Approval
Umatilla	Hermiston - Co. Rd. 598 San. Sewer	4/8/76	Provisional Approval
Multnomah	Gresham - SE. Division St. Sewer (Near 200th Ave.)	4/9/76	Provisional Approval
Multnomah	Gresham - Lunday Estates Sewers	4/9/76	Provisional Approval
Multnomah	Gresham - Stensrud Estates Sewers	4/9/76	Provisional Approval
Multnomah	Gresham - Rene Terrace Sewers	4/9/76	Provisional Approval
Marion	Salem (Willow) - Private Property Sewer - Madras St., S.E.	4/12/76	Provisional Approval

DEPARTMENT OF ENVIRONMENTAL QUALITY
TECHNICAL PROGRAMS

MONTHLY ACTIVITY REPORT

Water Quality Division
(Reporting Unit)

April 1976
(Month and Year)

PLAN ACTIONS COMPLETED - 74 (Continued)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
<u>Municipal Sewerage Projects - 66 (Continued)</u>			
Washington	USA (Forest Grove) - C.O. #2 Cornelius-Forest Grove Intertie	4/12/76	Approved
Clackamas	Lake Oswego - Lakeview Trunk Sewer	4/12/76	Provisional Approval
Lane	Springfield - "L" St. Sewer Project	4/12/76	Provisional Approval
Douglas	Roseburg - Sunberry Dr. San. Sewers	4/12/76	Provisional Approval
Columbia	Clatskanie - 0.5 MGD Activated Sludge Secondary Sewage Treatment Plant Modification	4/14/76	Provisional Approval
Umatilla	Hermiston - Sunnyvale Hts. Subdn. San. Sewer	4/14/76	Provisional Approval
Clackamas	Canby - Canby Hts. Subdn. Sewer	4/14/76	Provisional Approval
Marion	East Salem S & D #1 - Granada Subdn. Sewers	4/14/76	Provisional Approval
Washington	USA (Sherwood) - Crossbow Acres Subdn. Sewers	4/14/76	Provisional Approval
Washington	USA (Beaverton) - McCormack Pl. San. Sewer	4/14/76	Provisional Approval
Umatilla	Hermiston - Westview Estates Subdn. Sewers	4/15/76	Provisional Approval
Marion	Salem (Wallace) - Hood St. Sewer	4/15/76	Provisional Approval
Multnomah	Portland - N.E. 13th Ave. Relief Sewer	4/15/76	Provisional Approval
Marion	Salem (East Salem S & D #1) - Silverton Plaza Subdn. Sewer	4/15/76	Provisional Approval
Columbia	Rainier Elementary School Pump Station	4/15/76	Provisional Approval

DEPARTMENT OF ENVIRONMENTAL QUALITY
TECHNICAL PROGRAMS

MONTHLY ACTIVITY REPORT

Water Quality Division
(Reporting Unit)

April 1976
(Month and Year)

PLAN ACTIONS COMPLETED - 74 (Continued)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
<u>Municipal Sewerage Projects - 66 (Continued)</u>			
Umatilla	Umatilla - Gass Constr. Property Sewer	4/15/76	Provisional Approval
Umatilla	Umatilla - C.O. #1 Umatilla - McNary Int.	4/16/76	Approved
Klamath	Chiloquin - C.O. #3 Sch. B Sewer Rehab.	4/16/76	Approved
Multnomah	Portland (Col.) - Johns Landing. Pump Station	4/16/76	Provisional Approval
Multnomah	Portland (Col.) - N.E. 76th & Division Sewer	4/19/76	Provisional Approval
Douglas	Reedsport - Port of Umpqua - Ind. Park	4/19/76	Provisional Approval
Lane	Eugene - Tyler St. Sewer	4/20/76	Provisional Approval
Lane	Eugene - Garnet St. Sewer	4/20/76	Provisional Approval
Lane	Eugene - Shasta Loop Sewer	4/20/76	Provisional Approval
Lane	Eugene - Dillard Rd. Sewer	4/20/76	Provisional Approval
Lane	Junction City - E. 12th St. Sewer	4/20/75	Provisional Approval
Columbia	Scappoose - O'Neil - 3rd Addn. Sewers	4/20/76	Provisional Approval
Benton	Corvallis - Lilly Park Subdn. Sewers	4/20/76	Provisional Approval
Marion	Salem (Willow) - Fircrest Subdn. Sewers	4/20/76	Provisional Approval
Jackson	BCVSA - Sunnyview Lane Sewer	4/20/76	Provisional Approval
Umatilla	Hermiston - South Hill Addn. Sewers	4/21/76	Provisional Approval
Clackamas	West Linn (Bolton) - Kapteyn's Krest Subdn. Sewers	4/21/76	Provisional Approval

DEPARTMENT OF ENVIRONMENTAL QUALITY
TECHNICAL PROGRAMS

MONTHLY ACTIVITY REPORT

Water Quality Division
(Reporting Unit)

April 1976
(Month and Year)

PLAN ACTIONS COMPLETED - 74 (Continued)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
<u>Municipal Sewerage Projects - 66 (Continued)</u>			
Clackamas	Wilsonville - Packwell Ind. Park Sewer	4/21/76	Provisional Approval
Multnomah	Gresham - Ron's Tracts Subdn. Sewers	4/21/76	Provisional Approval
Washington	USA (Aloha) - Cross Creek South No. 2 Subdn. Sewers	4/21/76	Provisional Approval
Clackamas	Sandy - Park Crest Subdn. Sewers	4/22/76	Provisional Approval
Marion	East Salem S & D #1 - Belmont Park Estates Subdn. Sewers	4/22/76	Provisional Approval
Klamath	Klamath Falls - Lakeshore Pump Station No. 1, Force Main, etc.	4/22/76	Provisional Approval
Multnomah	Gresham - Bon-Al Park Phase II Subdn. Sewer	4/23/76	Provisional Approval
Clatsop	Seaside - Riverwood Park Subdn. Tract A Sewers	4/23/76	Provisional Approval
Multnomah	Inverness - Northcrest San. Sewer	4/23/76	Provisional Approval
Klamath	New Horizons Boys Ranch Non-Overflow Sewage Lagoon	4/27/76	Provisional Approval
Washington	USA (Rock Cr.) - Addn. #3, Contr. 459 STP Project	4/27/76	Approved
Umatilla	Umatilla - Orchard Terrace Addn. Subdn. Sewers	4/27/76	Provisional Approval
Multnomah	Gresham - Mesa Villa Subdn. Sewer	4/27/76	Provisional Approval
Lane	Florence - Siuslaw Village Subdn. Sewers	4/27/76	Provisional Approval
Washington	USA (Beaverton) - Country Side Subdn. Sewers	4/27/76	Provisional Approval
Marion	Salem (Keizer) - Wildwood Mobile Villa Sewers	4/27/76	Provisional Approval

DEPARTMENT OF ENVIRONMENTAL QUALITY
TECHNICAL PROGRAMS

MONTHLY ACTIVITY REPORT

Water Quality Division
(Reporting Unit)

April 1976
(Month and Year)

PLAN ACTIONS COMPLETED - 74 (Continued)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
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Municipal Sewerage Projects - 66 (Continued)

Jackson	Butte Falls - Sewerage System & 0.07 MGD STP plus Disinfection & Effluent Irrigation	4/29/76	Provisional Approval
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Industrial Waste Sources - 8

Union	Elgin - Boise Cascade Runoff Control System.	3/4/76	Approved
Marion	St. Paul - Western Pork Products, Animal Waste Facilities-Concept.	4/2/76	Approved
Lane	Springfield - Weyerhaeuser pH Adjustment to Secondary Treatment.	4/7/76	Approved
Clackamas	Gresham - Oregon Bulb Farms - Waste Water Control Facilities.	4/7/76	Approved
Klamath	Klamath Falls - Burlington Northern Modification to Waste Treatment Plans.	4/16/76	Approved
Klamath	Klamath Falls - Tom Dee Jong, Animal Waste Treatment.	4/20/76	Approved
Clackamas	Oregon City - Publishers Paper Co. Waste Water Foam Control.	4/22/76	Approved
Lincoln	Oregon Fish & Wildlife Alsea Hatchery Settling Basin.	4/23/76	Approved

DEPARTMENT OF ENVIRONMENTAL QUALITY
TECHNICAL PROGRAMS

MONTHLY ACTIVITY REPORT

Water Quality Division
(Reporting Unit)

April 1976
(Month and Year)

SUMMARY OF WATER PERMIT ACTIONS

	Permit Actions Received				Permit Actions Completed				Permit Actions Pending	Sources Under Permits	Sources Reqr'g Permits
	Month		Fis. Yr.		Month		Fis. Yr.				
	*	**	*	**	*	**	*	**			
<u>Municipal</u>											
New	0	1	5	5	0	1	0	10	5	3	
Existing	1	0	2	5	0	1	12	6	3	5	
Renewals	5	0	58	6	1	5	8	16	48	6	
Modifications	6	1	76	3	6	0	58	3	17	1	
Total	12	2	141	19	7	7	78	35	73	15	287 52 295 60
<u>Industrial</u>											
New	1	1	7	11	^{2/} (1)	1	7	14	4	5	
Existing	1	0	9	6	2	0	7	13	11	8	
Renewals	2	0	39	7	3	4	9	27	29	11	
Modifications	9	0	127	2	12	0	93	2	34	0	
Total	13	1	182	26	18	5	116	56	78	24	419 70 434 83
<u>Agricultural (Hatcheries, Dairies, etc.)</u>											
New	0		4	2	0	0	1	0	3	2	
Existing	0		0	0	0	0	0	0	0	2	
Renewals	0		0	1	0	0	0	0	0	1	
Modifications	1		23	0	0	0	12	0	11	0	
Total	1		27	3	0	0	13	0	14	5	59 3 62 7
<u>GRAND TOTALS</u>	26	4	350	48	25	12	207	91	165	44	765 125 791 150

* NPDES Permits
** State Permits

^{2/} One application withdrawn

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PERMIT ACTIONS COMPLETED (37)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
<u>MUNICIPAL SOURCES (14)</u>			
Deschutes	Brooks Resources Corp. West Hills STP	4/1/76	State Permit Issued
Douglas	Bremner Hills Cooperative Sewage Disposal	4/1/76	State Permit Renewed
Marion	Mill City Sewage Disposal	4/8/76	State Permit Renewed
Clackamas	City of Gladstone Sewage Disposal	4/8/76	State Permit Renewed
Clackamas	River Bend Mobile Home Park Sewage Disposal	4/8/76	State Permit Renewed
Clackamas	Timberline Lodge Sewage Disposal	4/8/76	State Permit Issued
Douglas	Lynnbrook Inc. Sewage Disposal	4/8/76	State Permit Renewed
Morrow	City of Boardman Sewage Disposal	4/9/76	NPDES Permit Modified
Yamhill	The Delphian Foundation Sewage Disposal	4/9/76	NPDES Permit Modified
Douglas	Winchester Bay Sanitary Dist. Sewage Disposal	4/16/76	NPDES Permit Renewed
Linn	City of Scio Sewage Disposal	4/23/76	NPDES Permit Modification Dropped
Douglas	City of Winston Sewage Diposal	4/23/76	NPDES Permit Modification Dropped
Douglas	Green Sanitary District Sewage Disposal	4/23/76	NPDES Permit Modification Dropped
Clatsop	City of Cannon Beach Sewage Disposal	4/23/76	NPDES Permit Modification Dropped

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PERMIT ACTIONS COMPLETED (37 continued)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
<u>INDUSTRIAL & COMMERCIAL SOURCES (23)</u>			
Multnomah	Kleiver Memorial Armory Truck Washing	4/1/76	State Permit Renewed
Douglas	Johnson Rock Products Gravel Operation	4/1/76	State Permit Renewed
Klamath	Klamath Tallow Rendering	4/8/76	State Permit Renewed
Klamath	T. P. Packing Co. Meat Packing	4/8/76	State Permit Renewed
Hood River	Columbia Plywood Corp. Cascade Locks Lumber	4/9/76	NPDES Permit Modified
Clatsop	Crown Zellerbach Wauna Paper Mill	4/9/76	NPDES Permit Modified
Multnomah	Pennwalt Corporation Chlorine Manufacturing	4/9/76	NPDES Permit Modified
Columbia	PGE - Trojan Nuclear Cooling Water	4/9/76	NPDES Permit Modified
Multnomah	Carnation Company Albers Milling Division	4/9/76	NPDES Permit Modified
Lincoln	New England Fish Newport Plant	4/9/76	NPDES Permit Modified
Jackson	Medford Corporation Timber Products	4/9/76	NPDES Permit Modified
Columbia	Kaiser Gypsum Company St. Helens Plant	4/9/76	NPDES Permit Modified
Malheur	Ore-Ida Foods, Inc. Food Processing	4/16/76	NPDES Permit Modified
Douglas	Joe L. Saulsberry Placer Mining	4/16/76	State Permit Issued
Yamhill	John C. Taylor Lumber Wood Preserving	4/16/76	NPDES Permit Issued

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PERMIT ACTIONS COMPLETED (37 continued)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
<u>INDUSTRIAL & COMMERCIAL SOURCES (23 continued)</u>			
Clackamas	South Fork Water Board Filter Plant Backwash	4/16/76	NPDES Permit Issued
Douglas	PP & L Clearwater #1 Cooling Water	4/16/76	NPDES Permit Renewed
Douglas	PP & L Clearwater #2 Cooling Water	4/16/76	NPDES Permit Renewed
Douglas	PP & L Slide Creek Cooling Water	4/16/76	NPDES Permit Renewed
Josephine	Clay-No Mining Corp. Placer Mining	4/23/76	Application Withdrawn
Douglas	Winchester Bay Sea Foods Fish Processing	4/23/76	Modification Dropped Plant Closed
Clatsop	Barbey Packing Fish Processing	4/23/76	Modification Dropped
Clackamas	Dravon Medical Instrument Sterilization	4/23/76	Modification Dropped

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PLAN ACTIONS COMPLETED (13)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
<u>Direct Stationary Sources (13)</u>			
Multnomah	Rhodia, Inc., New MPCA manufacturing process	4/1/76	Approved
Multnomah	Holladay Park Hospital, Inc., Facility expansion, two #2 oil fired boilers	4/6/76	Approved
Multnomah	K.F. Jacobsen, Co., Inc. Enlargement of existing baghouse	4/7/76	Approved
Multnomah	Boyd Coffee Co. New coffee roaster	4/9/76	Approved
Multnomah	Malarkey Roofing Co., New saturator and finished products looper	4/12/76	Approved
Polk	Boise Cascade, Cyclone for transfer of hog fuel	4/12/76	Approved
Umatilla	Riverbend Construction Co. Spray chamber for asphalt batch plant	4/20/76	Approved
Multnomah	Ray Grimshaw, Inc. Cyclone to control emissions from tire retread buffing machines	4/21/76	Approved
Jackson	Permaneer Baghouse for cyclones #7 & #8	4/21/76	Approved
Linn	Teledyne Wah Chang, Venturi scrubber for existing Mg recovery area to control crucible burnout emissions	4/26/76	Approved

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Air Quality Control
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PLAN ACTIONS COMPLETED (13 - con't)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
<u>Direct Stationary Sources (continued)</u>			
Linn	Teledyne Wah Chang, Caustic packed tower to replace existing chlorinator	4/26/76	Approved
Jackson	Medford Corporation, Baghouse to control wood transfer cyclones	4/27/76	Approved
Multnomah	Conrey Electric Motor Repair, electric motor burnout oven	4/28/76	Approved

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Air Quality Control
(Reporting Unit)

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SUMMARY OF AIR PERMIT ACTIONS

	Permit Actions Received		Permit Actions Completed		Permit Actions Pending	Sources under Permits	Sources Reqr'g Permits
	Month	Fis.Yr.	Month	Fis.Yr.			
<u>Direct Sources</u>							
New	8	18	1	7	15		
Existing	9	68	--	276	38		
Renewals	26	115	11	67	88		
Modifications	20	46	9	62	25		
Total	63	247	21	412	166*	2115	2168
<u>Indirect Sources</u>							
New	1	41	2	42	13		
Existing	NA	NA	NA	NA	NA		
Renewals	NA	NA	NA	NA	NA		
Modifications	0	1	0	1	--		
Total	1	42	2	42	13	34	NA
<u>GRAND TOTALS</u>	64	289	23	454	179	2149	

*Public notices have been issued on 56 of these pending permit actions, thereby allowing for completion of same during May 1976.

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Air Quality Control

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PERMIT ACTIONS COMPLETED (23)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
Clackamas	Oregon Portland Cement 03-1840, Addendum #1	4/5/76	Addendum Issued
Clackamas	Western Wood Mfg. 03-2078, Addendum #1	4/5/76	Addendum Issued
Clatsop	Clatsop County Road Dept. 04-0018, Asphalt Plant (Renewal)	4/12/76	Permit Issued
Columbia	Portland General Electric 05-2520, Addendum #2	4/8/76	Addendum Issued
Jackson	Medford Corp 15-0014, Addendum	4/26/76	Addendum Issued
Linn	Hub City Concrete 22-0605, Crusher, Concrete (Renewal)	4/12/76	Permit Issued
Marion	American Asphalt Paving 24-5865, Asphalt Plant (Renewal)	4/12/76	Permit Issued
Marion	American Asphalt Paving 24-5866, Asphalt Plant (Renewal)	4/12/76	Permit Issued
Marion	Salem Blacktop Paving 24-5954, Asphalt Plant (Renewal)	4/12/76	Permit Issued
Multnomah	Bybee Apts. 26-0059, Change of Ownership	3/31/76	Addendum Issued
Multnomah	Hampton Court Apts. 26-0563, Change of Ownership	4/12/76	Addendum Issued
Multnomah	Gordon Pubols 26-1116, Addendum	4/26/76	Addendum Issued
Multnomah	B.W. Feed Co. 26-2607, Addendum	4/26/76	Addendum Issued
Polk	Boise Cascade 27-7002, Sawmill, Plywood (Renewal)	3/26/76	Permit Issued
Washington	Durham Wastewater Treatment Plant 34-2623, Incinerator, Boiler, Lime Recalcining (New Source)	4/12/76	Permit Issued

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PERMIT ACTIONS COMPLETED (23 - con't)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
Yamhill	Dayton Sand & Gravel 36-2010, Rock Crusher (Renewal)	4/12/76	Permit Issued
Yamhill	Rowell & Wickersham 36-5330, Asphalt Plant (Renewal)	4/12/76	Permit Issued
Yamhill	Martin & Wright Paving 36-5376, Asphalt Plant (Renewal)	4/12/76	Permit Issued
Portable	L. W. Vail 37-0043, Asphalt Plant (Renewal)	4/12/76	Permit Issued
Portable	C. H. Stinson 37-0047, Change of Ownership	4/8/76	Addendum Issued
Portable	KLM Paving 37-0110, Asphalt Plant (Renewal)	4/12/76	Permit Issued

Indirect Sources (2)

Multnomah	Oregon Trails Shopping Center 900 space parking facility	4/28/76	Cancelled. No permit required due to reduction of parking facility to 249 spaces.
Multnomah	College Square Shopping Center, 450 space parking facility.	4/20/76	Final permit issued.

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Land Quality
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April 1976
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PLAN ACTIONS COMPLETED (6)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
Lane	Transfer System Equipment Bid Award	4/6/76	Approved
Linn	Teledyne Wah Chang Albany New Site Operational Plan	4/14/76	Approved
Marion	MacLaren School Existing Site Operational Plan	4/16/76	Provisional Approval
Douglas	Yoncalla Transfer Station New Site Construction and Operational Plan	4/21/76	Provisional Approval
Douglas	Glendale Transfer Station New Site Construction and Operational Plan	4/22/76	Provisional Approval
Yamhill	Newberg Sanitary Landfill Existing Site Revised Operational Plan	4/27/76	Provisional Approval

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Land Quality
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SUMMARY OF SOLID AND HAZARDOUS WASTE PERMIT ACTIONS

	Permit Actions Received		Permit Actions Completed		Permit Actions Pending	Sites Under Permits	Sites Reqr'g Permits
	Month	Fis.Yr.	Month	Fis.Yr.			
<u>General Refuse</u>							
New	2	9	21	4			
Existing		3	6	39	60	** (58)	
Renewals	2	24	27	4			
Modifications		9	2	12			
Total	4	45	8	99	68	194	200
<u>Demolition</u>							
New	1	7	6				
Existing			1	2	**		
Renewals		4	2	2			
Modifications							
Total	1	11	9	4		15	15
<u>Industrial</u>							
New		7	1	10	1		
Existing	1	8	1	26	16	** (12)	
Renewals	1	6	9	2			
Modifications	1	2	3				
Total	3	23	2	48	19	92	97
<u>Sludge Disposal</u>							
New		1					
Existing			1	1	**		
Renewals		1	2				
Modifications							
Total		2	3	1		8	8
<u>Hazardous Waste</u>							
New			1				
*Authorizations	3	3	3	3			
Renewals							
Modifications							
Total	3	3	3	4		1	1
<u>GRAND TOTALS</u>	<u>11</u>	<u>84</u>	<u>13</u>	<u>163</u>	<u>92</u>	<u>310</u>	<u>321</u>

* Hazardous waste disposal authorizations. Hazardous waste may not be disposed unless a formal disposal request is approved in writing by the Department.

** Sites operating under temporary permit operations until regular permits are issued.

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Land Quality
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PERMIT ACTIONS COMPLETED (10)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
<u>General Refuse (Garbage) Facilities (8)</u>			
Josephine	Grants Pass Landfill Existing Facility	4/2/76	Permit amended
Klamath	Malin Landfill Existing Facility	4/16/76	Permit issued
Harney	Burns-Hines Disposal Site Existing Facility	4/19/76	Permit amended
Lincoln	North Lincoln Disposal Site Existing Facility	4/19/76	Permit issued
Lincoln	Filmore Park Disposal Site Existing Facility	4/20/76	Permit issued
Lincoln	Waldport Disposal Site Existing Facility	4/20/76	Permit issued
Lincoln	Agate Beach Disposal Site Existing Facility	4/26/76	Permit issued
Lincoln	Logsdan Disposal Site Existing Facility	4/26/76	Permit issued
<u>Demolition Solid Waste Disposal Facilities (0)</u>			
<u>Sludge Disposal Facilities (0)</u>			
<u>Industrial Solid Waste Disposal Facilities (2)</u>			
Linn	Teledyne Wah Chang New I.W. Sludge Site	4/14/76	Permit issued
Linn	Cedar Lumber Existing Facility	4/16/76	Permit issued
<u>Hazardous Waste Facilities (0)</u>			

APPENDIX B

Department of Environmental Quality
Technical Programs

Permit and Plan Actions

May 1976

<u>Water Quality Division</u>	<u>Page</u>
119 Plan Actions Completed - Summary	1
Plan Actions Completed - Listing	2
68 Plan Actions Pending - Summary	1
36 Permit Actions Completed - Summary	10
Permit Actions Completed - Listing	11
200 Permit Actions Pending - Summary	10
 <u>Air Quality Division</u>	
17 Plan Actions Completed - Summary	1
Plan Actions Completed - Listing	14
21 Plan Actions Pending - Summary	1
51 Permit Actions Completed - Summary	16
Permit Actions Completed - Listing	17
174 Permit Actions Pending - Summary	16
 <u>Land Quality Division</u>	
10 Plan Actions Completed - Summary	1
Plan Actions Completed - Listing	21
16 Plan Actions Pending - Summary	1
29 Permit Actions Completed - Summary	23
Permit Actions Completed - Listing	24
85 Permit Actions Pending - Summary	23

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Air, Water and Land
Quality Divisions
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SUMMARY OF PLAN ACTIONS

	Plans Received		Plans Approved		Plans Disapproved		Plans Pending
	Month	Fis.Yr.	Month	Fis.Yr.	Month	Fis.Yr.	
<u>Air</u>							
Direct Sources	14	127	17	135			21
Indirect Sources							
Total	14	127	17	135			21
<u>Water</u>							
Municipal	104	850	103	830			55
Industrial	21	164	16	145		8	13
Total	125	1014	119	975		8	68
<u>Solid Waste</u>							
General Refuse	1	63	5	78		1	12
Demolition	1	4	1	4	1	2	
Industrial	2	24	4	33			4
Sludge		3		4		1	
Total	4	94	10	119	1	4	16
<u>Hazardous Wastes</u>							
<u>GRAND TOTAL</u>	143	1235	146	1229	1	12	105

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Water Quality Division
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PLAN ACTIONS COMPLETED - 119

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
<u>Municipal Sewerage Projects - 103</u>			
Clackamas	CCSD #1 - Harmon Terrace Subdn. Sewers	5/3/76	Provisional Approval
Josephine	Rogue River - Brookside Village Subdn. Sewers	5/3/76	Provisional Approval
Hood River	Hood River Marina Park Sewer	5/3/76	Provisional Approval
Clackamas	Oaklodge SD - River Forest Hts. Subdn. Sewer	5/3/76	Provisional Approval
Tillamook	NTCSA - Ocean Grove Subdn. Sewers	5/3/76	Provisional Approval
Harney	Hines - Sewage Pump Sta. & Chlorine Facilities - STP	5/4/76	Provisional Approval
Clackamas	CCSD #1 - C.O. #11 - STP Project	5/4/76	Approved
Washington	USA (Durham) - C.O. #20, 21 STP Project	5/4/76	Approved
Washington	USA (Aloha) - Sherwood Subdn. Sewers	5/4/76	Provisional Approval
Washington	USA (Aloha) - S.W. Rock Rd. Sewer Ext.	5/4/76	Provisional Approval
Washington	USA (Aloha) - Shallow Brook Subdn. Sewers	5/4/76	Provisional Approval
Washington	USA (Aloha) - Somerset Meadows Subdn. Sewers	5/4/76	Provisional Approval
Washington	USA (Aloha) - McLain West Subdn. Sewers	5/4/76	Provisional Approval
Washington	USA (Aloha) - Leewood No. 2 Subdn. Sewers	5/4/76	Provisional Approval
Washington	USA (Aloha) - Rock Creek Highlands 4 & 5 Subdn. Sewers	5/4/76	Provisional Approval

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PLAN ACTIONS COMPLETED (Continued)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
Coos	North Bend - Virginia Street Sewer	5/4/76	Provisional Approval
Douglas	Sutherlin - Jerry Matlock Sewer Ext.	5/4/76	Provisional Approval
Marion	Stayton - Prince Albert Add. Sub. Sewers	5/4/76	Provisional Approval
Marion	Stayton Freres Add. Sewers	5/4/76	Provisional Approval
Marion	Stayton - Pine St. Sewer	5/4/76	Provisional Approval
Marion	Sublimity - Sayre Add. Sewers	5/4/76	Provisional Approval
Washington	USA (Beaverton) - Murray Crest Subdn. Sewers	5/5/76	Provisional Approval
Washington	USA (Tigard) - Englewood 3 Subdn. Sewers	5/5/76	Provisional Approval
Washington	USA (Fanno) - Forestway II Subdn. Sewers	5/5/76	Provisional Approval
Josephine	Harbeck-Fruitdale SD - Grandview Meadows Subdn. Sewers	5/5/76	Provisional Approval
Douglas	Winchester Bay SD - Umpqua Light- house Park Sewer	5/5/76	Provisional Approval
Polk	Dallas - Dallas Hts #2 & 3 Subdn. Sewers	5/5/76	Provisional Approval
Marion	Salem (Willow) - Watson Ave. N. of Byram St. Sewer	5/5/76	Provisional Approval
Multnomah	Gresham - Glocca Morra LID Sewers	5/5/76	Provisional Approval

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PLAN ACTIONS COMPLETED (Continued)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
Multnomah	Gresham - Camelot LID Sewers	5/5/76	Provisional Approval
Marion	Woodburn High School Utility Proj.	5/6/76	Provisional Approval
Deschutes	Bend C.O. #1 Sewer R & D Proj.	5/6/76	Approved
Washington	Hillsboro Jonesfield #2, Ph. I Sub. Sewers	5/6/76	Provisional Approval
Multnomah	Portland - Extra Bill #5 N. Portland Road Project	5/6/76	Approved
Clackamas	Milwaukie - Torino 2 Sub. Sewers	5/6/76	Provisional Approval
Baker	Baker Phase III 1977-78 Sewer	5/10/76	Provisional Approval
Baker	Baker - Midway Drive Sewer	5/10/76	Provisional Approval
Marion	E. Salem S&D #1 - Macleay Estates #2 - Phase I Sewers	5/10/76	Provisional Approval
Clackamas	CCSD #1 - Master's Estates Subdn. Sewers	5/10/76	Provisional Approval
Washington	USA (Durham) - CO #22 STP Project	5/10/76	Approved
Washington	USA (Aloha) - Autumn Ridge Subdn. Sewers	5/10/76	Provisional Approval
Harney	Hines Add. #1 Chlorination Proj.	5/11/76	Approved
Multnomah	Portland - CO #1 - Gertz-Schmeer Project	5/11/76	Approved
Jackson	Butte Falls - Add. #1 - STP Project	5/11/76	Approved
Washington	USA (Rock Cr.) - Devlan Park Subdn. Sewers	5/14/76	Provisional Approval

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PLAN ACTIONS COMPLETED (Continued)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
Washington	USA (Forest Grove) - Arch Knoll Phase I Subdn. Sewers	5/14/76	Provisional Approval
Marion	Salem (Willow) - Fairway Ave. Apts. Sewer	5/14/76	Provisional Approval
Marion	Mt. Angel North Main Street Sewer Extension	5/17/76	Provisional Approval
Clackamas	West Linn (Bolton) - Century Lane Sewer	5/17/76	Provisional Approval
Marion	Salem (Willow) - Sha-La-Lyn Estates Subdn. Sewers	5/17/76	Provisional Approval
Lane	Springfield - Picanut Subdn. Sewers	5/17/76	Provisional Approval
Lane	Springfield - 1st Addn. E-2 Living Estates Subdn. Sewers	5/17/76	Provisional Approval
Lane	Springfield - 2nd Addn. Thurston Park Subdn. Sewers	5/17/76	Provisional Approval
Clackamas	Oregon City - Shenandoah IV Sub. Sewers	5/17/76	Provisional Approval
Jackson	Butte Falls - Add. #2 STP Project	5/17/76	Approved
Washington	USA (Aloha) - Cottage Grove Subdn. Sewers	5/17/76	Provisional Approval
Washington	USA (Beaverton) - Brooktree No. 2 Subdn. Sewers	5/17/76	Provisional Approval
Multnomah	Gresham - Kirsten's Kastles Subdn. Sewers	5/17/76	Provisional Approval
Marion	Salem (Willow) Cross St. Sewer	5/18/76	Provisional Approval

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PLAN ACTIONS COMPLETED (Continued)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
Marion	Salem (Wallace) - Wilark Park West Subdn. Sewers	5/18/76	Provisional Approval
Multnomah	Mult.Co. (Fanno Cr.) - Wilcox West Subdn. Sewers	5/18/76	Provisional Approval
Washington	USA (Beaverton) - Sequoia Park Subdn. Sewers	5/19/76	Provisional Approval
Washington	USA (Beaverton) - S.W. 130th Ave. Sewer - Davis Rd.	5/19/76	Provisional Approval
Washington	USA (Beaverton) - S.W. 130th Ave. Sewer	5/19/76	Provisional Approval
Washington	USA (Aloha) - Rock Creek Country Club #4	5/19/76	Provisional Approval
Clackamas	West Linn (Willamette) - N. from Virginia Lane Sewer	5/19/76	Provisional Approval
Multnomah	Gresham - Squire Brook Sub. Sewers	5/19/76	Provisional Approval
Multnomah	Inverness - Price Agreement #1 Inv. Int. Unit 6-B	5/19/76	Approved
Clackamas	CCSD #1 - For-Mor Enterprises Industrial Pk Sewer	5/20/76	Provisional Approval
Jackson	Jacksonville - S. Oregon St. Sewer Project	5/20/76	Provisional Approval
Lane	Eugene - Somerset Hills III Sub. Sewers	5/20/76	Provisional Approval
Lane	Eugene - Kincaid Oaks Sub. Sewers	5/20/76	Provisional Approval
Lane	Eugene - 2nd Add. to Meadowbrooks Sub. Sewers	5/20/76	Provisional Approval

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County	Name of Source/Project/Site and Type of Same	Date of Action	Action
Lane	Eugene - Capricorn Estates Sub. Sewers	5/20/76	Provisional Approval
Lane	Eugene - Royal View Sub. Sewers	5/20/76	Provisional Approval
Lane	Eugene - Western Industrial Park Sewers	5/20/76	Provisional Approval
Lane	Eugene - 1st Add. to Souza Park Sub. Sewers	5/20/76	Provisional Approval
Clackamas	Portland - Tryon Creek STP Expansion - Revised Plans	5/21/76	Provisional Approval
Union	LaGrande - NW Sewer Proj. #2	5/21/76	Provisional Approval
Union	LaGrande - Dairy Queen Sewer	5/21/76	Provisional Approval
Douglas	Myrtle Creek - Seeley Ave. Sewer	5/21/76	Provisional Approval
Clackamas	Sandy - "LID #2" Pioneer Creek Sewer	5/25/76	Provisional Approval
Columbia	St. Helens - "LID 75.3"	5/25/76	Provisional Approval
Yamhill	Newberg - Weatherly Lane Sewer	5/28/76	Provisional Approval
Malheur	Farewell Bend - STP & Sewage Pump Sta. & Cell non-discharge lagoon	5/28/76	Provisional Approval
Yamhill	Delphian Foundation - STP Expansion 0.10 MGD Plant followed by chlor. & irrigation	5/28/76	Provisional Approval

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County	Name of Source/Project/Site and Type of Same	Date of Action	Action
Harney	Hines - Addenda #'s 2 & 3 for chlorination facility	5/28/76	Approved
Multnomah	Portland - Extra bill No. 1 N. Portland Rd. P.S.	5/28/76	Approved
Tillamook	NTCSA - C.O. B-1-2	5/28/76	Approved
Josephine	Harbeck-Fruitdale SD - South Allen Creek Int. CO's 6 & 7	5/28/76	Approved
Deschutes	Sunriver - West Cascade Trunk Sewer	5/28/76	Provisional Approval

INDUSTRIAL WASTE SOURCES - 16

Tillamook	Cloverdale - Bailey Dairy Animal Wastes	05-25-76	Approved
Tillamook	Tillamook - Gienger Animal Wastes	05-25-76	Approved
Tillamook	Tillamook - Nielson Dairy Animal Wastes	05-25-76	Approved
Linn	Lebanon - Crown Zellerbach Water Treatment Filter Backwash Elimination	05-21-76	Approved

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PLAN ACTIONS COMPLETED - 119 (Continued)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
<u>INDUSTRIAL WASTE SOURCES - 16 con't.</u>			
Coos	Charleston - Hallmark Fisheries Screens	05-03-76	Approved
Columbia	Rainier - Don Schimmel Animal Wastes	05-13-76	Approved.
Hood River	Neal Creek - U.S. Plywood Log Deck Sprinkling Containment	05-14-76	Approved
Lincoln	Beverly Beach Water Filter Backwash Recycling	05-14-76	Approved
Washington	Forest Grove - Eugene M. Vandehay Animal Wastes	05-17-76	Approved
Washington	Banks - Myron F. Duyk Animal Wastes	05-19-76	Approved
Clackamas	Molalla - Avison Lumber Company Storm Water Diversion	05-19-76	Approved
Lincoln	L F & W L Trask R. Salmon Hatchery Waste Treatment	05-19-76	Approved
Lane	Springfield - Chembond Caustic Soda Spill Prevention	05-20-76	Approved
Lane	Junction City - Bohemia, Inc. Wastewater Reuse	05-27-76	Approved
Lane	Eugene - Deerhorn Enturprisus, Animal Wastes	05-24-76	Approved
Tillamook	Nehalem - Hurliman Dairy Animal Wastes	05-25-76	Approved

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SUMMARY OF WATER PERMIT ACTIONS

	Permit Actions Received				Permit Actions Completed				Permit Actions Pending		Sources Under Permits		Sources Reqr'g Permits	
	Month		Fis.Yr.		Month		Fis.Yr.		Pending		Permits		Permits	
	*	**	*	**	*	**	*	**	*	**	*	**	*	**
<u>Municipal</u>														
New	1	0	6	5	0	0	0	10	6	4				
Existing	0	1	2	6	0	0	12	6	3	6				
Renewals	4	0	62	6	3	3	11	19	48	2				
Modifications	6	0	82	3	6	1	64	3	19	0				
Total	11	1	152	20	9	4	87	39	76	12	287	52	296	62
<u>Industrial</u>														
New	1	0	8	11	2	1	9	15	3	3				
Existing	2	1	11	7	0	0	7	13	12	7				
Renewals	2	1	41	8	6	1	15	28	25	11				
Modifications	10	2	137	4	8	0	101	2	36	2				
Total	15	4	197	30	16	2	132	58	76	23	421	71	436	81
<u>Agricultural (Hatcheries, Dairies, etc.)</u>														
New	1	0	5	2	1	0	2	0	3	1				
Existing	0	0	0	0	0	0	0	0	0	2				
Renewals	0	0	0	1	0	0	0	0	0	1				
Modifications	0	0	23	0	5	0	17	0	6	0				
Total	1	0	28	3	6	0	19	0	9	4	60	3	63	6
<u>GRAND TOTALS</u>	27	5	377	53	31	6	238	97	161	39	768	126	795	149

* NPDES Permits
** State Permits

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PERMIT ACTIONS COMPLETED (36)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
<u>MUNICIPAL SOURCES (12)</u>			
Curry	City of Gold Beach Sewage Disposal	5/5/76	NPDES Permit Modified
Lane	Driftwood Shores Surfside Inn STP	5/6/76	NPDES Permit Renewed
Lane	City of Oakridge Sewage Disposal	5/6/76	NPDES Permit Renewed
Lake	City of Paisley Sewage Disposal	5/13/76	NPDES Permit Changed to State Permit
Marion	Salem Development, Inc. Illahe Country Club	5/13/76	State Permit Renewed
Lake	Town of Lakeview Sewage Disposal	5/13/76	NPDES Permit Changed to State Permit
Josephine	State Highway Division Manzanita Rest Area	5/13/76	State Permit Modified
Coos	City of North Bend Sewage Disposal	5/19/76	NPDES Permit Renewed
Coos	City of Myrtle Point Sewage Disposal	5/25/76	NPDES Permit Modified
Linn	Central Linn School Dist. Sewage Disposal	5/25/76	NPDES Permit Modified
Multnomah	Port of Portland Moorage Sewage Disposal	5/25/76	NPDES Permit Modified
Umatilla	City of Pendleton Sewage Disposal	5/25/76	NPDES Permit Modified

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PERMIT ACTIONS COMPLETED (36)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
<u>INDUSTRIAL & COMMERCIAL SOURCES (18)</u>			
Linn	Oregon Metallurgical Corp. Albany	5/5/76	NPDES Permit Modified
Coos	Eureka Fisheries, Inc. Fish Processing	5/5/76	NPDES Permit Modified
Coos	Peterson Sea Foods, Inc. Charleston	5/5/76	NPDES Permit Modified
Curry	Warrenton Seafood Co. Brookings	5/5/76	NPDES Permit Modified
Multnomah	Schnitzer Investment Corp. International Terminal	5/6/76	NPDES Permit Issued
Baker	Anthony Branden Thaler Parkerville Placer Claim	5/6/76	NPDES Permit Issued
Malheur	City of Ontario Filter Plant	5/6/76	NPDES Permit Renewed
Benton	Bermico Company Pipe Plant	5/6/76	NPDES Permit Renewed
Clackamas	Northwest Sand & Gravel Inc. Clackamas	5/13/76	State Permit Renewed
Morrow	Portland General Electric Boardman Fossil Plant	5/13/76	State Permit Issued
Josephine	Fourply, Incorporated Agnew Plywood	5/19/76	NPDES Permit Renewed
Douglas	P P & L Lemola Plant No. 1	5/19/76	NPDES Permit Renewed
Douglas	P P & L Lemola Plant No. 2	5/19/76	NPDES Permit Renewed
Douglas	P P & L Soda Springs Plant	5/19/76	NPDES Permit Renewed
Marion	Boise Cascade Corp. Salem Pulp Mill	5/25/76	NPDES Permit Modified

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PERMIT ACTIONS COMPLETED (36 - continued)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
<u>INDUSTRIAL & COMMERCIAL SOURCES (18 - continued)</u>			
Hood River	Champion International U. S. Plywood, Dee	5/25/76	NPDES Permit Modified
Klamath	D. G. Shelter Products Klamath Lumber	5/25/76	NPDES Permit Modified
Coos	Bandon Fisheries Fish Processing	5/25/76	NPDES Permit Modified
<u>AGRICULTURAL SOURCES (6)</u>			
Lincoln	Dept. of Fish & Wildlife Salmon River Hatchery	5/6/76	NPDES Permit Issued
Clatsop	Dept. of Fish & Wildlife Big Creek Hatchery	5/25/76	NPDES Permit Modified
Multnomah	Dept. of Fish & Wildlife Bonneville Salmon Hatchery	5/25/76	NPDES Permit Modified
Multnomah	Dept. of Fish & Wildlife Cascade Salmon Hatchery	5/25/76	NPDES Permit Modified
Clackamas	Dept. of Fish & Wildlife Sandy River Hatchery	5/25/76	NPDES Permit Modified
Linn	Dept. of Fish & Wildlife South Santiam Salmon Hatchery	5/25/76	NPDES Permit Modified

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PLAN ACTIONS COMPLETED (17)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
<u>Direct Stationary Sources (17)</u>			
Multnomah	Louis Dreyfus Co., Tent covers for grain ship loading.	5/3/76	Approved
Multnomah	Reed Electric Co. New Bayco burnout oven for electric motor components	5/3/76	Approved
Douglas	Hanna Nickel Smelting New 4th dryer with cyclone and scrubber.	5/3/76	Approved
Multnomah	Publishers Paper, Dwyer Centrifugal Separator on Veneer Dryer.	5/7/76	Approved
Hood River	U.S. Plywood (Ch-Int.) New solid waste incinerator.	5/11/76	Cancelled
Washington	Tigard Sand & Gravel Co. New stationary asphalt batch plant.	5/11/76	Approved
Umatilla	L. W. Vail, Wet scrubber for asphalt batch plant.	5/12/76	Approved
Washington	Tualatin Valley Paving, new stationary asphalt batch plant.	5/12/76	Approved
Crook	Clear Pine Moulding, New perservative treatment process.	5/14/76	Approved
Douglas	Roseburg Lumber Co. Burley scrubbers for veneer dryer #2 at plant #3.	5/17/76	Approved

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PLAN ACTIONS COMPLETED (17 - con't)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
<u>Direct Stationary Sources (continued)</u>			
Benton	Good Samaritan Hospital, New hospital	5/17/76	Cancelled
Multnomah	Reynolds Metals Co., 150' exhaust stack for new dry control system	5/17/76	Approved
Multnomah	Union Carbide No. 3 furnace hood modifications	5/18/76	Approved
Multnomah	Univ. of Ore. Health Science Center, Replacement of present power plant facility.	5/21/76	Approved
Morrow	Readymix Sand & Gravel Spray chamber for asphalt batch plant	5/21/76	Approved
Jackson	Boise Cascade Multiclone for #2 boiler	5/24/76	Cancelled
Douglas	Woolley Enterprises Modifications to veneer dryers	5/27/76	Approved

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SUMMARY OF AIR PERMIT ACTIONS

	Permit Actions Received		Permit Actions Completed		Permit Actions Pending	Sources under Permits	Sources Reqr'g Permits
	Month	Fis.Yr.	Month	Fis.Yr.			
<u>Direct Sources</u>							
New	1	19	2	9	14		
Existing	17	83**	3	279	52		
Renewals	19	134	32	99	75		
Modifications	9	54**	11	73	23		
Total	46	290	48	460	164*	2120	2186
<u>Indirect Sources</u>							
New	0	41	3	45	10		
Existing	NA	NA	NA	NA	NA		
Renewals	NA	NA	NA	NA	NA		
Modifications	0	1	0	1	--		
Total	0	42	3	46	10	37	NA
<u>GRAND TOTALS</u>	46	332	51	506	174	2157	

* Public notices have been issued on 48 of these pending permit actions.

** Two applications for existing sources and one application for modification of a permit have been retracted.

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PERMIT ACTIONS COMPLETED (51)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
Baker	Baker Redi-Mix 01-0022, Rock Crusher (Existing)	5/18/76	Permit Issued
Benton	Morse Bros. 02-2054, Concrete (Renewal)	5/18/76	Permit Issued
Benton	Morse Bros. 02-2088, Asphalt Plant (Renewal)	5/18/76	Permit Issued
Benton	Morse Bros. 02-2555, Rock Crusher (Renewal)	5/18/76	Permit Issued
Clackamas	Portland Road & Driveway 03-2452, Addendum	5/25/76	Addendum Issued
Columbia	Multnomah Plywood 05-2076, Plywood (Renewal)	5/21/76	Permit Issued
Coos	Menasha Corp. 06-0015, Addendum	5/24/76	Addendum Issued
Jackson	Medford Corp. 15-0048, (Renewal)	5/26/76	Permit Issued
Jackson	Morton Milling Co. 15-0061, Addendum	5/5/76	Addendum Issued
Josephine	Copeland Paving 17-0055, Asphalt Plant (New)	5/18/76	Permit Issued
Lane	Weyerhaeuser 20-8850, Addendum	5/5/76	Addendum Issued
Linn	Morse Bros. 22-0032, Rock Crusher (Renewal)	5/18/76	Permit Issued
Linn	Morse Bros. 22-0603, Asphalt Plant (Renewal)	5/18/76	Permit Issued
Linn	Mack Slate 22-1029, Rock Crusher (Renewal)	5/18/76	Permit Issued
Linn	Pioneer Concrete 22-1031, Rock Crusher (Renewal)	5/18/76	Permit Issued

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PERMIT ACTIONS COMPLETED (51 - con't)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
Linn	Young & Morgan Lumber 22-2520, Sawmill (Renewal)	5/18/76	Permit Issued
Linn	Morse Bros. 22-4004, Asphalt Plant (Renewal)	5/18/76	Permit Issued
Linn	D. G. Shelter Products 22-4006, Millwork (Renewal)	5/18/76	Permit Issued
Linn	Morse Bros. 22-4032, Rock Crusher (Renewal)	5/18/76	Permit Issued
Linn	Morse Bros. 22-4033, Ready Mix Concrete (Renewal)	5/18/76	Permit Issued
Linn	C & C Cedar Products 22-5192, Addendum	5/13/76	Addendum Issued
Linn	Morse Bros. 22-5247, Concrete (Renewal)	5/18/76	Permit Issued
Linn	North Santiam Sand & Gravel 22-6309, Concrete (Renewal)	5/18/76	Permit Issued
Linn	Morse Bros. 22-7134, Asphalt Plant (Renewal)	5/18/76	Permit Issued
Linn	Morse Bros. 22-7135, Rock Crusher (Renewal)	5/18/76	Permit Issued
Linn	Morse Bros. 22-7136, Concrete (Renewal)	5/18/76	Permit Issued
Linn	Morse Bros. 22-7141, Concrete (Renewal)	5/18/76	Permit Issued
Marion	Hills Quarry 24-2553, Rock Crusher (Renewal)	5/18/76	Permit Issued
Marion	Boise Cascade 24-4171, Modification	5/13/76	Permit Issued
Marion	M. P. Materials Corp. 24-5955, Rock Crusher (Renewal)	5/18/76	Permit Issued

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PERMIT ACTIONS COMPLETED (51 - con't)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
Marion	M. P. Materials Corp. 24-5956, Rock Crusher (Renewal)	5/18/76	Permit Issued
Multnomah	Bunge Corp. 26-2003, Addendum	5/6/76	Addendum Issued
Multnomah	GATX Tank Terminals Storage 26-2479, Boiler (New Source)	5/18/76	Permit Issued
Multnomah	McCall Oil & Chemical 26-2596, Modification	5/18/76	Permit Issued
Multnomah	Multnomah County-Animal Control Div. 26-2960, Incinerator (Existing)	5/18/76	Permit Issued
Polk	Jones Rock Products 27-0217, Asphalt, Crusher (Renewal)	5/18/76	Permit Issued
Tillamook	H & P Shake 29-0059, Shake Mill (Existing)	5/18/76	Permit Issued
Union	Boise Cascade 31-0006, Modification	4/28/76	Permit Issued
Yamhill	Amity Rock Products 36-0027, Rock Crusher (Renewal)	5/18/76	Permit Issued
Yamhill	Newberg Ready Mix 36-6121, Concrete (Renewal)	5/18/76	Permit Issued
Yamhill	Kamph Rock Crushing Co. 36-7023, Crusher (Renewal)	5/18/76	Permit Issued

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PERMIT ACTIONS COMPLETED (51 - con't)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
Portable	F. H. McEwen Construction 37-0017, Modification	5/18/76	Permit Issued
Portable	Tillamook County Road Dept. 37-0034, Asphalt Plant (Renewal)	5/18/76	Permit Issued
Portable	Kemhaul, Inc. 37-0057, Modification	5/18/76	Permit Issued
Portable	ACCO Contractors 37-0134, Crusher (Renewal)	5/18/76	Permit Issued
Portable	M. E. Main & Sons 37-0136, Crusher (Renewal)	5/18/76	Permit Issued
Portable	Morse Bros. 37-0137, Concrete (Renewal)	5/18/76	Permit Issued
Portable	Morse Bros. 37-0138, Crusher (Renewal)	5/18/76	Permit Issued

Indirect Sources (3)

Multnomah	Willamette Wharf, 312 space parking facility	5/28/76	Final permit issued
Multnomah	Data Processing Cntr. for ORBANCO, 117 space parking facility	5/28/76	Final permit issued
Marion	G.I. Joes Store, 292 space parking facility	5/28/76	Final permit issued

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PLAN ACTIONS COMPLETED (11)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
Linn	Church of Christ Disposal Site New Site Operational Plan	4/22/76	Letter of Authorization
Douglas	International Paper Co. Long Bell Division Existing Site Operational Plan	5/3/76	Provisional Approval
Douglas	International Paper Co. Horse Barn Disposal Site Existing Site Operational Plan	5/3/76	Provisional Approval
Marion	Woodburn Sanitary Landfill Existing Site Leachate and Storm Water Treat- ment System	5/3/76	Approved
Wallowa	City of Joseph Dump Existing Site Closure Plan	5/6/76	Provisional Approval
Douglas	Canyonville Disposal Site Existing Site Closure Plan	5/10/76	Provisional Approval
Polk	Fowler Demolition Site Existing Site Operational Plan	5/12/76	Approved
Curry	U.S. Plywood Division Champion International Existing Site Operational Plan	5/19/76	Approved

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PLAN ACTIONS COMPLETED (Continued)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
Marion	Stout Creek Lumber Co. Existing Site Revised Operational Plan	5/20/76	Provisional Approval
Wasco	Wasco County's Metal Storage Area New Site Operational Plan	5/24/76	Provisional Approval
Marion	Macleay Demolition Site New Site Construction and Operational Plan	5/28/76	Not Approved

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SUMMARY OF SOLID AND HAZARDOUS WASTE PERMIT ACTIONS

	Permit Actions Received		Permit Actions Completed		Permit Actions Pending	Sites Under Permits	Sites Reqr'g Permits
	Month	Fis.Yr.	Month	Fis.Yr.			
<u>General Refuse</u>							
New	1	10	3	24	3		
Existing	1	4	5	44	52	*-51	
Renewals	2	26	3	30	6		
Modifications	1	10	3	15			
Total	5	50	14	113	61	195	199
<u>Demolition</u>							
New		7	1	7			
Existing			1	2	1	*	
Renewals		4	1	3	1		
Modifications			4	4			
Total		11	7	16	2	13	13
<u>Industrial</u>							
New	1	8	1	11			
Existing		8		26	16	*-12	
Renewals	2	8		9	5		
Modifications		2		3			
Total	3	26	1	49	21	92	96
<u>Sludge Disposal</u>							
New		1					
Existing			1	2			
Renewals		1		2			
Modifications							
Total		2	1	4		8	8
<u>Hazardous Waste</u>							
New				1			
Authorizations	7	10	6	9	1		
Renewals							
Modifications							
Total	7	10	6	10	1	1	1
<u>GRAND TOTALS</u>	<u>15</u>	<u>99</u>	<u>29</u>	<u>192</u>	<u>85</u>	<u>309</u>	<u>317</u>

* Sites operating under temporary permit operation until regular permits are issued.

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PERMIT ACTIONS COMPLETED (30)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
<u>General Refuse (Garbage) Facilities</u>			
Marion	MacLaren School Existing Facility	5/7/76	Permit Issued
Umatilla	Pendleton Landfill Existing Facility	5/24/76	Permit Issued
Umatilla	Weston Landfill Existing Facility (Closed)	5/24/76	Permit Revoked
Baker	Baker Landfill Existing Facility	5/25/76	Permit Amended
Clatsop	Cannon Beach Disposal Site Existing Facility	5/25/76	Permit Issued
Clatsop	Seaside Disposal Site Existing Facility	5/25/76	Permit Issued
Douglas	Glendale Transfer Station New Facility	5/25/76	Permit Issued
Douglas	Yoncalla Transfer Station New Facility	5/25/76	Permit Issued
Multnomah	St. John's Landfill Existing Facility	5/25/76	Permit Amended
Wasco	No. Wasco County Landfill Existing Facility	5/25/76	Permit Amended
Clatsop	Astoria Landfill Existing Facility	5/27/76	Permit Issued

DEPARTMENT OF ENVIRONMENTAL QUALITY
TECHNICAL PROGRAMS

MONTHLY ACTIVITY REPORT

Land Quality
(Reporting Unit)

May 1976
(Month and Year)

PERMIT ACTIONS COMPLETED (Continued)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
Tillamook	Manzanita Disposal Site Existing Facility	5/27/76	Permit Issued (Renewal)
Tillamook	Pacific City Disposal Site Existing Facility	5/27/76	Permit Issued (Renewal)
Tillamook	Tillamook Disposal Site Existing Facility	5/27/76	Permit Issued (Renewal)
Crook	Prineville Reservoir Resort Existing Facility	5/27/76	Permit Issued
<u>Demolition Solid Waste Disposal Facilities (7)</u>			
Multnomah	Land Reclamation, Inc. Existing Facility	5/10/76	Permit Amended
Multnomah	LaVelle and Yett Landfill Existing Facility	5/10/76	Permit Amended
Washington	Hillsboro Landfill Existing Facility	5/10/76	Permit Amended
Marion	Salem Airport Disposal Site Existing Facility	5/13/76	Permit Issued
Marion	Macleay Demolition Site Existing Facility	5/14/76	Permit Amended
Clackamas	LaVelle Landfill Existing Facility	5/24/76	Permit Issued (Renewal)
Linn	Albany Demolition Site Proposed New Facility	5/30/76	Application Denied

DEPARTMENT OF ENVIRONMENTAL QUALITY
TECHNICAL PROGRAMS

MONTHLY ACTIVITY REPORT

Land Quality
(Reporting Unit)

May 1976
(Month and Year)

PERMIT ACTIONS COMPLETED (Continued)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
<u>Sludge Disposal Facilities (1)</u>			
Jefferson	Jefferson Co. Sludge Site Existing Facility	5/13/76	Permit Issued
<u>Industrial Solid Waste Facilities (1)</u>			
Linn	Willamette Industries New Facility	* 4/22/76	Letter Author- ization Issued
<u>Hazardous Waste Facilities (6)</u>			
Gilliam	Chem-Nuclear, Inc. Existing Facility	5/3/76	Three (3) Dispos- al Authorizations Issued
Gilliam	Chem-Nuclear, Inc. Existing Facility	5/5/76	Disposal Authorization Issued
Gilliam	Chem-Nuclear, Inc. Existing Facility	5/11/76	Disposal Authorization Issued
Gilliam	Chem-Nuclear, Inc.	5/21/76	Disposal Authorization Issued

* Not Reported Last Month



ENVIRONMENTAL QUALITY COMMISSION

1234 S.W. MORRISON STREET • PORTLAND, ORE. 97205 • Telephone (503) 229-5696

ROBERT W. STRAUB
GOVERNOR

MEMORANDUM

TO: Environmental Quality Commission
FROM: Director
SUBJECT: Agenda Item No. C, June 25, 1976, EQC Meeting

Variance Extension Request: Northern Wasco County Landfill, Inc.
(formerly Northern Wasco County Refuse Collectors, Inc.,
The Dalles)

Background:

The Environmental Quality Commission, at its September 4, 1974 meeting granted a variance to Northern Wasco County Refuse Collectors, Inc. for a two year period from Oregon Administrative Rule Chapter 340, Section 23-010(2) pertaining to open burning (copy attached).

New owners of the facility have changed the business name to Northern Wasco County Landfill, Inc. and have requested an extension of the variance for two more years.

Discussion:

The company landfill is located approximately 2.9 "airline" miles from The Dalles in a sparsely populated area. Operation over the past two years has demonstrated that this burning activity can be conducted in a manner which results in minimal visual emissions and nuisance conditions while disposing of bulky combustible waste material in an environmentally acceptable manner. Burning of this material significantly extends the life of this landfill, which is the primary refuse disposal site for Wasco County.

Summary and Conclusions:

1. The overall objective of the Department should be to minimize to the extent practicable, open burning and visual emissions in the Columbia Gorge area and to minimize possible effects on visibility.
2. This request has been recommended for approval by the Solid Waste Management Division, and Central Region.



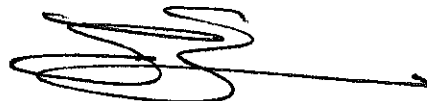
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3. The burning of tree trunks, limbs and other miscellaneous wood products, as surveyed by the staff, can be accomplished under controlled conditions with minimal effect upon air quality in the urban area or air shed.
4. The fire permit agency has reviewed the material and states it will be burned under controlled and acceptable fire protection conditions.
5. The Commission has the authority to grant such variances.
6. The variance should be limited in time to permit reassessment of conditions and alternatives available.

Director's Recommendation:

It is recommended that the Environmental Quality Commission enter a finding that strict compliance with OAR 340-23-010(2) is inappropriate because no other practical alternative facility or method of disposal is available. The Director also recommends that the Commission grant Northern Wasco County Landfill, Inc. a variance from strict compliance with OAR 340-23-010(2) for the period April 30, 1976 through April 30, 1978 under the following conditions:

1. Burning shall be limited to the periods November 1, 1976 through April 30, 1977 and November 1, 1977 through April 30, 1978.
2. Burning shall be limited to three separate burn periods per year, to encompass no more than three continuous days each.
3. Burning shall be conducted at the present stockpile location in lieu of the wigwam waste burner.
4. Burning shall comply with all local fire permit regulations.
5. Burning days and hours must be approved by the Chief of The Dalles Fire Department.
6. Burning of rubber, plastics, paints, solvents, or burning for the purpose of salvage is prohibited.
7. Northern Wasco County Landfill, Inc. shall notify the Department of Environmental Quality, Bend Office (Phone 382-6446) and the Portland Office (Phone 229-5365) on the day preceding each of the three annual burn periods.
8. This variance may be revoked if the Department determines that any of the above conditions are violated, or that the open burning causes local nuisance conditions. The Department will notify the Company in writing within seven days of the revocation, if revocation becomes necessary.



LOREN KRAMER
Director



State of Oregon
CITY of THE DALLES
DEPARTMENT OF ENVIRONMENTAL QUALITY 313 COURT STREET
THE DALLES, OREGON 97058

OFFICE OF CITY CLERK-TREASURER

RECEIVED
MAY 19 1976

(503) 296-5481

WATER QUALITY CONTROL

May 18, 1976

Department of Environmental Quality
1234 S.W. Morrison St.
Portland, Ore. 97205

Re: Northern Wasco Co. Landfill, Inc.

Dear Sir;

The Wasco Rural Fire Protection Board has reviewed the request of the Northern Wasco Co. Landfill and they have instructed me to write the following recommendation.

The Northern Wasco Co. Landfill open burning is a needed service to the community. We are recommending that a open burning variance be granted for a two year period providing that the seven points, in your letter dated September 5, 1974, be re-issued and the variance can be revoked upon finding of violation of any of the seven points.

Copy of your letter is enclosed.

Sincerely;

Gerol Underhill, Acting Chief
The Dalles Fire Department

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
MAY 19 1976
AIR QUALITY CONTROL



ENVIRONMENTAL QUALITY COMMISSION

1234 S.W. MORRISON STREET • PORTLAND, ORE. 97205 • Telephone (503) 229-5696

ROBERT W. STRAUB
GOVERNOR

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. D, June 25, 1976, EQC Meeting

Variance Extension - Reichhold Chemicals, Inc.,
Columbia County

Background

In December 1972, Reichhold Chemicals, Inc. purchased from Shell Chemical Company the ammonium nitrate fertilizer plant constructed by Shell at St. Helens, Oregon, in 1965. It has operated continuously since then in its present location 3 1/2 miles northwest of St. Helens and presently employs 61 people.

In addition to an ammonium nitrate solution, the plant produces ammonia, nitric acid, and a dry form of urea. The urea is manufactured by reacting ammonia with carbon dioxide and by spraying the molten urea mixture from the top of a large tower through an updraft of air. During this process, the droplets solidify and harden into spherical pellets or "prills". These are subsequently bagged and sold for fertilizer.

During this process, particulate matter escapes from the top of the prill tower. The average grain loading is 0.018 gr/SCF which is in compliance with Department standards. Sixty-two percent (62%) of this particulate matter is in the 0.5-1.0 micron range which is the critical visible spectrum and results in visible emissions in excess of the Department's opacity standard. An additional 25 percent of the particulate emission is in the 1.0-2.0 micron range. The facility annually emits in excess of 75 tons per year of particulate.

Early in the plant's operation, Shell Chemical conducted process studies and engineering work on various scrubbing systems for the urea prill tower in an attempt to correct the opacity problem. Three devices were tested at the St. Helens plant and others in California. Shell was considering total recycle of the prill tower exhaust when it sold the operation to Reichhold in 1972.



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Analysis

As previously mentioned, Reichhold Chemicals, Inc. is located 3 1/2 miles northwest of St. Helens, Oregon, near the sparsely populated community of Columbia City. The plant property encompasses approximately 800 acres and the physical plant occupies 50 acres of this parcel. The nearest resident is located approximately 1/4-1/2 mile from the physical plant and the Department has not recorded any complaints related to the urea production process.

Reichhold was aware of the opacity problem upon assuming control of the operation in December 1972. Since that time, efforts by the Company through the chemical fertilizer industry and air pollution consultants to obtain guarantees of an economically feasible system have proven unsuccessful.

On December 19, 1974, representatives of Reichhold and the Department met to discuss the Air Contaminant Discharge Permit proposed for the urea process. As a result of this meeting, it was mutually agreed that the Company would either submit a compliance schedule or apply for a variance relative to the prill tower opacity problem.

Subsequently, in correspondence submitted December 23, 1974, Reichhold stated that investigations had thus far not disclosed any "practicable method of treatment or control to reduce the opacity of the prilling tower to 20 percent or less," and in a meeting with Department officials that same day confirmed their intention to submit a written request for a variance.

On January 13, 1975, Reichhold submitted to this Department a written request for a five year variance from the existing opacity standard. This request was made on the basis of Reichhold's belief that it is presently using the highest and best practicable control available, "since practicable technology to achieve a plume opacity of less than 20 percent for urea prill towers has not been demonstrated."

In a letter dated February 11, 1975, the Department responded that it did not concur with the statement that the highest and best practicable treatment is presently being employed. Several of the vendors cited by Reichhold would guarantee particulate collection efficiencies which the Department believes would be capable of attaining compliance with our opacity standard.

The Department stated that practically no equipment manufacturer will guarantee to meet opacity limits regardless of the application of their equipment, but most will guarantee a collection efficiency or outlet grain loading. The Department contended that a grain loading or collection efficiency can be established which would meet opacity limits and that a schedule and vendor guarantee could be developed based upon this approach. This procedure has been used many times in the past by the Department and industries in the State.

The Department's response further stated that the variance request did not present any evidence that strict compliance would result in substantial curtailment or plant closure. Also, the length of the variance was considered unreasonably long, particularly since no definitive schedule for ultimately attaining compliance was presented.

After meeting with the Department on February 19, 1975, Reichhold Chemicals, Inc. submitted a modified request for a one year operational variance during which time various devices capable of reducing particulate emissions to a level which would give a good assurance of attaining compliance with the opacity standard would be tested.

As required by the one year variance subsequently granted by the Environmental Quality Commission (EQC) on May 23, 1975, Reichhold undertook an extensive research program to identify such a device. A detailed technical report has been submitted which outlines the results of testing completed to date. A partial summary of their efforts is attached.

Of significance was the discovery that the size distribution of the particulate effluent fluctuates over a large range. At present, this is thought to be attributable to variations in ambient air temperature, but further testing is needed to confirm this possibility.

At a meeting held between the Department and Reichhold personnel on March 3, 1976, Reichhold presented this material and other data to substantiate that a pilot facility capable of handling the submicron fume over its full size distribution does not currently exist. It should be noted that theirs is a unique problem in the ammonium nitrate industry.

At that time, Reichhold stated it would need another year in which to confirm some of the data generated before being able to successfully incorporate it into an acceptable design for control equipment.

Oregon Revised Statutes (ORS) Chapter 468.345, 1974 Replacement Part, Variances from Air Contaminant Rules and Regulations, paragraph (1) states that:

The Commission may grant specific variances which may be limited in time from the particular requirement of any rule or standard . . . if it finds that strict compliance with the rule or standard is inappropriate because:

- a. Conditions exist that are beyond the control of the persons granted such variance; or
- b. Special circumstances render strict compliance unreasonable, burdensome or impractical due to special physical conditions or cause; or
- c. Strict compliance would result in substantial curtailment or closing down of a business, plant or operation; or
- d. No other alternative facility or method of handling is yet available.

Conclusions

1. Reichhold Chemicals, Inc. operates a chemical fertilizer plant 3 1/2 miles northwest of St. Helens, Oregon.
2. The Company employs approximately 61 people whose annual payroll and annual operating expenses has a significant impact on local economics.
3. The Company employs a prill tower in its production of pelletized urea from which visible particulate matter escapes in excess of the Department's opacity standards.
4. Extensive Company investigation has thus far resulted in no guaranteed solution to opacity problems. However, the results have further isolated the problem and defined an additional area to be researched.
5. From an overall environmental viewpoint, the granting of a variance will have little impact due to the plant's location. The Department has no record of complaints relative to this source.

6. Granting of a variance by the EQC would be allowable in accordance with ORS 468.345.
7. Since this source is included in the control strategy of the Oregon State Implementation Plan, granting of the said variance will also necessitate an amendment of the Implementation Plan.

Recommendations

Since no practicable method to achieve a plume opacity of less than 20 percent for Reichhold Chemicals, Inc.'s urea prill tower is yet available, it is the Director's recommendation that the Implementation Plan be amended and that a one year variance be granted to Reichhold under the following conditions:

1. Amend the current Air Contaminant Discharge Permit to include the variance period and conditions.
2. During the variance period, the Company will continue to conduct investigations with the ultimate goal being the development of control equipment or operating parameters which are likely to result in compliance with the Department's opacity standard.
3. The Company shall submit a progress report on December 31, 1976, outlining the results of their program. Upon development of control equipment or operating parameters which would likely result in the compliance with the 20 percent opacity standard, but by no later than thirty (30) days prior to the expiration of the variance, Reichhold shall submit a written report to the Department describing the results of the testing program and be prepared to enter a compliance agreement for any method proven acceptable.


LOREN KRAMER
Director

SMW/jms

Attachments:

Reichhold Chemicals, Inc. letter dated April 28, 1976

Reichhold Chemicals, Inc. summary report dated April 1976

6/7/76

REICHHOLD CHEMICALS, INC.

Creative Chemistry . . . Your Partner in Progress



~~FRB~~
~~LDP~~
~~SMW~~
~~TRB~~

Executive Offices • RCI BUILDING, WHITE PLAINS, N. Y. 10602

April 28, 1976

ADDRESS REPLY TO
P. O. BOX 810
ST. HELENS, OREGON 97051
—
TELEPHONE (503) 397-2224

Mr. Thomas R. Bispham
Assistant Administrator
Department of Environmental Quality
1234 S.W. Morrison Street
Portland, Oregon 97205

Dear Tom:

Enclosed are two copies of our progress report on the fume abatement study for our urea prilling tower.


We have not found a practicable scrubbing system that we feel will achieve the 20% opacity requirement, even though nine different systems were tested. There is a possibility that one or more of these systems could adequately reduce the opacity if the size distribution of the particulate could be successfully controlled. Presently, we don't have this ability, and must do additional research and development work through this summer to see if it can be accomplished.

In view of the above, we hereby request a 12 month extension on our variance to allow time to complete work on the opacity problem. As you are aware from the progress reports, our extensive test work has confirmed that the mass emission from the tower is well below the emission rate of particulate matter as determined from Table I of our Air Contaminant Discharge Permit #05-2042.

If you have any questions about the test procedures or our findings, please contact me.

Very truly yours,

REICHHOLD CHEMICALS, INC.


E. J. Stipkala
General Manager

EJS:beb

Enclosures

Dept. of Environmental Quality

RECEIVED

APR 29 1976

PORTLAND REGION

ST. HELENS UREA PRILL TOWER FUME ABATEMENT PILOT TESTS 1975

ITEM	JOHNS-MANVILLE	MYSTAIRE	BECO	APS TEST A	CEBECO	BRINK HV (Glass)	BRINK HE	CURRENT SYSTEM
Date Tested	Feb. 20-24	June, 1975	July, 1975	Aug. 15-16	Aug. 20 - Sept. 15	Oct. 20 - Oct. 30	In Progress	
Gas Δ p	15" WG	4" WG	3" WG	7" WG	15.5" WG	8.5" WG	11.5" WG	3" WG
Liquid Spray Pressure	30 psig	250 psig	250 psig	30 spig	30 psig	50 psig	50 psig	30 psig
L/G Ratio GPM/1000 CFM	0.7	12.0	6.0	14.7	0.42	1.2	1.44	7.5
Overall Efficiency	95%	97.5%	87.5%	95.8%	98.0%	> 3 μ = 93% < 3 μ = 86%	99.8%	50%
Measured Outlet Loading Grain/SCF	0.002	0.001	0.005	0.0017	0.0008	0.0026	0.0001	0.02
Gas Shaft Horsepower-80,000 CFM	251	67	50	117 (1)	260	142	192	50
Liquid Shaft Horsepower	1.5	200	100	30	1	4	5	15

Note (1) Does not include power consumption for ionizer



ENVIRONMENTAL QUALITY COMMISSION

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ROBERT W. STRAUB
GOVERNOR

MEMORANDUM

To: Environmental Quality Commission
From: Director
Subject: Agenda Item No. E, June 25, 1976, EQC Meeting

Authorization to hold a public hearing to revise the kraft mill emission regulation (OAR 340, Sections 25-150 through 25-200)

Discussion:

The initial regulation pertaining to kraft pulp mills was adopted on April 2, 1967 by the Oregon State Sanitary Authority. The Environmental Quality Commission adopted revisions on January 26, 1973. The current regulation is set forth in OAR 340, Sections 25-150 through 25-200.

Kraft mills are known for their particulate and rotten-egg smelling emissions. Therefore, the regulation limits emission of these and other materials from specified production components. The emission limitations are designed to become more restrictive in three stages - July 1, 1975, July 1, 1978 and July 1, 1983.

In accordance with Section 25-200, the Department held a public hearing on January 22, 1976 to review current technology and the adequacy of the regulation with the intent of adopting any revisions or additional emission standards if necessary. In conjunction with this hearing, the Department also had a consultant, Oregon State University, conduct a statistical analysis of some of the emission data obtained from the kraft mill self-monitoring programs. Based on the results of the hearing and statistical analysis, the Department has concluded that a revision of the regulation is necessary for purposes of additions to the regulation, clarification, especially with regard to emissions averaging times, and general housekeeping.

During the development of the January 26, 1973 revisions, a key component of the rationale concerned the recovery furnaces. At that time the Department thinking was that old generation furnaces, those



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associated with direct contact evaporators, would have to be replaced in order to comply with the 1978 and 1983 recovery furnace total reduced sulfur limits. Industry requested an opportunity to evaluate a process modification (black liquor oxidation) in lieu of recovery furnace replacement. Generally speaking the 1978 TRS limits can be attained by black liquor oxidation. However, it now appears that some recovery furnaces may have to be replaced to achieve the 1983 limits. Since these furnace replacements are long term and large capital projects, the regulation revision must be completed as soon as practicable so that specific compliance schedules can be negotiated to assuredly meet 1983 limits.

Upon receiving authorization to hold hearings, the Department will proceed to confer with industry and other interested groups or individuals, develop a proposed revised regulation and conduct the necessary hearings. Copies of proposed regulations will be available at least 30 days before any hearing. The Department will inform the EQC of any substantial issues which may develop.

Director's Recommendation:

It is the Director's recommendation that the Environmental Quality Commission authorize the Director to schedule public hearings at times and places to be determined for the purpose of receiving testimony relevant to the revising of the kraft pulp mill regulations.



LOREN KRAMER
Director

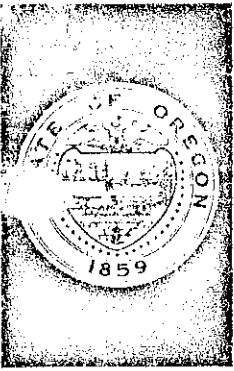
DISCUSSION DRAFT

EMISSION SOURCE(S)	POLLUTANTS AND UNITS	EMISSION LIMITS			PROPOSED CHANGES
		Current 1975	Proposed 1978	Proposed 1983	
I. Recovery Furnace(s)					
A. Individual furnaces	TRS daily average concentration (ppm)	$\frac{15}{(15)}$	$\frac{10}{(10)}$	$\frac{5}{(5)}$	None
	TRS Monthly average mass rate (lb/adt)	$\frac{0.45}{(0.45)}$	$\frac{0.3}{(0.3)}$	$\frac{0.15}{(0.15)}$	None
	TRS Maximum daily cumulative (ppm)	$\frac{40}{(40)}$	$\frac{40}{(40)}$	$\frac{20}{(20)}$	None
	Particulate Monthly average mass rate (lb/adt) ^{1/}	$\frac{4.0}{(4.0)}$	$\frac{4.0}{(4.0)}$	$\frac{4.0}{(4.0)}$	Averaging time defined
	SO ₂ - Average concentration (ppm) ^{2,3/}	$\frac{300}{(300)}$	$\frac{300}{(300)}$	$\frac{300}{(300)}$	None
B. Average of all furnaces at mill site	TRS- Daily average concentration (ppm)	$\frac{10}{(10)}$	$\frac{5}{(5)}$	$\frac{5}{(5)}$	None
	TRS- Monthly average mass rate (lb/adt)	$\frac{0.3}{(0.3)}$	$\frac{0.15}{(0.15)}$	$\frac{0.15}{(0.15)}$	None
II. Lime Kiln(s)					
	TRS-Average concentration (ppm) ^{1,4/}	$\frac{40}{(40)}$	$\frac{20}{(40)}$	$\frac{20}{(20)}$	Averaging time defined and interim date extended
	TRS-Monthly average mass rate (lb/adt)	$\frac{0.2}{(0.2)}$	$\frac{0.1}{(0.2)}$	$\frac{0.1}{(0.1)}$	Interim date extended
	Particulate-Monthly average mass rate (lb/adt) ^{1/}	$\frac{1.0}{(1.0)}$	$\frac{1.0}{(1.0)}$	$\frac{1.0}{(1.0)}$	Avg. time extended
III. Smelt Dissolving Tank(s)					
	Particulate-Monthly average mass rate (lb/adt) ^{1/}	$\frac{0.5}{(0.5)}$	$\frac{0.5}{(0.5)}$	$\frac{0.5}{(0.5)}$	Avg. time defined
IV. Other Sources					
	TRS-Average mass rate (lb/adt) ^{2,5/}	$\frac{-}{(-)}$	$\frac{-}{(0.1)}$	$\frac{-}{(0.1)}$	Numerical limits added

Footnotes

1. Averaging time not defined in current regulation; DEQ and industry have considered it to be on a monthly basis.
2. Daily average - infrequently measured.
3. Measured at least once per month.
4. Proposed revision; average times for 1978 and 1983 are on a daily basis.
5. Measured at least once per year.

Date: June 22, 1976



ENVIRONMENTAL QUALITY COMMISSION

1234 S.W. MORRISON STREET • PORTLAND, ORE. 97205 • Telephone (503) 229-5696

ROBERT W. STRAUB
GOVERNOR

MEMORANDUM

To: Environmental Quality Commission
From: Director
Subject: Agenda Item No. F, June 25, 1976 EQC Meeting
Revisions in Rules - Governing Administrative Procedure

Background and Hearings Report

Only Mr. Thomas Guilbert, representing the Oregon Environmental Council, offered testimony at a public hearing on February 17, 1976. His Amended Testimony, Attachment C, constitutes a fair summary of the oral hearing record.

Discussion

Discussion of the proposals is set forth in the Comments, Attachment B. Please see the attachments for amplification of the matters considered in drafting these proposals. They are as follows:

Proposed Rule	Attachment	A
Comments		B
Hearing Testimony		C
Present Rule		D
Oregon Laws 1975, Chapter 759		E
Current ORS Chapter 183		F
Rule Draft Subject to Public Hearing		G
EPA Comment		H

Recommendation

It is the Director's Recommendation that the Commission adopt the proposed revisions to OAR Chapter 340, sections 11-010 et. seq. (Attachment A) to become effective as permanent rules upon their prompt filing with the Secretary of State.

LOREN KRAMER
Director

PWM:dh

PROPOSED AMENDMENTS TO OAR CHAPTER 340, SECTIONS 11-005 THROUGH 11-135
(NEW MATTER UNDERLINED, DELETED MATTER IN BRACKETS AND LINED-OUT)

SECTION ONE. 11-005 is amended as follows:

11-005 DEFINITIONS. Unless otherwise required by context, as used in this subdivision:

- (1) "Adoption" means the carrying of a motion by the Commission with regard to the subject matter or issues of an intended agency action.
- [~~(1)~~] (2) "Commission" means the Environmental Quality Commission.
- [~~(2)~~] (3) "Department" means the Department of Environmental Quality.
- [~~(3)~~] (4) "Director" means the Director of the Department or any of his authorized delegates.
- (5) "Filing" means the completed mailing to or service upon the Director. Such filing is adequate where filing is required of any document with regard to any matter before the Commission, Department, or Director except a claim of personal liability.
- [~~(4)~~] (6) "License" [~~includes the whole or part of any Department permit, certificate, approval, registration, or similar form of permission required by law to pursue any commercial activity, trade, occupation, or profession.~~] has the same meaning as given in ORS 183.310.
- [~~(5)~~] (7) "Order" has the same meaning as given in ORS 183.310.
- [~~(6)~~] (8) "Party" has the same meaning as given in ORS 183.310 and includes the Department in all contested case hearings before the Commission [~~and before the~~] or Department or any of their presiding officers.
- [~~(7)~~] (9) "Person" [~~includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivision, the state and any agencies thereof, and the Federal Government and any agencies thereof.~~] has the same meaning as given in ORS 183.310.

SECTION ONE CON'T

(10) "Presiding Officer" means the Commission, its Chairman, the Director, or any individual designated by the Commission or the Director to preside in any contested case, public, or other hearing. Any employee of the Department who actually presides in any such hearing is presumptively designated by the Commission or Director, such presumptive designation to be overcome only by a written statement to the contrary bearing the signature of the Commission Chairman or the Director.

~~[(8)]~~ (11) "Rule" has the same meaning as given in ORS 183.310.

SECTION TWO. 11-007 is amended as follows:

11-007 PUBLIC INFORMATIONAL HEARINGS

(1) Whenever there is ~~[held]~~ required or permitted a ~~[public]~~ hearing which is ~~[not]~~ neither a contested case hearing ~~[or]~~ nor a rule making hearing as defined in ~~[Chapter 183 of Oregon Revised Statutes,]~~ ORS Chapter 183, ~~[the procedures set forth in section 11.025 and section 11.025-(2) shall be followed.]~~ the presiding officer shall follow any applicable procedural law, including case law, and rules and take appropriate procedural steps to accomplish the purpose of the hearing. Interested persons may, on their own motion or that of the presiding officer, submit written briefs or oral argument to assist the presiding officer in his resolution of the procedural matters set forth herein.

SECTION TWO, CON'T

- (2) Prior to the submission of testimony by members of the general public the Presiding Officer may present and offer for the record a summary of the questions the resolution of which, in his preliminary opinion, will determine the matter at issue. He may also present so many of the facts relevant to the resolution of these questions as he then possesses and which can practicably be presented in that forum.
- (3) Following the public informational hearing, or within a reasonable time after receipt of the report of the Presiding Officer, the Director or Commission shall take action upon the matter. Prior to or at the time of such action, the Commission or Director may address separately each substantial distinct issue raised in the hearings record. This shall be in writing if taken by the Director or shall be noted in the minutes if taken by the Commission in a public forum.

SECTION THREE. 11-008 is hereby repealed.

SECTION FOUR. 11-010 is amended as follows:

- 11-010 NOTICE OF RULEMAKING. (1) [~~Except as specifically provided otherwise by statute, the Commission shall give~~] Notice of [its] intention to adopt, amend, or repeal any rule(s) shall be in compliance with applicable state and federal laws and rules, including ORS Chapter 183 and subsections (2) and (3) of this section. [by publication not less than twenty-(20) days prior to the date of the proposed action in the bulletin published by the Secretary of State.]
- (2) In addition to the news media on the list established pursuant to ORS 183.335 (6), a copy of the notice shall be furnished to such news media as the Director [Commission] may deem appropriate.
- (3) [~~A copy of the notice shall be mailed to persons on the mailing list established pursuant to ORS 183.335-(3)] In addition to meeting the requirements of ORS 183.335 (2), the notice shall contain the following:~~

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(a) Where practicable and appropriate, a copy of the rule proposed to be adopted.

(b) Where the proposed rule is not set forth verbatim in the notice, a statement of the time, place, and manner in which a copy of the proposed rule may be obtained.

(c) Whether the presiding officer will be a hearing officer or a member of the Commission.

(d) The manner in which persons not planning to attend the hearing may offer for the record written testimony on the proposed rule.

~~[(4)-Each rule-making notice shall contain a description of the Commission's intended action, setting forth the subjects and issues involved in sufficient detail to inform a person that his interest may be affected. Where practicable and appropriate, a copy of the rule proposed to be adopted, amended, or repealed shall be included. If the proposed rule, amendment, or repeal thereof is not set forth verbatim in the notice, the notice shall state the time, place, and manner in which the rule or amendment may be obtained.]~~

~~[(5)-When the Commission is required by law to hold a public hearing on the proposed rule-making, or contemplates that a public hearing is necessary or appropriate, the notice shall additionally include:~~

~~(a)--The time and place of the public hearing.~~

~~(b)--The manner in which interested parties may present their views at the hearing.~~

~~(c)--A designation of the person who is expected to preside at and conduct the hearing, if other than the full Commission.~~

~~[(6)]When the Commission is not required to hold a public hearing, and does not contemplate that a hearing is appropriate to the circumstances of~~

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~~the proposed rule making, the notice shall additionally include:~~

~~(a) -- A statement of the time and place at which data, views, or arguments may be submitted in writing to the Commission.~~

~~(b) -- A statement that any interested person desiring to express or submit his data, views, or arguments at a public hearing must request the opportunity to do so.~~

~~(c) -- A designation of the person to whom a request for public hearing must be submitted and the time and place therefor.~~

~~(d) -- A statement that a public hearing will be held if the Commission receives a request for public hearing within fifteen (15) days after the Commission's notice from ten (10) or more persons or from an association having not less than ten (10) members.]~~

SECTION FIVE. 11-015 and 11-020 are hereby repealed.

SECTION SIX. 11-025 is amended as follows:

11-025 CONDUCT OF RULE MAKING HEARING. (1) The hearing shall be conducted before the Commission, with the Chairman as the presiding officer, or before any member of the Commission, [the Director,] or other [person designated by the Commission to be the] presiding officer.

(2) At the commencement of the hearing, any person wishing to be heard shall advise the presiding officer of his name, address [---Additional persons may be heard at the discretion of the presiding officer.---The presiding officer shall provide an appropriate] on a provided form for listing witnesses [which shall indicate the name of the witness, whether the witness favors or opposes the proposed action,] and such other information as the presiding officer may deem appropriate.

Additional persons may be heard at the discretion of the presiding officer.

(3) At the opening of the hearing the presiding officer shall state, or have stated, the purpose of the hearing.

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~~[(4) At public informational hearings, prior to the submission of testimony by members of the general public, the Director shall present and offer for the record a summary of the questions the resolution of which, in his preliminary opinion, will determine the matter at issue. He shall also present so many of the facts relevant to the resolution of these questions as he then possesses and which can be practicably be presented in that forum.]~~ In his discretion, the presiding officer may present:

- (a) A statement of the issues whose resolution would, in his estimation, determine the matter at issue.
- (b) A statement of such relevant facts as he deems to be presently understood by the agency.

~~[(5)]~~ (4) The presiding officer shall thereupon describe the manner in which ~~[interested parties]~~ persons may present their views at the hearing.

~~[(6)]~~ (5) ~~Subject to the discretion of the Presiding Officer, the order of presentation shall be:~~

- ~~(a) Statements of proponents.~~
- ~~(b) Statements of opponents.~~
- ~~(c) Statements of any other witnesses present and wishing to be heard.~~

The Presiding Officer shall order the presentations in such manner as he deems appropriate to the purpose of the hearing.

~~[(7)]~~ (6) The Presiding Officer and any member of the Commission shall have the right to question or examine any witness making a statement at the hearing. The Presiding Officer may, at his discretion, permit other persons to examine witnesses.

~~[(8)]~~ (7) There shall be no rebuttal or additional statements given by any witness except as requested by the Presiding Officer. However, when such additional statement is given, the Presiding Officer ~~[shall]~~ may allow an equal opportunity for reply by those whose statements were rebutted.

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~~[(9)]~~(8) The hearing may be continued with recesses as determined by the presiding officer until all listed witnesses present and wishing to make a statement have had an opportunity to do so.

~~[(10)]~~(9) The Presiding Officer shall, where practicable and appropriate, receive all physical and documentary evidence presented by witnesses. ~~[Exhibits shall be marked and shall identify the witness offering each exhibit.]~~ Unless otherwise required by law or rule, the exhibits shall be preserved by the Department for a period of one year or, at the discretion of the Commission or Presiding Officer, returned to the persons who submitted them.

~~[(11)]~~(10) The Presiding Officer may, at any time during the hearing [set] impose reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial matter. Persons with a concern distinct from those of citizens in general, and those speaking for groups, associations, or governmental entities may be accorded preferential time limitations as may be extended also to any witness who, in the judgment of the Presiding Officer, has such expertise, experience, or other relationship to the subject matter of the hearing as to render his testimony of special interest to the agency. If the Presiding Officer has reason to believe present are an unusual number of witnesses whose testimony has been elicited merely to indicate popular support of a given position based upon considerations beyond the agency's jurisdiction, the Presiding Officer may require such witnesses to designate a spokesman whose testimony shall alone be received, provided that any person may list himself by name, address, and affiliation, as in support of the testimony given by such spokesman and present written testimony by mail within such reasonable time after adjournment and in such reasonable manner as the Presiding Officer shall announce.

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~~[(12)]~~(11) A verbatim oral, written, or mechanical record shall be made of all the hearing proceedings, or, in the alternative, a record in the form of minutes. Question and answer periods or other informalities before or after the hearing may be excluded from the record. The record shall be preserved for one year, unless otherwise required by law or rule.

SECTION SEVEN. 11-035 is amended as follows:

11-035 ACTION OF THE COMMISSION OR DIRECTOR. ~~(1)~~ Following the rule making hearing by the Commission, or after receipt of the report of the Presiding Officer, the Commission may adopt, amend, or repeal rules within the scope of the notice of intended action.

~~[(2)-Following-the-public-informational-hearing-by-the-Direector,-or-within-a-reasonable-time-after-receipt-of-the-report-by-the-Presiding-Offieer,-the-Direector-shall-take-action-upon-the-matter,--Prior-to-or-at-the-time-of-such-action,-the-Direector-shall-issue-a-written-report-in-which-he-addresses-separately-each-substantial-distinet-issue-raised-in-the-hear-ings-reeord.]~~

SECTION EIGHT. 11-040 and 11-045 are hereby repealed. A new section 11-047 is hereby adopted to read as follows:

11-047 PETITION TO PROMULGATE, AMEND, OR REPEAL RULE: CONTENTS OF PETITION, FILING OF PETITION. (1) Pursuant to the provisions of ORS 183.390 and the rules prescribed thereunder by the Attorney General, any person may petition the Commission requesting the adoption (promulgation), amendment, or repeal of a rule. The petition shall be in writing, signed by or on behalf of the petitioner, and shall contain a detailed statement of:

(a) The rule petitioner requests the agency to promulgate, amend or repeal. Where amendment of an existing rule is sought, the rule shall be set forth in the petition in full with matter proposed to be deleted therefrom enclosed in brackets and proposed additions thereto shown by underlining or bold face.

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- (b) Ultimate facts in sufficient detail to show the reasons for adoption, amendment or repeal of the rule.
 - (c) All propositions of to be asserted by petitioner.
 - (d) Sufficient facts to show how petitioner will be affected by adoption, amendment, or repeal of the rule.
 - (e) The name and address of petitioner and of any other person known by petitioner to be interested in the rule sought to be adopted, amended, or repealed.
- (2) The petition, either in typewritten or printed form, shall be deemed filed when received by the Department.
- (3) Upon receipt of the petition, the Department:
- (a) Shall mail a true copy of the petition together with a copy of the applicable rules of practice to all parties named in the petition. Such petition shall be deemed served on the date of mailing to the last known address of the person being served.
 - (b) Shall advise petitioner that he has 15 days in which to submit written views.
 - (c) May schedule oral presentation of petitions if petitioner makes a request therefore and the Commission desires to hear petitioner orally.
 - (d) Shall, within 30 days after date of submission of the properly drafted petition either deny the petition or initiate rule making proceedings in accordance with applicable procedures for Commission rule making.
- (4) In the case of a denial of a petition to adopt, amend or repeal a rule, the agency shall issue an order setting forth its reasons in detail for denying the petition. The order shall be mailed to the petitioner and all other persons upon whom a copy of the petition was served.

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- (5) Where procedures set forth in this section are found to conflict with those prescribed by the Attorney General, the latter shall govern upon motion of any party other than the Commission or Department.

SECTION NINE. 11-050 is hereby repealed. A new section 11-052 is hereby adopted to read as follows:

11-052 TEMPORARY RULES. The Commission may adopt temporary rules and file the same, along with supportive findings, pursuant to ORS 183.335(5) and 183.355(2).

SECTION TEN. 11-055, 11-060, 11-065, 11-070, 11-075, 11-080, 11-085, 11-090, and 11-095 are hereby repealed. A new 11-062 is hereby adopted to read as follows:

11-062 DECLARATORY RULINGS: INSTITUTION OF PROCEEDINGS, CONSIDERATION OF PETITION, AND DISPOSITION OF PETITION (1) Pursuant to the provisions of ORS 183.410 and the rules prescribed thereunder by the Attorney General, and upon the petition of any person the Commission may, in its discretion, issue a declaratory ruling with respect to the applicability to any person, property or state of facts of any rule or statute enforceable by the agency.

(2) The petition to institute proceedings for a declaratory ruling shall contain:

(a) A detailed statement of the facts upon which petitioner requests the agency to issue its declaratory ruling.

(b) The rule or statute for which petitioner seeks a declaratory ruling.

(c) Sufficient facts to show how petitioner will be affected by the requested declaratory ruling.

(d) All propositions of law or contentions to be asserted by petitioner

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- (e) The question presented for decision by the Commission
 - (f) The specific relief requested
 - (g) The name and address of petitioner and of any other person known by the petitioner to be interested in the requested declaratory ruling
- (3) The petition shall be typewritten or printed.
- (4) The petition shall be deemed filed when received by the Department.
- (5) The Department shall within 30 days after the petition is filed notify the petitioner of the Commission's decision not to issue a ruling or the Department shall, within the same thirty days, serve all parties named in the petition by mail:
- (a) A copy of the petition together with a copy of the Commission's rules of practice; and
 - (b) A notice of the hearing at which the petition will be considered. This notice shall have the contents set forth in subsection (6) below.
- (6) The notice of hearing at which time the petition will be considered shall set forth:
- (a) A copy of the petition requesting the declaratory ruling.
 - (b) The time and place of hearing.
 - (c) A designation of the officer or governing body of the agency or member thereof who will preside at and conduct the hearing.
- (7) The hearing shall be conducted by and shall be under the control of the presiding officer. The presiding officer may be the Chairman of the Commission, any Commissioner, the Director or any other person designated by the Commission or its Chairman.
- (8) At the hearing, petitioner and any other interested party shall have the right to present oral argument. The presiding officer may impose

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reasonable time limits on the time allowed for oral argument. Petitioner and other interested parties may file with the agency briefs in support of their respective positions. The presiding officer shall fix the time and order of filing briefs.

- (9) In those instances where the hearing was conducted before someone other than the Commission, the presiding officer shall prepare an opinion in form and in content as set forth in subsection (11) below.
- (10) The Commission is not bound by the opinion of the presiding officer.
- (11) The Commission shall issue its declaratory ruling within 60 days of the close of the hearing, or, where briefs are permitted to be filed subsequent to the hearing, within 60 days of the time permitted for the filing of briefs. The ruling shall be in the form of a written opinion and shall set forth:
 - (a) The facts being adjudicated by the Commission.
 - (b) The statute or rule being applied to those facts.
 - (c) The Commission's conclusion as the applicability of the statute or rule to those facts.
 - (d) The Commission's conclusion as to the legal effect or result of applying the statute or rule to those facts.
 - (e) The reasons relied upon by the agency to support its conclusions.
- (12) A declaratory ruling issued in accordance with this section is binding between the Commission and the petitioner on the state of facts alleged, or found to exist, unless set aside by a court.
- (13) Where procedures set forth in this section are found to conflict with those prescribed by the Attorney General, the latter shall govern upon motion by any party other than the Commission or Department.

SECTION ELEVEN. 11-097 is amended as follows:

11-097 SERVICE OF WRITTEN NOTICE. (1) Whenever a statute or rule requires that the Commission or Department serve a written notice upon a party other than for purposes of ORS 183.335 or for the purposes of notice to members of the public in general, the notice shall be personally delivered or sent by registered or certified mail.

~~[(2)-An-employee-of-the-Department-or-any-other-competent-person-over-the-age-of-18-years-may-serve-a-written-notice.]~~

~~[(3)]~~(2) The Commission or Department perfects service of a written notice when the notice is posted, addressed to, or personally delivered to:

- (a) The party, or
- (b) Any person designated by law as competent to receive service of a summons or notice for the party; or
- (c) Following appearance of Counsel for the party, the party's counsel.

~~[(4)]~~(3) A party holding a license or permit issued by the Department, or Commission, or an applicant therefor, shall be conclusively presumed able to be served at the address given in his application, as it may be amended from time to time, until the expiration date of the license or permit.

~~[(5)]~~(4) Service of written notice may be proven by a certificate executed by the person effecting service.

~~[(6)]~~(5) In all cases not specifically covered by this section, a rule, or a statute, a writing to a person if mailed to said person at his last known address is rebuttably presumed to have reached said person in a timely fashion, notwithstanding lack of certified or registered mailing.

SECTION TWELVE. 11-100 is amended as follows:

11-100 WRITTEN OF OPPORTUNITY FOR A HEARING

- (1) Except as otherwise provided in [~~section 11-095~~] ORS 183.430 and ORS 670.785, before the Commission or Department shall by order suspend, revoke, refuse to renew, or refuse to issue a license or enter a final order in any other contested case as defined in ORS Chapter 183, it shall afford the licensee, the license applicant or other party to the contested case an opportunity for hearing after reasonable written notice.
- (2) Written notice of opportunity for a hearing, in addition to the requirements of ORS 183.415 (2), [shall] may include:
- ~~[(a)-A-statement-of-the-party's-right-to-request-a-hearing-or-a-designation-of-the-time-and-place-of-the-hearing.~~
 - ~~(b)-A-statement-of-the-authority-and-jurisdiction-under-which-the hearing-would-be-held.~~
 - ~~(c)--A-reference-to-the-particular-sections-of-the-statutes-and-rules involved.~~
 - ~~(d)--A-short-and-plain-statement-of-the-matters-asserted-or-charged.~~
 - (e)(a) A statement that an answer will or will not be required if the party requests a hearing, and, if so, the consequence of failure to answer. A statement of the consequence[s] of failure to answer may be satisfied by serving a copy of section 11-107 upon the party.
 - (b) A statement that the party may elect to be represented by legal counsel.
 - (c) A statement of the party or parties who, in the contention of the Department or Commission, would have the burden of coming forward with evidence and the burden of proof in the event of a hearing.

SECTION THIRTEEN. Section 11-107 is hereby amended to read as follows:

11-107 ANSWER REQUIRED: CONSEQUENCES OF FAILURE TO ANSWER. (1) Unless

waived [~~in writing by the Director~~], in the notice of opportunity for a hearing and except as otherwise provided by statute or rule, a party who has been served written notice of opportunity for a hearing shall have 20 days from the date of mailing or personal delivery of the notice in which to file with the Director a written answer and application for hearing.

(2) In the answer the party shall admit or deny all factual matters and shall affirmatively allege any and all affirmative claims or defenses the party may have and the reasoning in support thereof. Except for good cause shown:

(a) Factual matters not controverted shall be presumed admitted;

(b) Failure to raise a claim or defense shall be presumed to be a waiver of such claim or defense.

(c) New matters alleged in the answer shall be presumed to be denied[;]
unless admitted in subsequent pleading or stipulation by the
Department or Commission, and

(d) Evidence shall not be taken on any issue not raised in the notice and the answer.

(3) In the absence of a timely answer, the Director on behalf of the Commission or Department may issue a default order and judgment, based upon prima facie case made on the record, for the relief sought in the notice.

(4) Notwithstanding the provisions of this section, parties may vary their pleadings, orally or in writing at any time, with the approval of the Presiding Officer after notice to the other parties.

SECTION FOURTEEN. 11-115 is hereby repealed and a new section 11-115 is hereby adopted to read:

11-115 SUBPOENAS AND DEPOSITIONS. Subpoenas and Depositions shall be as provided by ORS 183.425, 183.440, and 468.120 and shall be preceded by a showing of good cause, general relevance, and reasonable scope with regard to the evidence sought. Such showing may be by affidavit based on knowledge and belief. Subpoenas and Depositions may be modified or withdrawn for good cause shown.

SECTION FIFTEEN. Section 11-120(3) is amended to read as follows:

- (3) At the discretion of the presiding officer, the hearing shall be conducted in the following manner:
 - (a) Statement and evidence of the [~~Commission-or-Department~~] party with the burden of coming forward with evidence in support of [~~its~~] his proposed action.
 - (b) Statement and evidence of [~~affected-persons~~] defending party in support of his alleged position or [in-support-of, requesting modification-of, or disputing the Commission's or the Department's proposed action.]
 - (c) Rebuttal [~~testimony~~] evidence, if any.
 - (d) Surrebuttal [~~testimony~~] evidence, if any.

SECTION SIXTEEN. Section 11-120(12) is hereby repealed. A new section 11-121 is hereby adopted to read as follows:

11-121 THE RECORD. The Presiding Officer shall certify such exhibits and transcript as may be necessary for review of final orders and proposed final orders. The Commission or Director may review tape recordings of proceedings in lieu of a prepared transcript.

SECTION SEVENTEEN. 11-125 is hereby amended as follows:

11-125 EVIDENTIARY RULES. (1) [~~The rules of evidence as in equity proceedings shall apply to all hearings in contested cases.~~] In applying the

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standard of admissibility of evidence set forth in ORS 183.450, the Presiding Officer may refuse to admit hearsay evidence inadmissible in the courts of this state where he is satisfied that the declarant is reasonably available to testify and his out of court statement is significant but would not commonly be found reliable because of its lack of corroboration in the record or its lack of clarity and completeness.

- (2) All offered evidence, not objected to, will be received by the Presiding Officer subject to his power to exclude or limit cumulative, repetitious, irrelevant, or immaterial matter.
- (3) Evidence objected to may be received by the Presiding Officer with rulings on its admissibility or exclusion to be made at the time a final order is issued.

Approved
SECTION EIGHTEEN. 11-132 is amended as follows:

11-132 PRESIDING OFFICER'S PROPOSED ORDER IN HEARINGS BEFORE THE COMMISSION.

- (1) In a contested case before the Commission, if a majority of the members of the Commission have not heard the case or considered the record, the Presiding Officer shall prepare a written proposed order [~~and-judgment~~] including findings of fact and conclusions of law. Copies of the proposed order [~~and-judgment~~] shall be filed with the Commission and parties in accordance with section 11-097 (regarding service of written notice).
- (2) The parties shall have fourteen (14) days from the date of mailing or personal service in which to file with the Commission and serve upon the other parties a request that the Commission review the proposed order [~~and-judgment~~].
- (3) Unless a timely request for Commission review is filed with the Commission, or unless within the same time limit the Commission, upon the motion of

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its Chairman or a majority of the members, decides to review it, the proposed order [~~and-judgment~~] of the Presiding Officer shall become the final order [~~and-judgment~~] of the Commission.

- (4) If the Commission review is invoked, then the parties shall be given thirty [~~30~~] days from the date of mailing or personal service of the Presiding Officer's proposed order [~~and-judgment~~], or such further time as the Director or Commission may allow, to file with the Commission and serve upon the other parties written exceptions and arguments to the proposed order [~~and-judgment~~]. Such exceptions and arguments shall include proposed alternative findings of fact, conclusions of law, and order [~~and judgment~~] and shall include specific references to those portions of the record upon which the party relies. As to any finding of fact made by the Presiding Officer, [~~to which no exception, or an inadequate exception, is taken,~~] the Commission may make an identical finding without any further consideration of the record.

Further the Commission may make a finding identical to that proposed by all parties other than the agency without any further consideration of the record.

- (5) Following the expiration of the time allowed the parties to present exceptions and arguments, the Chairman may at his discretion schedule the matter for oral argument before the Commission.
- (6) Notwithstanding whether the procedures set out in subsection (1) through (5) of this section have been completed, a majority of the members of the Commission may at any time personally consider the whole record or appropriate portions thereof and issue a final order [~~and-judgment~~] based thereon.

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- (7) In reviewing a proposed order [~~and-judgment~~] prepared by a Presiding Officer, the Commission may, based upon the record made before the Presiding Officer or appropriate portions thereof, substitute its judgment for that of the Presiding Officer in making any particular finding of fact, conclusion or law, or order. [~~or-judgment~~]
- (8) In reviewing a proposed order [~~and-judgment~~] prepared by a Presiding Officer, the Commission [~~shall-not~~] may take [~~any~~] additional evidence. [~~unless-it-is-shown-to-the-satisfaction-of-the-Commission-that-the-additional-evidence-is-material-and-that-there-were-good-and-substantial-reasons-for-failure-to-present-it-in-the-hearing-before-the-Presiding-Officer.~~] Requests to present additional evidence shall be submitted by motion and shall be supported by an affidavit specifying the reasons for the failure to present it at the hearing before the Presiding Officer. If the Commission grants the motion, or so decides of its own motion, it may hear the additional evidence itself or remand to a Presiding Officer upon such conditions as it deems just.

SECTION NINETEEN. 11-133 is hereby repealed. A new section 11-134 is hereby adopted to read as follows:

11-134 PRESIDING OFFICER'S PROPOSED ORDER IN HEARING BEFORE THE DEPARTMENT.

- (1) In a contested case before the Department, the Director shall exercise powers and have duties in every respect identical to those of the Commission in contested cases before the Commission.
- (2) Notwithstanding subsection (1) of this section, the Commission may, as to any contested case over which it has final administrative jurisdiction, upon motion of its Chairman or a majority of its members, remove to the Commission any contested case before the Department at any time during the proceedings in a manner consistent with ORS Chapter 183.

SECTION TWENTY. A new section 11-140 is hereby adopted to read as follows:
11-140 MISCELLANEOUS PROVISIONS. OAR Chapter 340, sections 11-010 to 11-140,
as amended and adopted June 25, 1976, shall take effect upon prompt filing
with the Secretary of State. They shall govern all further administrative
proceedings then pending before the Commission or Department except to the
extent that, in the opinion of the Presiding Officer, their application in
a particular action would not be feasible or would work an injustice, in
which event, the procedure in former rules designated by the Presiding
Officer shall apply.

PROPOSED AMENDMENTS TO OAR CHAPTER 340, SECTIONS 11-005 THROUGH 11-140.

COMMENTS

SECTION ONE

This section adds definitions to the rules. These include a definition of "adoption" to clarify that such occurs in Commission meetings, not upon filing with the Secretary of State or upon some other event. "Filing" is added to insure that completed mailing to or service upon the Director is sufficient for public business (as opposed to private suits or actions). "License", "party" and "person" are defined identically to the statute. Where there are no strong reasons to the contrary, a definition identical to the statute avoids confusion, diminishes the risk of an unauthorized rule, and will be included in case law which may, from time to time, further clarify the statute. Finally, "presiding officer" is defined functionally so as to preclude any necessity of specific designation of the presiding officer in each case. It is to be noted that those who function as presiding officers, if challenged under current rules, could invoke only their apparent authority as presumptive of their legitimacy.

SECTION TWO

Federal public participation requirements and fundamental fairness often result in hearings which are neither legislative nor quasi judicial in nature. This section makes it clear that such hearings will be subject to whatever federal requirements exist and procedurally allows those interested to guide the agency in choosing the correct hearing format. Subsections (2) and (3) of this section are retained largely in the same form as existing sections 11-025(4), and 11-035(2) which were previously adopted at the request of the Oregon Environmental Council.

Subsection (2) has been made discretionary for reasons similar to those set forth in the COMMENT on SECTION SIX, below. Subsection (3) has been revised to adapt itself to Commission meetings. It is to be noted that existing section 11-035(2) while in the Rule Making subdivision pertains only to informational hearings. It has been made discretionary also. The reasons will be discussed below in relation to SECTION SIX.

SECTION THREE

Deletes provision for variance hearings to be public informational because denial of a variance request might call for a contested case hearing and the proposal set forth in SECTION TWO would adequately serve public hearings preliminary to the granting of a variance.

SECTION FOUR

Oregon Laws 1975, chapter 759 at Section 1 adds to ORS 183.315 the requirement for agency notice to the public in rule making that the agency shall give notice "... in the manner established by rule adopted by the agency which provides a reasonable opportunity for interested persons to be notified of the agency's proposed action...". The Department has felt that existing provisions meet the requirement of a rule so adopted. This is particularly true in that, unlike many agencies, the subscription to our legislatively required list is voluminous, active, and membered by associations with large constituencies. Press coverage of significant rule making activities has been intense. The Oregon Environmental Council proposes a rule which would require the agency to select individuals for notice upon each occasion of rule making. This, we feel, would pose both undue expense and serve as a potential "trip wire" for tedious litigation over the substantial compliance necessary for a valid rule under Section 6, subsection (5) of Oregon Laws 1975, chapter 759 (See Attachment E). With regard to subsection (4) of this same section it may be noted that the Attorney General's office has reviewed both this proposal and the existing rules since the effective date of the 1975 act and found them sufficient. We interpret the Act to refer only to agencies not having already performed the required rule making activity. Given the extensive private and media interest in this agency's rule making activities and the paucity of its budgetary resource to effect public notice, it is felt the current proposal is adequate, reasonable, and within the agency's means. It is the agency's policy to add a courtesy mailing to the required mailing to insure that obviously interested persons are informed.

An attempt has been made to remove from this rule the redundancies pointed out by the Oregon Environmental Council, see page 7 of Mr. Guilbert's testimony (attachment C) and the original draft at page 3 (attachment G).

As is recognized in comments to the Attorney General's Model Rules, ORS 183.335(3) and ORS 183.335(1)(b) (as revised by the 1975 Act) may, taken in conjunction, result in the adoption of a rule before the time has expired within which proper parties may require delay. This agency holds a hearing prior to the adoption of any permanent rule (ORS 468.020(2)). We operate on the presumption that the announcement of intended rule making; when coupled with the announcement of opportunity for oral hearing (Sub-section (3) of Section 4, 1975 Act) and the opportunity to submit data, views, or arguments (ORS 183.335(1)(c), and the above-mentioned subsection of the 1975 Act); will either provide for the necessary input and preclude the need for awaiting request or afford the Commission opportunity to consider any ~~set~~ which might be cited at the time of hearing.

defect

SECTION FIVE

Existing sections 11-015 and 11-020 deal with situations wherein no hearing is contemplated. As mentioned in regard to SECTION FOUR, it is our policy to always hold a hearing. Further, the sections tend to repeat statutory requirements that are now somewhat altered. For these reasons, their deletion is proposed.

It is to be noted that subsection (5) of Section Four of the 1975 Act states itself as being "notwithstanding subsection (1) of this section." In turn, subsection (1) does not contain the requirement of subsection (3) that appropriate parties may, within fifteen days of notice of rule making, receive opportunity for oral hearing. It would seem that, to be given any meaning at all, subsection (5) should mean "notwithstanding both subsections (1) and (3)". One would expect that, in the event of litigation, the courts would find oversight rather than find the entire fifth subsection sterile. Suffice it to say that we are reluctant to suggest rule making in this muddled territory.

SECTION SIX

Removed to the subdivision dealing with public informational hearings is existing subsection (4) of section 11-025. See the COMMENT ON SECTION TWO. The term "interested parties" is exchanged for the term "persons" to avoid the implication that the general public is without standing (an implication never accorded any credulity by the Commission in rule making matters).

The wording in existing sections 11-025(4) and (5) is qualified to render actions discretionary. This is deemed both to affirm the agency's authority to conduct the subject activities and to leave their performance out of the realm of constraint. This proposal is contra to the mandatory nature of the proposal of the Oregon Environmental Council. It is felt that the proposed constraint is both unwise and unnecessary in light of the following:

- (a) All that ideally should be done by an agency is, not by such virtue appropriately "cemented" in a rule as that which must be done.
- (b) In many of the hearings now conducted by this agency the request of the Oregon Environmental Council would be a stultifying; unnecessary prelude to the receipt of testimony.
- (c) The Commission and its designated hearing officers have conducted many hearings without the requested formalities and received no public complaint regarding the absence of such formalities (other than as is inherent in the suggested rule).
- (d) Such formalities would require considerable additional staff time (at public expense) to accompany each and every hearing, whether or not the context for such effort is appropriate.
- (e) Such requirements place every rule making activity in jeopardy of challenge on procedural points that are more traditional for quasi-judicial than legislative activities and pose uncertainty for those (from all sectors) who would benefit by repose in the validity of administrative rules.

SECTION SIX (Cont.)

- (f) The execution of such formalities now lies within the discretion of the agency and can be, in appropriate cases, the subject of negotiation between those notified of rule making (including the Oregon Environmental Council).
- (g) Where such formalities are appropriate, their purpose is better served by operation of the notice of public hearing and the availability of public records (well set out in statute) to enable participants to prepare reaction to agency predisposition well before the time of hearing.

The proposal makes it clear that the presiding officer may conduct the hearing with emphasis on relevant, informed testimony and need not suffer a "parade" of witnesses whose interests and testimony are not related to the subject matter of the hearing. It is noteworthy that proponents of a recently issued Air Contaminant Discharge Permit offered to produce three hundred witnesses on "their side". The rule should clearly provide for the exclusion of such tactics if such exclusion becomes necessary.

Question and answer periods often precede and follow hearings. Subsection (11) of the proposed amendment makes clear that the agency may consider them while warning that that which must be considered remains within the scope of formal testimony and subsequent examination.

SECTION SEVEN

This proposal deletes provisions which are proposed to be removed to OAR Chapter 340, section 11-007. (See SECTION TWO of the proposals.)

SECTION EIGHT

Section 11-040 is sought to be deleted because; (a) the requirement that a rule making body file its rules is inherent in the Administrative Procedure Act and (b) in most cases the person most able to certify the copy filed is he who has taken personal charge of its promulgation, not the Director or his Deputy (if any). Certification is a ministerial duty which is not felt an appropriate expenditure of time for the Director.

Differences between the Department and the Oregon Environmental Council regarding the authority of the agency to adopt rules in the area of petition for rule making have arisen. The history of ORS 183.390 indicates that its wording was taken from the Uniform Model State Administrative Procedures Act with the exception that "the Attorney General" replaces "all agencies". (See Cooper, State Administrative Law at 203 (1965) for historical comment.) While ORS 183.340 provides that the Attorney General shall prepare model rules for adoption by as many agencies as possible, ORS 183.390 provides that "the Attorney General shall prescribe by rule the form for such petitions (requesting adoption, amendment, or repeal of rules) and the procedure for their submission, consideration, and disposition". This specific language augments that of ORS 183.340 in only two areas: that cited above and that of petitions for declaratory ruling.

SECTION EIGHT (cont.)

The Department, with the advice of agency counsel, has concluded that these latter areas were reserved for rule making by the Attorney General only. The existing rule (taken almost verbatim from the previous rules of the Attorney General) differs in some particulars from the Attorney General's model rules as revised (effective October 22, 1975). The current draft is a compromise based on the Oregon Environmental Council's view that the Attorney General has not "prescribed" rules in this area and the Secretary of State's Office has not made the same readily available through its compilation. While the current model rules were preceded and followed by all rule making prerequisites under the Administrative Procedures Act and their filing with the Secretary of State will be followed by their inclusion in the compilation of Oregon Administrative Rules, the Department recommends the current proposal for reasons as follow:

- (a) It clearly provides for the subordination of the Commission's rule to that of the Attorney General.
- (b) It is drafted to effectuate procedures identical to what we feel would be the result on this agency of the present rule of the Attorney General.
- (c) It clearly warns its reader that consultation of the Attorney General's rules is advisable as a precaution.
- (d) It sets forth information regarding the Attorney General's rule.

It is to be noted here that rules should not be adopted to provide for an oversimplification of public information. While a tool of public information, they are also a tool of potential litigation. If, as is the case here, the rule is consequential to a complex circumstance and must thereby stand or fall, it is misleading to draft a rule which implies by its wording that it flows from a broad, unqualified statutory grant of power.

We are unable to recommend that the Commission adopt a rule which would require the Commission, in rejecting a rule-making petition and calling for agency rule drafts on essentially the same subject, to impose a time table on the agency. Our reasons are that:

- (a) Failure to meet this time table might result in litigation.
- (b) The time needed to resolve conflicts between the agency and others prior to taking a rule draft to a hearing is unpredictable but, as experience shows, beneficial as a preliminary phase in most rule making; and
- (c) The Commission now can and often does set a target date for progress in rule making (Development of Regional Indirect Source Plans and consequent rule changes was an example of an optimistic hope for rapid progress which was not realized for reasons completely beyond Department control).

SECTION EIGHT (cont.)

It is worth mentioning that pending federal law or regulation and pending state legislation often make it desirable to delay action. In the instance of Prevention of Significant Deterioration, vigorous activity, including the monitoring of federal proposals through Committee sessions, has constituted the "DEQ oblivion" to which Mr. Guilbert refers.

SECTION NINE

This section merely affirms the agency's prerogative and intent to adopt temporary rules in accordance with procedures which are deemed to be adequately set out in the statutes referenced.

SECTION TEN

Section 11-055 is deleted insofar as it merely recites what is statutorily set forth. The deletion of the remaining sections is to reduce the sections on petitions for declaratory rulings to one. The proposed section on declaratory rulings is taken largely from the current rule of the Attorney General's office and is proposed for reasons akin to those set forth above regarding SECTION EIGHT.

SECTION ELEVEN

This proposal, in addition to the purposes clearly indicated by its alteration, makes clear that general public mailing lists are not to be served by certified mail. It removes the burden of certifying Departmental Employees as over eighteen years of age. Finally, it makes clear that mail not subject to specific formal requirements may be presumed to have reached its addressee. This latter provision is desired for routine business, especially in procedural matters.

SECTION TWELVE

This proposal would apply to cases other than those wherein the statutes provide for a specific time frame. It guarantees reasonable notice prior to a hearing and opportunity for a hearing with no specified time frame. Matter specifically set forth in the statute is deleted from the rule and incorporated by reference. Added to the present rule is the provision that the agency may include its view of where the burden lies in a given contested case. This will serve to notify permit applicants and others that the notice of hearing does not imply the agency's assumption of any inappropriate burden.

SECTION THIRTEEN

This section is revised to better accommodate instances wherein the agency does not have the burden of going forward. It requires parties to state claims as well as denials and defenses in the answer. Further, the agency is given leeway to respond to claims with an admission or stipulation. Finally, discretion is given to allow oral variances from pleadings if appropriate. This would arguably strengthen the jurisdictional basis of a final order going beyond the written pleadings.

SECTION FOURTEEN

This references the authority and sets forth requirements for subpoenas and depositions. It delineates an acceptable method of showing good cause, etc. It makes clear the agency's authority to modify or withdraw.

SECTION FIFTEEN

The rewording is to accommodate the cases wherein the agency's position is a defensive one only. The agency may temper its efforts based on the other party's case in chief (or lack thereof).

SECTION SIXTEEN

Section Sixteen withdraws the present requirement that a transcript be certified in each case before a hearing officer. There are insufficient resources allocated the agency to meet such a requirement.

SECTION SEVENTEEN

This proposal revises the standard of evidence to conform to the amended Act (see Section 12 of Oregon Laws, 1975, Chapter 759 - Attachment E). It attempts to give guidance as to how the rule will be construed.

SECTION EIGHTEEN

This section eliminates the word "judgment" as surplusage and increases Commission discretion to review contested cases. The Commission is allowed to adopt findings identical to those of the person having mastery of the record for purpose of due process. See 2 Cooper, State Administrative Law 452-456 (1965). However, the parties are assured of an opportunity to file exceptions and present argument prior to the issuance of an adverse final order. The Commission retains discretion to call for the entire record or such portions thereof as may be in issue. (See Section 13 of Oregon Laws 1975 - Attachment E).

With regard to proposal 11-132(6) and (7), the term "appropriate" is deemed sufficient when taken in context. Under the proposals, the Commission has increased discretion to subdelegate certain decisions to subordinates while retaining absolute discretion to undertake complete, de novo review. This increase in discretion is supported by the above-cited Section 13 of the 1975 Act and the holding in Warren v. Marion County et. al. 222 Or 307, 353 P. 2d 257 (1960). The term "appropriate" must be taken in context with the preceding sections, dealing with the parties' duties to file adequate exceptions and to allude to specific portions of the record in support thereof.

The Department is unable to recommend a rule providing that settlement of the record would be a final order. Such would open the way to piecemeal judicial review and protracted expense.

SECTION NINETEEN

This proposal eliminates repetition of the previous section and expressly provides for Commission assumption of matters before the Director.

SECTION TWENTY

This section is intended to clarify the application of the rule to procedural matters pending upon adoption and filing.

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

In the Matter of)
Proposed Amendments) AMENDED TESTIMONY OF THOMAS GUILBERT,
to OAR 340-11-005) REPRESENTING THE OREGON ENVIRONMENTAL
through 340-11-135) COUNCIL

Mr. Hearings Officer, my testimony is based in part on a letter dated February 13, 1976 from Peter W. McSwain to Larry Williams of the Oregon Environmental Council: a letter precipitated by a letter from Mr. Williams dated February 12, which I had a part in drafting, and by my telephone conversation with Mr. McSwain on February 13. The DEQ is already in possession of copies of both the February 12 and February 13 letters, and I request that copies of those letters be made a part of the record of this hearing.

At page 2, "SECTION EIGHT" and "SECTION TEN" of ATTACHMENT B to the Amended Notice of Intended Agency Action, the Department of Environmental Quality presents its reason for deleting §§11-045 and 11-060 through 11-090 of the Procedural Rules: The Environmental Quality Commission "*** has no jurisdiction to make such rule[s]. The Administrative Procedure Act gives this power exclusively to the Attorney General's Office." As expanded upon by Mr. McSwain in his letter of February 13, there is a distinction to be made between the language of ORS 183.340, as amended by §6, chapter 759, Oregon Laws 1975, viz: "The Attorney General

shall prepare model rules of procedure ***" (emphasis added), and the language of sentences which appear in identical form in ORS 183.390 and 183.410, viz: "The Attorney General shall prescribe by rule the form for such petitions and the procedure for their submission, consideration, and disposition." (Emphasis added.)

The Attorney General, charged by the Administrative Procedure Act with fulfilling the mandates of both ORS 183.340 on one hand and 183.390 and 183.410 on the other, has made no such distinction.

The Attorney General has not "prescribed"--in any sense which would support the weight placed upon the term by the DEQ--any rules for the form or procedure of either petitions to promulgate, amend, or repeal a rule or of petitions for a declaratory ruling. The Attorney General has prepared rules in these subject matter areas as Rules 10.70 and 20.10 through 20.70 of the Model Rules of Procedure Under the Administrative Procedure Act. They have never been published as a part of Oregon Administrative Rules. In short, the Attorney General has not interpreted "prescribe" to be materially different from "prepare" or "model rules" to be materially different from "rules."

Section 6(1) of chapter 759, Oregon Laws, amending ORS 183.340, specifically states:

*** Any agency may adopt all or part of the model rules but such adoption shall comply with the rule-making procedures under this chapter.***
(Emphasis added.)

Inasmuch as the Attorney General has "prescribed" the rules required by ORS 183.390 and 183.410 as model rules, and only as model rules, if the Environmental Quality Commission were to repeal its existing §§11-045 and 11-060 through 11-090 without at the same time adopting the Attorney General's Model Rules 10.70 and 20.10 through 20.70, there would be for the EQC and DEQ no rules comprehending the subject matter required to be covered by ORS 183.390 and ORS 183.410.

The Environmental Quality Commission need not repeal its existing rules. As Mr. McSwain points out in his February 13 letter, the Attorney General's rules are not incongruent with the existing rules of the EQC. The existing rules do, however, have the virtue of substituting "Commission" and "Department" for the Attorney General's monolithic "agency," which is confusing as applied in this case, and of supplying certainty as to events such as establishing the time and date of filing of a petition. See, e.g., §11-045(2). ORS 183.390 cannot be read to endorse the ambiguity of the Attorney General's rule-for-all-agencies over the EQC's precise rule for this agency, or to require the EQC to adopt a reference without a referent, as it would by adopting the language of rule 10.70(3)(d) of the Attorney General's Model Rules which refers to "Division 1 of these rules."

The situation may be viewed from another perspective. If the DEQ's interpretation of the law were upheld in the

courts after the EQC had retained its present §§11-045 and 11-060 through 11-090, then the only "harm" done is that a bit of surplusage--usefully informational surplusage to the casual reader of EQC-DEQ rules, as noted below--is inserted into the rules. If my interpretation of the law were upheld in the courts after the EQC had repealed §§11-045 and 11-060 through 11-090 relying upon the Attorney General's Model Rules to fill the void, then the EQC and DEQ would be without any rules on vital subject matter.

Even if the DEQ were to obtain an opinion from the Attorney General to buttress its position (in the circumstances, an inexcusable waste of manpower), that opinion would still be open to court challenge if the EQC-DEQ lacked "back-up" rules covering the same subject matter as the Attorney General's rules. With "back-up" rules, however, no person would have reason to challenge the proposition in court, since establishment that the EQC lacked authority to adopt its rules would simultaneously establish that the substantively identical Attorney General's rules govern the situation.

The point relating to the informational value of the "surplusage" noted above is not merely incidental. The Attorney General's Model Rules are not a part of Oregon Administrative Rules. Interested parties, especially those unfamiliar with EQC practice and those headquartered and with counsel out-of-state, may find access to such "unofficially

published" rules difficult. But it is especially for such parties that the EQC and DEQ publish their rules of practice and procedure. Publishing a complete set of procedures all in one place as a part of the EQC's rules of practice and procedure is a valuable service to such persons. The EQC ought to consider this point in reference also to the proposal to delete §§11-015, 11-020, 11-055, and 11-095 which are to be repealed because they repeat language of ORS chapter 183.

In Mr. McSwain's letter of February 13, he notes that proposed rule 11-005(6), adding a new definition of "Direct interest," is a vestigial remain of an earlier draft in which the DEQ attempted to make a distinction between those who may testify at a hearing on whether to entertain a petition and those who may testify at a rule-making hearing itself. He there states his belief that the definition should be deleted. (Another vestigial appearance of the term is §11-025(10).)

The proposed definition of "Direct interest" is anathema to public interest associations like the Oregon Environmental Council. It does raise the interesting prospect that, whether or not the EQC could adopt rules differing from the Attorney General's rules "prescribed" under ORS 183.390 and 183.410, it can certainly adopt rules which adopt for the agency a definitive interpretation of terms used in the rules. We request that "interested person," as

used in the Administrative Procedure Act and the Attorney General's Model Rules, be conclusively interpreted by the EQC's rules of practice and procedure in such a way as to guarantee that organizations such as the Oregon Environmental Council and, yes, Associated Oregon Industries, would have unquestioned access to proceedings before the EQC and DEQ.

We further recommend that the EQC take this opportunity to expand upon §11-045(4), in a manner which would abridge none of the rights and privileges contemplated by Rule 10.70 of the Attorney General's Model Rules, but which would take historical practice into account. When presented with a petition to adopt an ambient air standard for lead, and again when presented with a petition to promulgate a rule for the prevention of significant deterioration of air quality, the EQC denied the petitions to initiate rule making on the specific rules presented, at the same time directing the DEQ to initiate rule making on the same subject matter. In both instances, the matters sank into DEQ oblivion for about a year. We therefore propose that §11-045(4) be amended to read:

- (4) The Commission shall promptly:
 - (a) grant the petition and initiate the rule-making proceedings petitioned for in accordance with sections 11-005 through 11-035; or
 - (b) deny the petition and issue an order which sets forth in detail its reasons for denial; or

(c) by order establish a timetable within which it resolves to promulgate or amend rules relating to the substantial subject matter of the petition; such order shall set forth in detail its reasons for declining to initiate rule making on the proposal contained in the petition.

In proposed §11-010(2), you have a drafting problem. Since ORS 183.335(6) is part of ORS Chapter 183 and of state laws, it is doubly covered by subsection (1), and thus doubly redundant in subsection (2). As to the remaining part of subsection (2), restriction to "news media" is unduly narrow. There are many instances where other persons are more "appropriate" recipients of a notice of intended agency action.

In §11-025(3), we welcome the new additions, but question whether the presentations should be optional with the presiding officer. Where such information is available, it seems to us that to withhold it would violate procedural due process.

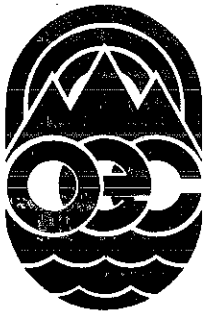
In §11-025(10), we understand the considerations which lead to the desire to add language. Has the added language really helped, though? And doesn't the final sentence give sanction to a practice the EQC and DEQ wish to discourage?

In §11-025(11), you appear to hamstring yourself with the mandatory "shall." Often, especially at EQC meetings,

the question and answer period provides valuable contextual history of a vote, or the most decisive piece of information. We suggest that you leave to the discretion of the presiding officer the supplementation of the record by such "informalities."

In §§11-132(6) and (7), the term "appropriate" needs tightening. We suggest that (6) be revised to allow the presiding officer to certify to the Commission those portions of the record he or she deems relevant, subject to the right of both parties to request that one member of the Commission designated by the Chairman listen to specified portions of the recording of the hearing or read documentary evidence excluded from record so certified, and decide whether to supplement the record which the entire Commission will review. Decisions denying certification of portions of the record requested to be certified by a party should be final orders, subject to appeal to the Court of Appeals prior to a decision on the certified record by the Commission.

The Oregon Environmental Council appreciates having been given the opportunity to present its views on this important rule making.



OREGON ENVIRONMENTAL COUNCIL

2637 S.W. WATER AVENUE, PORTLAND, OREGON 97201 / PHONE: 503/222-0633

RECEIVED
FEB 13 1976
DEPT. OF ENVIRONMENTAL QUALITY

Mr. Peter McSwain
Hearings Officer
Environmental Quality Commission
1234 S.W. Morrison
Portland, Oregon 97204

Re: DEQ Proposed Changes in
Administrative Rules

Dear Mr. McSwain:

We are very alarmed at the amendments the Department of Environmental Quality is proposing to make to OAR Chapter 340, Sections 11-005 through 11-135. We will be appearing at the hearing with additional specific comments, but wish to respond in a letter to one particular change which supersedes all the others in importance.

In particular, the amendment proposed at page eight to repeal Section 11-045 would repeal the citizen power to initiate rule making proceedings! In the comments on the proposed amendments DEQ explains the change in this manner:

"Also deletes procedural provisions for Petition to Amend or Repeal because agency has no jurisdiction to make such a rule. The Administrative Procedure Act gives power exclusively to the Attorney General's Office."

The stated reason is totally without support in the law.

Section 6 of Chapter 759, Oregon Laws 1975, states, in relevant part:

"The Attorney General shall prepare model rules of procedure appropriate for use by as many agencies as possible. Any agency may adopt all or part of the model rules***. The model rules may be amended from time to time by the Attorney General after notice and opportunity for hearing as required by rule-

A. F. T. E. R., Tigard
AMERICAN ASSOCIATION OF UNIVERSITY
WOMEN, Forest Grove Chapter
Portland Chapter
AMERICAN INSTITUTE OF ARCHITECTS
The Portland Chapter
Southwestern Oregon Chapter
AMERICAN SOCIETY OF LANDSCAPE ARCHITECTS
Oregon Chapter
ANGLERS CLUB OF PORTLAND
ASSOCIATED GENERAL CONTRACTORS OF AMERICA
AUDUBON SOCIETY, Portland, Central Oregon, Corvallis
BAY AREA ENVIRONMENTAL COMMITTEE
Coos Bay, Oregon
CHEMEKETANS, Salem, Oregon
CITIZENS FOR A CLEAN ENVIRONMENT
Corvallis, Oregon
CLATSOP ENVIRONMENTAL COUNCIL
EAST SALEM ENVIRONMENTAL COUNCIL
ECO-ALLIANCE, Corvallis
EUGENE FUTURE POWER COMMITTEE
EUGENE NATURAL HISTORY SOCIETY
FRIENDS OF THE EARTH
GARDEN CLUBS of Cedar Mill, Corvallis,
Eastmoreland, Fir Grove, McKenzie River,
Nahalem Bay, Portland, Scappoose, Villa
GOOSE HOLLOW FOOTHILLS LEAGUE
JUNIOR LEAGUE, Eugene, Portland
LEAGUE OF WOMEN VOTERS
Central Lane
Coos County
McKENZIE FLYFISHERS, Eugene, Oregon
McKENZIE GUARDIANS, Blue River, Oregon
MT. HOOD COMMUNITY COLLEGE
OUTDOOR CLUB
NEWPORT FRIENDS OF THE EARTH
NORTHWEST ENVIRONMENTAL
DEFENSE CENTER
NORTHWEST STEELHEADERS COUNCIL OF TROUT
UNLIMITED, Tigard, Willamette Falls
OBSIDIANS, INC., Eugene, Oregon
1,000 FRIENDS OF OREGON
OREGON BASS AND PANFISH CLUB
OREGON GUIDES AND PACKERS, Sublimity, Oregon
OREGON LUNG ASSOCIATION
OREGON PARK & RECREATION SOCIETY
Eugene, Oregon
OREGON ROADSIDE COUNCIL
OREGON SHORES CONSERVATION COALITION
O.S.P.I.R.G.
PLANNED PARENTHOOD ASSOCIATION, INC.
Lane County
Portland
PORTLAND RECYCLING TEAM, INC.
P.U.R.E., Bend, Oregon
REED COLLEGE OUTING CLUB
Portland, Oregon
ROGUE ECOLOGY COUNCIL
Ashland, Oregon
SANTIAM ALPINE CLUB
Salem, Oregon
SELLWOOD-MORELAND IMPROVEMENT
LEAGUE, Portland
SIERRA CLUB
Pacific Northwest Chapter
Columbia Group, Portland
Klamath, Klamath Falls
Mary's Peak, Corvallis
Mt. Jefferson, Salem
Rogue Valley, Ashland
SOLV
SPENCER BUTTE IMPROVEMENT ASSOCIATION
Eugene, Oregon
STEAMBOATERS
SURVIVAL CENTER, U. of O., Eugene
TEAMSTERS FOOD PROCESSORS
UMPUQUA WILDERNESS DEFENDERS
WESTERN RIVER GUIDES ASSOCIATION, INC.
YAMETTE RIVER GREENWAY ASSOCIATION
WOMEN'S LAW FORUM, U of O, Eugene

Mr. Peter McSwain
February 12, 1976

Page 2

making proceedings under this chapter. ***
All agencies shall adopt rules of procedure
to be utilized in the adoption of rules***.
The Attorney General shall compile *** [t]he
procedural rules of all agencies that have
not adopted the Attorney General's model
rules ***." (Emphasis added.)

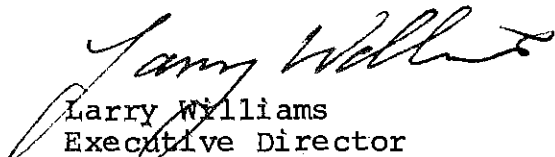
Section 3 of Chapter 759 states that "***each agency shall
publish a description of***the methods whereby the public may***
make submissions or requests."

The two quoted sections are the only sections relating to the
question of whether the DEQ has jurisdiction to adopt a rule
similar to rule 11-045. Note: (1) The DEQ need not "make" this
rule; it is already in effect; (2) Any agency may adopt all or
part of the Attorney General's model rules and thus by implication
may reject all or part of them; (3) The law clearly contemplates
that some agencies will adopt procedural rules that are not the
Attorney General's model rules. The assertion in Attachment B
of the amended notice of intended agency action is therefore
directly contrary to the language of the statute.

Additionally, the power of existing rule 11-045 can hardly be
called unrestrained. If the EQC does not like a proposed rule-
making, it can merely dismiss the proceeding. Repeal of rule
11-045, however, would deprive citizen organizations of any
formal means to present the question to the EQC.

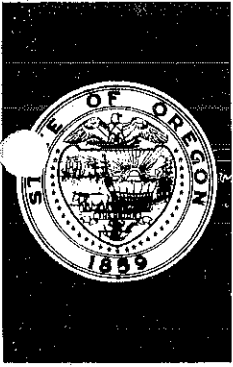
We cannot understand why the Department of Environmental Quality
would be interested in cutting off citizen activists through
the rule-making procedure. Such a move is not in character with
Oregon's open form of government. We strongly urge that the
Department delete this change from the rule-making proposal.

Sincerely,


Larry Williams
Executive Director

LW:alh

cc: Environmental Quality Commissioners
Loren Kramer
OSPIRG
1000 Friends of Oregon
NEDC
Janet McLennan



**DEPARTMENT OF
ENVIRONMENTAL QUALITY**

1234 S.W. MORRISON STREET • PORTLAND, ORE. 97205 • Telephone (503) 2295301

February 13, 1976

Mr. Larry Williams
Executive Director
Oregon Environmental Council
2637 S. W. Water Avenue
Portland, Oregon 97201

Re: DEQ Proposed Changes in
Administrative Rules

Dear Mr. Williams:

Thank you for your February 12 comments on the draft revisions to our administrative procedure rules.

Please be assured this agency has no desire to abridge citizen standing to petition rule adoption. Moreover, our reading of ORS chapter 183 leads us to believe no agency would have authority to do so.

With regard to only two areas of administrative procedure the Act specifically states: "The Attorney General shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition." These areas are those of declaratory rulings (ORS 183.410) and requesting adoption of rules (ORS 183.390).

You will note the above quoted language does not deal with "model" rules. We feel that these areas, the only two wherein specific mention is made of rules to be "prescribed" by the Attorney General to deal with "submission, consideration, and disposition," contain specific language which governs over the general.

COPY

Mr. Larry Williams
February 13, 1976
Page Two

We would point out that the Attorney General's present rule is largely identical to our present "purported" rule and provides an orderly process upon which both petitioner and the agency may stand when appropriate. However, this agency frequently waives such formalities and takes informal requests before the Commission. We will continue to do so where appropriate because in many cases, particularly where attorneys are not involved and the rule sought is not complex, informal access to the Commission is both welcome and adequate. The vast majority of such cases obviously were not even preceded by the petitioner's consulting the rule.

It is to be noted that the definition of "Direct Interest" in the draft was inadvertantly left in, has no usage in the draft or the Attorney General's rules, and might well be deleted. It was originally intended to draft a rule which would sever the process of deciding to entertain a petition to amend from the process of public comment on the proposed amendment (which would come only if the petition is granted). The intent was to give not only the petitioner but also those who would be directly affected by the amendment a right to be heard in the initial decision as well as the public forum which might follow. Since this would govern "consideration" of the petition, it may well be within the province of the Attorney General's office and was therefore abandoned. (ORS 183.390)

Mr. Guilbert has suggested the adoption of a rule requiring Commission consideration of public interest in a petition as a criterion favoring a rule-making hearing (granting a petition). I see no objection to this. It might suffer from lack of authority for the above reasons, however.

I have not specifically discussed several of the above points with counsel and so am forwarding this letter and yours to Mr. Underwood for his review.

It might be well to add language to the revision clearly stating that rule-change petitions are governed by the Attorney General's model rules. To do so, how-

Mr. Larry Williams
February 13, 1976
Page Three

ever, might not be a rule-making activity, but a mere recital of legal fact, more appropriate to a public information pamphlet than a rule draft.

We look forward to your comments in the forthcoming hearing on this and other matters.

Sincerely,

Peter W. McSwain
Hearing Officer

PWM:cm

cc: Janet McLennan
Environmental Quality Commission
Loren Kramer
Raymond P. Underwood
OSPIRG
1000 Friends of Oregon
Northwest Environmental Defense Center
Tom Gilbert

RULES OF GENERAL APPLICABILITY AND ORGANIZATION

DIVISION 11

RULES OF PRACTICE AND PROCEDURE

[ED. NOTE: Previous sections 340-11-005 to 340-11-170 filed as Administrative Order SA 10, are repealed. Unless otherwise specified, sections 340-11-005 through 340-11-135 of this chapter of the Oregon Administrative Rules Compilation were adopted by the Environment Quality Commission May 24, 1974, and filed with the Secretary of State June 5, 1974 as DEQ 72. Effective 6-25-74. Supersedes temporary rules filed and effective 3-22-74 as DEQ 69(T).]

Definitions

340-11-005 Unless otherwise required by context, as used in this subdivision:

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

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

(3) "Director" means the Director of the Department or any of his authorized delegates.

(4) "License" includes the whole or part of any Department permit, certificate, approval, registration or similar form of permission required by law to pursue any commercial activity, trade, occupation or profession.

(5) "Order" has the same meaning as given in ORS 183.310.

(6) "Party" has the same meaning as given in ORS 183.310 and includes the Department in all contested case hearings before the Commission and before the Department or any of their presiding officers.

(7) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the Federal Government and any agencies thereof.

(8) "Rule" has the same meaning as given in ORS 183.310.

Hist: Filed and Eff. 3-22-74 as DEQ 69(Temp)
Filed 6-5-74 as DEQ 72, Eff. 6-25-74
Amended 9-6-74 by DEQ 78, Eff. 9-25-74

Public Information Hearings

340-11-007 Whenever there is held a public hearing which is not a contested case hearing or a rule making hearing, as defined in Chapter 183 of Oregon Revised Statutes, the procedures set forth in section 340-11-025 and section 340-11-035(2) shall be followed.

Hist: Filed 9-6-74 as DEQ 78, Eff. 9-25-74

Hearings on Variances

340-11-008 Whenever a hearing is held regarding an application for any variance authorized to be issued

by the Commission or the Department, it shall be a public informational hearing pursuant to section 340-11-007.

Hist: Filed 9-6-74 as DEQ 78, Eff. 9-25-74

Rule Making

Notice of Rule Making

340-11-010 (1) Except as specifically provided otherwise by statute, the Commission shall give notice of its intention to adopt, amend, or repeal any rules by publication not less than twenty (20) days prior to the date of the proposed action in the bulletin published by the Secretary of State.

(2) A copy of the notice shall be furnished to such news media as the Commission may deem appropriate.

(3) A copy of the notice shall be mailed to persons on the mailing list established pursuant to ORS 183.335(3).

(4) Each rule-making notice shall contain a description of the Commission's intended action, setting forth the subjects and issues involved in sufficient detail to inform a person that his interest may be affected. Where practicable and appropriate, a copy of the rule proposed to be adopted, amended, or repealed shall be included. If the proposed rule, amendment, or repeal thereof is not set forth verbatim in the notice, the notice shall state the time, place, and manner in which the rule or amendment may be obtained.

(5) When the Commission is required by law to hold a public hearing on the proposed rule making, or contemplates that a public hearing is necessary or appropriate, the notice shall additionally include:

(a) The time and place of the public hearing.

(b) The manner in which interested parties may present their views at the hearing.

(c) A designation of the person who is expected to preside at and conduct the hearing, if other than the full Commission.

(6) When the Commission is not required to hold a public hearing, and does not contemplate that a hearing is appropriate to the circumstances of the proposed rule making, the notice shall additionally include:

(a) A statement of the time and place at which data, views, or arguments may be submitted in writing to the Commission.

(b) A statement that any interested person desiring to express or submit his data, views, or arguments at a public hearing must request the opportunity to do so.

(c) A designation of the person to whom a request for public hearing must be submitted and the time and place therefor.

(d) A statement that a public hearing will be held if the Commission receives a request for public hearing within fifteen (15) days after the Commission's notice

from ten (10) or more persons or from an association having not less than ten (10) members.

Hist: Filed and Eff. 3-22-74 as DEQ 69(Temp)
Filed 6-5-74 as DEQ 72, Eff. 6-25-74

Request for a Public Hearing

340-11-015 If ten (10) persons or an association having more than ten (10) members make a timely request for a public hearing on proposed rule making, the Commission shall give notice thereof in conformity with section 340-11-010(5).

Hist: Filed and Eff. 3-22-74 as DEQ 69(Temp)
Filed 6-5-74 as DEQ 72, Eff. 6-25-74

Postponing Intended Action

340-11-020 (1) The Commission shall postpone its intended action upon request of an affected person, received within fifteen (15) days after the Commission's notice, in order to allow the requesting person an opportunity to submit data, views, or arguments concerning the proposed action.

(2) Postponement of the date of intended action shall be no less than ten (10) nor more than ninety (90) days. In determining the length of postponement, the Commission shall consider the time necessary to give reasonable notice of the postponement and the complexity of the subject and issues of the intended action.

(3) The Commission shall give notice of the postponement pursuant to section 340-11-010 but publication in the Secretary of State's Bulletin is required only when the notice can be published in the Bulletin prior to the postponement date of the intended action.

(4) This section does not apply to adoption of temporary rules by the Commission pursuant to ORS 183.335(2) and section 340-11-050.

Hist: Filed and Eff. 3-22-74 as DEQ 69(Temp)
Filed 6-5-74 as DEQ 72, Eff. 6-25-74

Conduct of Hearing

340-11-025 (1) The hearing shall be conducted before the Commission, with the Chairman as the presiding officer, or before any member of the Commission, the Director, or other person designated by the Commission to be the presiding officer.

(2) At the commencement of the hearing, any person wishing to be heard shall advise the presiding officer of his name, address, and affiliation. Additional persons may be heard at the discretion of the presiding officer. The presiding officer shall provide an appropriate form for listing witnesses which shall indicate the name of the witness, whether the witness favors or opposes the proposed action and such other information as the presiding officer may deem appropriate.

(3) At the opening of the hearing, the presiding officer shall state, or have stated, the purpose of the hearing.

(4) At public information hearings, prior to the submission of testimony by members of the general public, the Director shall present and offer for the record a summary of the questions the resolution of

which, in his preliminary opinion, will determine the matter at issue. He shall also present so many of the facts relevant to the resolution of those questions as he then possesses and which can practicably be presented in that forum.

(5) The presiding officer shall thereupon describe the manner in which interested parties may present their views at the hearing.

(6) Subject to the discretion of the presiding officer, the order of the presentation shall be:

(a) Statements of proponents.

(b) Statements of opponents.

(c) Statements of any other witnesses present and wishing to be heard.

(7) The presiding officer and any member of the Commission shall have the right to question or examine any witness making a statement at the hearing. The presiding officer may, at his discretion, permit other persons to examine witnesses.

(8) There shall be no rebuttal or additional statements given by any witness except as requested by the presiding officer. However, when such additional statement is given, the presiding officer shall allow an equal opportunity for reply.

(9) The hearing may be continued with recesses as determined by the presiding officer until all listed witnesses present and wishing to make a statement have had an opportunity to do so.

(10) The presiding officer shall, where practicable and appropriate, receive all physical and documentary evidence presented by witnesses. Exhibits shall be marked and shall identify the witness offering each exhibit. The exhibits shall be preserved by the Department for a period of one year, or, at the discretion of the Commission, returned to the persons who submitted them.

(11) The presiding officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial matter.

(12) A verbatim oral, written, or mechanical record shall be made of all the hearing proceedings, or, in the alternative, a record in the form of minutes.

Hist: Filed and Eff. 3-22-74 as DEQ 69(Temp)
Filed 6-5-74 as DEQ 72, Eff. 6-25-74
Amended 9-6-74 by DEQ 78, Eff. 9-25-74

Presiding Officer's Report

340-11-030 (1) Where the hearing has been conducted before other than the full Commission, the presiding officer, within a reasonable time after the hearing, shall provide the Commission with a written summary of statements given and exhibits received, and a report of his observations of physical experiments, demonstrations, or exhibits. The presiding officer may also make recommendations to the Commission based upon the evidence presented, but the Commission is not bound by such recommendations.

(2) At any time subsequent to the hearing, the Commission may review the entire record of the hearing and make a decision based upon the record. Thereafter, the presiding officer shall be relieved of his duty to provide a report thereon.

Hist: Filed and Eff. 3-22-74 as DEQ 69(Temp)
Filed 6-5-74 as DEQ 72, Eff. 6-25-74
Amended 9-6-74 by DEQ 78, Eff. 9-25-74

Action of the Commission or Director

340-11-035 (1) Following the rulemaking hearing by the Commission, or after receipt of the report of the presiding officer, the Commission may adopt, amend, or repeal rules within the scope of the notice of intended action.

(2) Following the public informational hearing by the Director, or within a reasonable time after receipt of the report of the presiding officer, the Director shall take action upon the matter. Prior to or at the time of such action, the Director shall issue a written report in which he addresses separately each substantial distinct issue raised in the hearings record.

Hist: Filed and Eff. 3-22-74 as DEQ 69(Temp)
Filed 6-5-74 as DEQ 72, Eff. 6-25-74
Amended 9-6-74 by DEQ 78, Eff. 9-25-74

Notice of Commission Action: Certification to Secretary of State

340-11-040 The Department shall file in the office of the Secretary of State a copy of each rule adopted, amended, or repealed by the Commission, certified by the Director, or Deputy Director, of the Department.

Hist: Filed and Eff. 3-22-74 as DEQ 69(Temp)
Filed 6-5-74 as DEQ 72, Eff. 6-25-74

Petition to Promulgate, Amend, or Repeal Rule: Contents of Petition, Filing of Petition

340-11-045 (1) An interested person may petition the Commission requesting the promulgation, amendment, or repeal of a rule. The petition shall be in typewritten form, signed by or on behalf of the petitioner and shall contain a detailed statement of:

(a) The rule petitioner requests the Commission to promulgate, amend, or repeal. If amendment of an existing rule is sought, the rule shall be set forth in the petition in full with matter proposed to be deleted therefrom enclosed in brackets and proposed additions thereto shown by underlining.

(b) Ultimate facts in sufficient detail to show the reasons for adoption, amendment, or repeal of the rule.

(c) All propositions of law to be asserted by petitioner.

(d) Sufficient facts to show how petitioner will be affected by adoption, amendment, or repeal of the rule.

(e) The name and address of petitioner and of any other persons known by petitioner to be interested in the rule sought to be adopted, amended, or repealed.

(2) The petition shall be deemed filed when received by the Department at the office of the Director.

(3) Upon receipt of the petition, the Department:

(a) Shall serve a true copy of the petition, together with a copy of any applicable rules of practice, on all persons named in the petition, and on those whom the Department believes to have an interest in the proceeding. For the purposes of this subsection, service shall be deemed perfected on the date such copies are mailed to the last known address of the person being served.

(b) Shall advise petitioner that he has fifteen (15) days in which to supplement his petition in writing with additional data, views, or arguments.

(c) Shall advise all other persons served that they have fifteen (15) days in which to submit written data, views, or arguments regarding the petition.

(d) May schedule oral presentation of petitioner's views if petitioner makes a request therefor, or if the Commission wishes to hear petitioner orally.

(4) The Commission shall promptly either deny the petition or initiate rulemaking proceedings in accordance with sections 340-11-005 through 340-11-040 and, if it denies the petition, shall issue an order setting forth its reasons in detail. The order shall be mailed to the petitioner and to all other persons upon whom a copy of the petition was served.

Hist: Filed and Eff. 3-22-74 as DEQ 69(Temp)
Filed 6-5-74 as DEQ 72, Eff. 6-25-74

Temporary Rules

340-11-050 (1) The Commission may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it finds practicable and appropriate, to adopt a rule without the notice otherwise required by ORS Chapter 183 and by these rules. In such a case, the Department shall:

(a) File a copy, certified by the Director or by the Deputy Director of the Department, of the rule with the Secretary of State.

(b) File with the Secretary of State the Commission's findings that failure of the Commission to act promptly will result in serious prejudice to the public interest or to the interest of the parties concerned. The findings shall be supported by a statement of specific facts and reasons.

(c) Take practicable and appropriate measures to make the temporary rule known to persons who may be affected by it.

(d) Furnish copies of the temporary rule to such news media as the Commission deems appropriate to comply with the notice requirement of these rules.

(2) A temporary rule adopted in compliance with this section becomes effective immediately upon filing with the Secretary of State, or at a designated later date.

(3) A temporary rule may be effective for no longer than 120 days, and may not be extended, renewed, or repromulgated beyond the initial 120 days. In accordance with the procedures established by sections 340-

11-005 through 340-11-040, the Commission may adopt a rule identical to an existing temporary rule.

Hist: Filed and Eff. 3-22-74 as DEQ 69(Temp)
Filed 6-5-74 as DEQ 72, Eff. 6-25-74

Application of Sections 340-11-005 to 340-11-040

340-11-055 Sections 340-11-005 through 340-11-040 do not apply to rules establishing an effective date for a previously effective rule or establishing a period during which a provision of a previously effective rule will apply.

Hist: Filed and Eff. 3-22-74 as DEQ 69(Temp)
Filed 6-5-74 as DEQ 72, Eff. 6-25-74

Declaratory Rulings

Institution of Proceedings for Declaratory Rulings

340-11-060 On petition of any interested person, the Commission may, at its discretion, issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any statute or rule enforceable by the Commission.

Hist: Filed and Eff. 3-22-74 as DEQ 69(Temp)
Filed 6-5-74 as DEQ 72, Eff. 6-25-74

Contents of Petition

340-11-065 The petition shall be typewritten and shall contain:

(1) The statute or rule for which petitioner seeks a declaratory ruling.

(2) A detailed statement of the facts upon which petitioner requests the Commission to issue its declaratory ruling.

(3) Sufficient facts to show how petitioner will be affected by the requested declaratory ruling.

(4) All propositions of law or contentions to be asserted by petitioner.

(5) The questions presented for decision by the Commission.

(6) The specific relief requested.

(7) The name and address of petitioner and of any other person known by petitioner to be interested in the requested declaratory ruling and the reason for such interest.

Hist: Filed and Eff. 3-22-74 as DEQ 69(Temp)
Filed 6-5-74 as DEQ 72, Eff. 6-25-74

Filing and Service of Petition

340-11-070 (1) The petition shall be deemed filed when received by the Department at the office of the Director.

(2) The Commission shall inform the petitioner promptly after the filing of the petition whether it intends to issue a ruling.

(3) If the Commission intends to issue a ruling, the Department shall serve a copy of the petition, and a notice of a hearing at which the petition will be considered, on all persons named in the petition, and on all

other persons the Department believes to have an interest in the outcome of such a ruling.

(4) The notice of hearing required by subsection (3) of this section shall include:

(a) The time and place of the hearing.

(b) A designation of the person who is expected to preside at and conduct the hearing, if other than the full Commission.

Hist: Filed and Eff. 3-22-74 as DEQ 69(Temp)
Filed 6-5-74 as DEQ 72, Eff. 6-25-74

Conduct of Hearing: Briefs and Oral Argument

340-11-075 (1) A hearing for a declaratory ruling may be held before the Commission or a member thereof, the Director, or any other person designated by the Commission to preside at and conduct the hearing.

(2) At the hearing, petitioner and any other interested party shall have the right to present oral argument. The presiding officer may impose reasonable time limits on the time allowed for oral argument. Petitioner and other interested persons may file briefs with the Commission in support of their respective positions. The Commission or its designee shall fix the time and order of filing briefs.

Hist: Filed and Eff. 3-22-74 as DEQ 69(Temp)
Filed 6-5-74 as DEQ 72, Eff. 6-25-74

Presiding Officer's Opinion

340-11-080 In those instances where the hearing has been conducted before a person other than the full Commission, the presiding officer shall prepare an opinion conforming in form and content to the requirements of subsection 340-11-085(2). The Commission is not bound by the opinion of the presiding officer.

Hist: Filed and Eff. 3-22-74 as DEQ 69(Temp)
Filed 6-5-74 as DEQ 72, Eff. 6-25-74

Decision of Commission: Time, Form, and Service

340-11-085 (1) The Commission shall issue its declaratory ruling within sixty (60) days of:

(a) Where no briefs are permitted to be filed subsequent to the hearing, the close of the hearing.

(b) Where permission has been granted for the filing of briefs subsequent to the hearing, the deadline set for the filing of briefs.

(2) The ruling shall be in the form of a written opinion and shall set forth:

(a) The facts being adjudicated by the Commission.

(b) The statute or rule being applied to those facts.

(c) The Commission's conclusion as to the applicability of the statute or rule to those facts.

(d) The Commission's conclusion as to the legal effect or result of applying the statute or rule to those facts.

(e) The reasons relied upon by the Commission to support its conclusions.

(3) The Department shall mail the Commission's ruling to all persons upon whom it served the petition in compliance with subsection 340-11-070(3), and to all other persons on the mailing list established pursuant to ORS 183.335(3).

Hist: Filed and Eff. 3-22-74 as DEQ 69(Temp)
Filed 6-5-74 as DEQ 72, Eff. 6-25-74

Effect of Commission Rulings

340-11-090 A declaratory ruling issued in accordance with these rules is binding between the Commission and the petitioner on the state of facts alleged, or found to exist, except:

(1) When altered or set aside by a court.

(2) When the ruling is based on a rule of the Commission, the rule is amended, repealed, or superseded pursuant to rule making conducted in accordance with sections 340-11-005 through 340-11-040.

(3) Where the declaratory ruling is adverse to petitioner, when altered by the Commission.

Hist: Filed and Eff. 3-22-74 as DEQ 69(Temp)
Filed 6-5-74 as DEQ 72, Eff. 6-25-74

Contested Cases

Immediate Suspension or Refusal to Renew a License

340-11-095 If the Commission or Department, as applicable, finds a serious danger to the public health or safety and sets forth the specific reasons for such findings, the Commission or Department, as applicable, may suspend or refuse to renew a license without hearing. If the licensee demands a hearing within ninety (90) days after the date of notice to the licensee of such suspension or refusal to renew, a hearing as provided in sections 340-11-110 through 340-11-135 shall be granted to the licensee as soon as practicable after such demand, and the Commission or Department, as applicable, shall issue an order pursuant to such hearing confirming, altering, or revoking its earlier order. Such a hearing need not be held where the order of suspension or refusal to renew is accompanied by or is pursuant to, a citation for violation which is subject to judicial determination in any court of this state, and the order by its terms will terminate in case of final judgment in favor of the licensee.

Hist: Filed and Eff. 3-22-74 as DEQ 69(Temp)
Filed 6-5-74 as DEQ 72, Eff. 6-25-74
Amended 9-6-74 by DEQ 78, Eff. 9-25-74

Service of Written Notice

340-11-097 (1) Whenever a statute or rule requires that the Commission or Department serve a written notice upon a party, the notice shall be personally delivered or sent by registered or certified mail.

(2) An employee of the Department or any other competent person over the age of 18 years may serve a written notice.

(3) The Commission or Department perfects service of a written notice when the notice is posted, addressed to, or personally delivered to:

(a) The party; or

(b) Any person designated by law as competent to receive service of a summons or notice for the party; or

(c) Following appearance of counsel for the party, the party's counsel.

(4) A party holding a license or permit issued by the Department, or an applicant therefor, shall be conclusively presumed able to be served at the address given in his application, as it may be amended from time to time, until the expiration date of the license or permit.

(5) Service of written notice may be proven by a certificate executed by the person effecting service.

Hist: Filed 9-6-74 as DEQ 78, Eff. 9-25-74

Written Notice of Opportunity for a Hearing

340-11-100 (1) Except as otherwise provided in section 340-11-095, before the Commission or Department shall by order suspend, revoke, refuse to renew or issue a license, or enter a final order in any other contested case as defined in ORS Chapter 183, it shall afford the licensee, the license applicant or other party to the contested case an opportunity for hearing after reasonable written notice.

(2) Written notice of opportunity for a hearing shall include:

(a) A statement of the party's right to request a hearing or designation of the time and place of the hearing.

(b) A statement of the authority and jurisdiction under which the hearing would be held.

(c) A reference to the particular sections of the statutes and rules involved.

(d) A short and plain statement of the matters asserted or charged.

(e) A statement that an answer will or will not be required if the party requests a hearing, and, if so, the consequence of failure to answer. A statement of the consequences of failure to answer may be satisfied by serving a copy of section 340-11-107 upon the party.

Hist: Filed and Eff. 3-22-74 as DEQ 69(Temp)
Filed 6-5-74 as DEQ 72, Eff. 6-25-74
Amended 9-6-74 by DEQ 78, Eff. 9-25-74

340-11-105 [Repealed 9-6-74 by DEQ 78, Eff. 9-25-74.]

Answer Required: Consequences of Failure to Answer

340-11-107 (1) Unless waived in writing by the Director, and except as otherwise provided by statute or rule, a party who has been served written notice of opportunity for a hearing shall have 20 days from the date of mailing or personal delivery of the notice in which to file with the Director a written answer and application for hearing.

(2) In the answer the party shall admit or deny all factual matters and shall affirmatively allege any and all affirmative defenses the party may have and the reasoning in support thereof.

Except for good cause shown:

(a) Factual matters not controverted shall be presumed admitted;

(b) Failure to raise a defense shall be presumed to be a waiver of such defense;

(c) New matters alleged in the answer shall be presumed to be denied; and

(d) Evidence shall not be taken on any issue not raised in the notice and the answer.

(3) In the absence of a timely answer, the Director on behalf of the Commission or Department may issue a default order and judgment, based upon a prima facie case made on the record, for the relief sought in the notice.

Hist: Filed 9-6-74 as DEQ 78, Eff. 9-25-74

340-11-110 [Repealed 9-6-74 by DEQ 78, Eff. 9-25-74.]

Subpoenas and Depositions

340-11-115 (1) The Department shall issue subpoenas on behalf of any party to a contested case upon a showing of good cause, and a showing of general relevance within the reasonable scope of the proceedings. Witnesses appearing pursuant to subpoena, other than persons requesting the hearing, members of the Commission, the Director, or employees of the Department, shall receive fees and mileage as prescribed by law for witnesses in civil actions.

(2) An interested person may petition the Department for an order that the testimony of a material witness be taken by deposition. Fees and mileage are to be paid as determined by applicable statutes.

Hist: Filed and Eff. 3-22-74 as DEQ 69(Temp)

Filed 6-5-74 as DEQ 72, Eff. 6-25-74

Conduct of Hearing

340-11-120 (1)(a) Contested case hearings before the Commission shall be held under the control of the chairman as presiding officer, or any Commission member, or other person designated by the Commission or Director to be presiding officer.

(b) Contested case hearings before the Department shall be held under the control of the Director as presiding officer or other person designated by the Director to be presiding officer.

(2) The presiding officer may schedule and hear any preliminary matter, including a pre-hearing conference, and shall schedule the hearing on the merits. Reasonable written notice of the date, time, and place of such hearings and conferences shall be given to all parties.

Except for good cause shown, failure of any party to appear at a duly scheduled pre-hearing conference or the hearing on the merits shall be presumed to be a

waiver of right to proceed any further, and, where applicable:

(a) A withdrawal of the answer;

(b) An admission of all the facts alleged in the notice of opportunity for a hearing; and

(c) A consent to the entry of a default order and judgment for the relief sought in the notice of opportunity for a hearing.

(3) At the discretion of the presiding officer, the hearing shall be conducted in the following manner:

(a) Statement and evidence of the Commission or Department in support of its proposed action.

(b) Statement and evidence of affected persons in support of, requesting modification of, or disputing the Commission's or the Department's proposed action.

(c) Rebuttal testimony, if any.

(d) Surrebuttal testimony, if any.

(4) Except for good cause shown, evidence shall not be taken on any issue not raised in the notice and the answer.

(5) All testimony shall be taken upon oath or affirmation of the witness from whom received. The officer presiding at the hearing shall administer oaths or affirmations to witnesses.

(6) The following persons shall have the right to question, examine, or cross-examine any witness:

(a) The presiding officer.

(b) Where the hearing is conducted before the full Commission, any member of the Commission.

(c) Counsel for the Commission or the Department.

(d) Where the Commission or the Department is not represented by counsel, a person designated by the Commission or the Director.

(e) Any party to the contested case or such party's counsel.

(7) The hearing may be continued with recesses as determined by the presiding officer.

(8) The presiding officer may set reasonable time limits for oral presentation and shall exclude or limit cumulative, repetitious, or immaterial matter.

(9) The presiding officer shall, where appropriate and practicable, receive all physical and documentary evidence presented by parties and witnesses. Exhibits shall be marked, and the markings shall identify the person offering the exhibits. The exhibits shall be preserved by the Department as part of the record of the proceedings. Copies of all documents offered in evidence shall be provided to all other parties, if not previously supplied.

(10) A verbatim oral, written, or mechanical record shall be made of all motions, evidentiary objections, rulings, and testimony.

(11) Upon request of the presiding officer or upon a party's own motion, a party may submit a pre-hearing brief, or a post-hearing brief, or both.

(12) Following a hearing on the merits before a presiding officer, the presiding officer shall certify the exhibits and transcript.

Hist: Filed and Eff. 3-22-74 as DEQ 69(Temp)
Filed 6-5-74 as DEQ 72, Eff. 6-25-74
Amended 9-6-74 as DEQ 78, Eff. 9-25-74

Evidentiary Rules

340-11-125. (1) The rules of evidence as in equity proceedings shall apply to all hearings in contested cases.

(2) All offered evidence, not objected to, will be received by the presiding officer subject to his power to exclude or limit cumulative, repetitious, irrelevant, or immaterial matter.

(3) Evidence objected to may be received by the presiding officer with rulings on its admissibility or exclusion to be made at the time a final order is issued.

Hist: Filed and Eff. 3-22-74 as DEQ 69(Temp)
Filed 6-5-74 as DEQ 72, Eff. 6-25-74

340-11-130 [Repealed 9-6-74 as DEQ 78, Eff. 9-25-74.]

Presiding Officer's Proposed Order in Hearing Before the Commission

340-11-132 (1) In a contested case before the Commission, if a majority of the members of the Commission have not heard the case or considered the record, the presiding officer shall prepare a written proposed order and judgment including findings of fact and conclusions of law. Copies of the proposed order and judgment shall be filed with the Commission and be served by the presiding officer upon the parties in accordance with section 340-11-097 (regarding service of written notice).

(2) The parties shall have 14 days from the date of mailing or personal service in which to file with the Commission and serve upon the other parties a request that the Commission review the proposed order and judgment.

(3) Unless a timely request for Commission review is filed with the Commission, or unless within the same time limit the Commission, upon the motion of its Chairman or a majority of the members, decides to review it, the proposed order and judgment of the presiding officer shall become the final order and judgment of the Commission.

(4) If Commission review is invoked, then the parties shall be given 30 days from the date of mailing or personal service of the presiding officer's proposed order and judgment, or such further time as the Director or a Commissioner may allow, to file with the Commission and serve upon the other parties written exceptions and arguments to the proposed order and judgment. Such exceptions and arguments shall include proposed alternative findings of fact, conclusions of law, order, and judgment and shall include specific references to those portions of the record upon which the party relies. As to any finding of fact made by the presiding officer to which no exception, or an

inadequate exception, is taken, the Commission may make an identical finding without any further consideration of the record.

(5) Following the expiration of the time allowed the parties to present exceptions and arguments, the Chairman may at his discretion schedule the matter for oral argument before the Commission.

(6) Notwithstanding whether the procedures set out in subsections (1) through (5) of this section have been completed, a majority of the members of the Commission may at any time personally consider the whole record and issue a final order and judgment based thereon.

(7) In reviewing a proposed order and judgment prepared by a presiding officer, the Commission may, based upon the record made before the presiding officer, substitute its judgment for that of the presiding officer in making any particular finding of fact, conclusion of law, order, or judgment.

(8) In reviewing a proposed order and judgment prepared by a presiding officer, the Commission shall not take any additional evidence unless it is shown to the satisfaction of the Commission that the additional evidence is material and that there were good and substantial reasons for failure to present it in the hearing before the presiding officer. Requests to present additional evidence shall be submitted by motion and shall be supported by an affidavit specifying the reasons for the failure to present it at the hearing before the presiding officer. If the Commission grants the motion, it may hear the additional evidence itself or remand to a presiding officer upon such conditions as it deems just.

Hist: Filed 9-6-74 as DEQ 78, Eff. 9-25-74

Presiding Officer's Proposed Order in Hearing Before the Department

340-11-133 (1) In a contested case before the Department, if the Director has not heard the case or considered the record, the presiding officer shall prepare a proposed order and judgment including findings of fact and conclusions of law. Copies of the proposed order and judgment shall be filed with the Director and be served by the presiding officer upon the parties in accordance with section 340-11-097 (regarding service of written notice).

(2) The parties shall have 14 days from the date of mailing or personal service in which to file with the Director and serve upon the other parties a request that the Director review the proposed order and judgment.

(3) Unless a timely request for Director review is filed with the Director, or unless within the same time limits the Director decides to review it, the proposed order and judgment of the presiding officer shall become the final order and judgment of the Department.

(4) If Director review is invoked, then the parties shall be given 30 days from the date of mailing or

personal service of the presiding officer's proposed order and judgment, or such further time as the Director may allow, to file with the Director and serve upon the other parties written exceptions and arguments to the proposed alternative findings of fact, conclusions of law, order, and judgment, and shall include specific references to those portions of the record upon which the party relies. As to any finding of fact made by the presiding officer to which no exception, or an inadequate exception, is taken, the Director may make an identical finding without any further consideration of the record.

(5) Following the expiration of the time allowed the parties to present exceptions and arguments, the Director may at his discretion schedule the matter for oral argument before himself.

(6) Notwithstanding whether the procedures set out in subsections (1) through (5) of this section have been completed, the Director may at any time personally consider the whole record and issue a final order and judgment based thereon.

(7) In reviewing a proposed order and judgment prepared by a presiding officer, the Director may, based upon the record made before the presiding officer, substitute his judgment for that of the presiding officer in making any particular finding of fact, conclusion of law, order, or judgment.

(8) In reviewing a proposed order and judgment prepared by a presiding officer, the Director shall not take any additional evidence unless it is shown to the satisfaction of the Director that the additional evi-

dence is material and that there were good and substantial reasons for failure to present it in the hearing before the presiding officer. Requests to present additional evidence shall be submitted by motion and shall be supported by an affidavit specifying the reasons for the failure to present it at the hearing before the presiding officer. If the Director grants the motion, he may hear the additional evidence himself or remand to a presiding officer upon such conditions as he deems just.

Hist: Filed 9-6-74 as DEQ 78, Eff. 9-25-74

Final Orders in Contested Cases Notification

340-11-135 (1) Final orders in contested cases shall be in writing or stated in the record, and may be accompanied by an opinion.

(2) Final orders shall include the following:

(a) Rulings on admissibility of offered evidence if not already in the record.

(b) Findings of fact, including those matters which are agreed as fact, a concise statement of the underlying facts supporting the findings as to each contested issue of fact and each ultimate fact required to support the Commission's or the Department's order.

(c) Conclusions of law.

(d) The Commission's or the Department's order.

(3) The Department shall serve a copy of the final order upon every party or, if applicable, his attorney of record.

Hist: Filed and Eff. 3-22-74 as DEQ 69(Temp)
Filed 6-5-74 as DEQ 72, Eff. 6-25-74

Enrolled
House Bill 2068

Sponsored by COMMITTEE ON JUDICIARY

CHAPTER..... 759.....

AN ACT

Relating to administrative procedures of state agencies; creating new provisions; amending ORS 183.315, 183.330, 183.335, 183.355, 183.360, 183.370, 183.400, 183.425, 183.450, 183.460, 183.480, 654.290 and 656.740; and repealing ORS 183.340, 345.190, 345.200 and 345.230.

Be It Enacted by the People of the State of Oregon:

Section 1. ORS 183.315 is amended to read:

183.315. (1) The provisions of section 6 of this 1975 Act and ORS [183.340,] 183.410, 183.415, 183.425, 183.440, 183.450, 183.460, 183.470 and 183.480 do not apply to the Department of Revenue, State Accident Insurance Fund, Public Utility Commissioner, Workmen's Compensation Board, or State Board of Parole.

(2) Notwithstanding ORS 183.310 to 183.500, except as provided in this section, ORS 183.310 to 183.500 does not apply with respect to actions of the Governor authorized under ORS chapter 240.

(3) The provisions of ORS 183.415, 183.425, 183.440, 183.450 and 183.460 do not apply to the Employment Division, ORS 183.470 does not apply to the Public Utility Commissioner, and ORS 183.410 does not apply to the Employment Division.

(4) The provisions of ORS 183.415 to 183.500 do not apply to orders issued to persons who have been committed pursuant to ORS 137.124 to the custody of the Corrections Division.

[(5) Upon application of any agency, the Governor may exempt any agency rule or order or class of rules or orders from a requirement of ORS 183.310 to 183.500, when:]

[(a) The Attorney General has certified that such requirement would conflict with any provisions of federal law or rules with which the agency must comply as a condition to the receipt of federal funds, or in order to permit employers or other persons in the state to receive tax credits or other benefits under any federal law; or]

[(b) The Governor has found that conformity with such requirements of ORS 183.310 to 183.500 would be so inconvenient or impracticable as to defeat the purpose of the rule or order, and is not in the public interest, in light of the nature of the rule or order and in light of the enabling act or other laws affecting the agency.]

[(6) When the Governor exempts an agency from a requirement of ORS 183.310 to 183.500 pursuant to subsection (5) of this section, he shall establish alternative procedures for the agency action consistent, in so far as possible, with the intent and purpose of ORS 183.310 to 183.500.]

[(a) Prior to the granting of any exemption authorized by this section the Governor shall, after notice, hold a public hearing after notice as provided by ORS 183.335, or he may designate the Attorney General to hold the required hearing.]

[(b) An exemption, and any alternative procedure prescribed shall terminate upon the adjournment of the next regular legislative session after issuance of the exemption.]

Note: Section 2 was deleted by amendment.

Section 3. ORS 183.330 is amended to read:

183.330. (1) In addition to other rulemaking requirements imposed by law, each agency shall [:]

[(a)] publish [and file with the Secretary of State] a description of its organization and the methods whereby the public may obtain information or make submissions or requests.

[(b) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available.]

[(c) Make available for public inspection all rules, final orders, decisions and opinions. No matter prohibited from public disclosure by ORS 314.835, 657.665, 657.670, or similar statutes, shall be required to be made available for public inspection by this subsection.]

(2) An order shall not be effective as to any person or party unless it is served upon him either personally or by mail. This subsection is not applicable in favor of any person or party who has actual knowledge of the order.

Section 4. ORS 183.335, as amended by section 11, chapter 136, Oregon Laws 1975 (Enrolled Senate Bill 381), is amended to read:

183.335. (1) Prior to the adoption, amendment or repeal of any rule, the agency shall [:]

[(a)] give notice of [its intended action not less than 20 days prior thereto by publication] the proposed adoption, amendment or repeal: [in the bulletin referred to in ORS 183.360 and to persons who have requested notice pursuant to subsection (3) of this section. The notice shall state the subject matter and purpose of the intended action in sufficient detail to inform a person that his interests may be affected, and the time, place and manner in which interested persons may present their views on the intended action. If a proposed rule or an amendment to an existing rule has been prepared, the notice also shall state the time, place and manner in which such rule or amendment may be obtained.]

[(b) Afford all interested persons reasonable opportunity to submit data, views or arguments, either orally or in writing. Opportunity for oral hearing shall be granted upon request received from 10 persons or from an association having not less than 10 members within 15 days after agency notice of intended action pursuant to paragraph (a) of this subsection. The agency shall consider fully any such written or oral submission.]

(a) In the manner established by rule adopted by the agency which provides a reasonable opportunity for interested persons to be notified of the agency's proposed action;

(b) In the bulletin referred to in ORS 183.360 at least 10 days prior to the effective date; and

(c) To persons who have requested notice pursuant to subsection (6) of this section.

(2) The notice required by subsection (1) of this section shall state the subject matter and purpose of the intended action in sufficient detail to inform a person that his interests may be affected, and the time, place and manner in which interested persons may present their views on the intended action.

(3) When an agency proposes to adopt, amend or repeal a rule, it shall give interested persons reasonable opportunity to submit data or views. Opportunity for oral hearing shall be granted upon request received from 10 persons or from an association having not less than 10 members within

15 days after agency notice. The agency shall consider fully any written or oral submission.

[(c)] (4) Upon request of an interested person received within 15 days after agency notice [of intended action] pursuant to [paragraph (a) of this] subsection (1) of this section, the agency shall postpone the date of its intended action no less than 10 nor more than 90 days in order to allow the requesting person an opportunity to submit data, views or arguments concerning the proposed action. Nothing in this paragraph shall preclude an agency from adopting a temporary rule pursuant to subsection [(2)] (5) of this section.

[(2)] (5) Notwithstanding subsection (1) of this section, if an agency finds that its failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned, and sets forth the specific reasons for its finding, it may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt a rule without notice. Such rule is temporary and may be effective upon filing with the Secretary of State pursuant to ORS 183.355 for a period of not longer than 120 days [, but the]. The subsequent adoption of an identical rule under subsection (1) of this section is not precluded.

[(3)] (6) Any person may request in writing that an agency mail him copies of its notices of intended action given pursuant to paragraph (a) of subsection (1) of this section and filed in the office of the Secretary of State pursuant to subsection (1) of ORS 183.355. Upon receipt of any request the agency shall acknowledge the request, establish a mailing list and maintain a record of all mailings made pursuant to the request. Agencies may establish procedures for establishing and maintaining the mailing lists current and, by rule, establish fees necessary to defray the costs of mailings and maintenance of the lists.

[(4)] (7) This section does not apply to rules establishing an effective date for a previously effective rule or establishing a period during which a provision of a previously effective rule will apply.

[(5)] (8) This section does not apply to ORS chapter 279.

[(6)] (9) No rule adopted after October 5, 1973, is valid unless adopted in substantial compliance with this section.

[(7)] (10) In addition to all other requirements with which rule adoptions must comply, no rule adopted after the effective date of [this 1975 Act] chapter 136, Oregon Laws 1975 (Enrolled Senate Bill 381) is valid unless adopted in compliance with section 3, [of this 1975 Act] chapter 136, Oregon Laws 1975 (Enrolled Senate Bill 381).

SECTION 5. ORS 183.340 is repealed and section 6 of this Act is enacted in lieu thereof.

SECTION 6. (1) The Attorney General shall prepare model rules of procedure appropriate for use by as many agencies as possible. Any agency may adopt all or part of the model rules but such adoption shall comply with the rulemaking procedures under this chapter. Notice of such adoption shall be filed with the Secretary of State in the manner provided by ORS 183.355 for the filing of rules. The model rules may be amended from time to time by the Attorney General after notice and opportunity for hearing as required by rulemaking procedures under this chapter.

(2) All agencies shall adopt rules of procedure to be utilized in the adoption of rules and conduct of proceedings in contested cases or, if exempt from the contested case provisions of ORS chapter 183, for the conduct of proceedings.

(3) The Attorney General shall compile and the Secretary of State shall publish in the Oregon Administrative Rules:

(a) The Attorney General's model rules adopted under subsection (1) of this section;

(b) The procedural rules of all agencies that have not adopted the Attorney General's model rules; and

(c) The notice procedures required by subsection (1) of ORS 183.335.

(4) Agencies shall adopt rules of procedure which will provide a reasonable opportunity for interested persons to be notified of the agency's intention to adopt, amend or repeal a rule. Rules adopted pursuant to this subsection shall be approved by the Attorney General.

(5) No rule adopted after the effective date of this 1975 Act is valid unless adopted in substantial compliance with the rules adopted pursuant to subsection (4) of this section.

Section 7. ORS 183.355 is amended to read:

183.355. (1) Each agency shall file in the office of the Secretary of State a certified copy of each rule adopted by it [, including all rules in effect on September 9, 1971, and not previously filed as provided by law. The Secretary of State shall keep a permanent register of the rules open to public inspection] .

(2) Each rule [adopted after September 9, 1971, other than a temporary rule adopted pursuant to subsection (2) of ORS 183.335 is effective 10 days after publication in the bulletin provided in ORS 183.360, except] is effective upon filing as required by subsection (1) of this section, except that:

(a) If a later effective date is required by statute or specified in the rule, the later date is the effective date.

(b) [Subject to applicable constitutional or statutory provisions,] A temporary rule becomes effective [immediately] upon filing with the Secretary of State, or at a designated later date prior to publication **only** if the agency finds [that the designated date] the rule is necessary for the public interest or the interest of the parties concerned [. The agency finding and a] and the statement of the reasons therefor [shall be] is filed with the rule. The agency shall take appropriate measures to make temporary rules known to the persons who may be affected by them.

(3) When a rule is amended or [vacated, rescinded or otherwise] repealed by an agency, the agency shall [forthwith certify that fact to the Secretary of State who shall enter that fact on the certified copy of the rule.] file a certified copy of the amendment or notice of repeal with the Secretary of State who shall appropriately amend the compilation required by subsection (1) of ORS 183.360.

(4) A certified copy of each executive order issued, prescribed or promulgated by the Governor shall be filed in the office of the Secretary of State.

(5) No rule of which a certified copy is required to be filed [, and no rule of which a duplicate original or authenticated copy before September 9, 1971, was required to be filed] shall be valid or effective against any person or party [, nor may it be invoked by the issuer thereof for any purpose, unless a duplicate original or authenticated copy was filed or] until a certified copy is filed in accordance with this section. However, if an agency, in disposing of a contested case, announces in its decision the adoption of a general policy applicable to such case and subsequent cases of like nature the agency may rely upon such decision in disposition of later cases.

(6) The Secretary of State shall, upon request, supply copies of rules, or orders or designated parts of rules or orders, making and collecting therefor fees prescribed by ORS 177.130. All receipts from the sale of copies shall be deposited in the State Treasury to the credit of the General Fund.

Section 7a. ORS 183.360 is amended to read:

183.360. (1) The Secretary of State shall compile, index and publish

all rules adopted by each agency pursuant to ORS 183.330 and 183.340. [or filed with him pursuant to law prior to September 9, 1971, or pursuant to ORS 183.355 and remaining in effect. Compilations] The compilation shall be supplemented or revised as often as necessary and at least once every [two years] six months. Such [compilations may be adopted by agencies as a code of regulations, superseding all previous] compilation supersedes any other rules [of such agency]. The Secretary of State may make such compilations of other material published in the bulletin as he deems desirable.

(2) The Secretary of State may, in his discretion, omit from the compilation rules the publication of which would be unduly cumbersome or expensive if the rule in printed or processed form is made available on application to the adopting agency, and if the compilation contains a notice summarizing the omitted rule and stating how a copy thereof may be obtained.

(3) The Secretary of State shall publish at at least monthly intervals a bulletin [in which he may, in his discretion, publish the text of any agency rule or order filed since the preceding issue and any other administrative or executive document of public interest.] which:

(a) Briefly indicates the agencies that are proposing to adopt, amend or repeal a rule, the subject matter of the rule and the name, address and telephone number of an agency officer or employe from whom information and a copy of any proposed rule may be obtained;

(b) Contains the text or a brief description of all rules filed under ORS 183.355 since the last bulletin indicating the effective date of the rule; and

(c) Contains executive orders of the Governor.

[(4) If the Secretary of State does not publish in the bulletin the text of any rule or executive order filed since the preceding issue, he shall publish in the bulletin a notice summarizing each rule and order the text of which is not published in full, and stating that a copy thereof may be obtained by application to the adopting agency. Such notice shall constitute publication for the purposes of subsection (2) of ORS 183.355.]

[(5)] (4) Courts shall take judicial notice of rules and executive orders filed with the Secretary of State [and published pursuant to this section. Material so published may be cited as OAR, followed by the chapter and section numbers designated in the publication]. The compilation required by subsection (1) of this section shall be titled Oregon Administrative Rules and may be cited as "O.A.R." with appropriate numerical indications.

Section 8. ORS 183.370 is amended to read:

183.370. [The Secretary of State shall forward free of charge one copy of the bulletins and compilations to each district attorney and county clerk. The county clerk's copy shall be maintained in the county law library, or if the county has no law library, in his office available for inspection by the public. In addition,] The bulletins and compilations may be distributed by the Secretary of State free of charge as provided for the distribution of legislative materials referred to in ORS 171.225. [Further distribution of the bulletins or compilations shall be made as directed by the Department of General Services.] Other copies of the bulletins and compilations shall be distributed by the Secretary of State at a cost determined in the manner provided in ORS 2.160 for the distribution of copies of Supreme Court Reports. Any agency may compile and publish its rules or all or part of its rules for purpose of distribution outside of the agency only after it proves to the satisfaction of the [Department of General Services] Secretary of State that agency publication is necessary [in addition to the publications required to be made by the Secretary of State under ORS 183.360].

Section 9. ORS 183.400 is amended to read:

183.400. (1) The validity of any rule may be determined upon a petition [for a declaratory judgment thereon filed as provided by ORS chapter 28] by any person to the Court of Appeals in the manner provided for review of orders in contested cases. [if the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the rights, privileges or substantial interest of the petitioner. The agency shall be made a party to the proceeding. The declaratory judgment may be rendered] The court shall have jurisdiction to review the validity of the rule whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question, but not when the petitioner is a party to an order or a contested case in which the validity of the rule may be determined by a court.

(2) The validity of any applicable rule may also be determined by a court, upon review of an order in any manner provided by law or pursuant to ORS 183.480 or upon enforcement of such rule or order in the manner provided by law.

(3) The court shall declare the rule invalid only if it finds that [it] the rule: (a) Violates constitutional provisions or; (b) exceeds the statutory authority of the agency or; (c) was adopted without compliance with [statutory] applicable rulemaking procedures.

(4) In the case of disputed allegations of irregularities in procedure which, if proved, would warrant reversal or remand, the Court of Appeals may refer the allegations to a Master appointed by the court to take evidence and make findings of fact. The court's review of the Master's findings of fact shall be de novo on the evidence.

SECTION 10. When an agency refuses to issue a license required to pursue any commercial activity, trade, occupation or profession if the refusal is based on grounds other than the results of a test or inspection that agency shall grant the person requesting the license 60 days from notification of the refusal to request a hearing.

Section 11. ORS 183.425 is amended to read:

183.425. On petition of any party to a contested case, the agency may order that the testimony of any material witness may be taken by deposition in the manner prescribed by law for depositions in civil actions. The petition shall set forth the name and address of the witness whose testimony is desired, a showing of the materiality of his testimony, [a showing that the witness will be unable or cannot be compelled to attend,] and a request for an order that the testimony of such witness be taken before an officer named in the petition for that purpose. If the witness resides in this state and is unwilling to appear, the agency may issue a subpoena as provided in ORS 183.440, requiring his appearance before such officer.

Section 12. ORS 183.450 is amended to read:

183.450. In contested cases:

(1) [The rules of evidence as applied in equity cases in the circuit courts of this state shall be followed. Every agency shall provide for the exclusion of] Irrelevant, immaterial or unduly repetitious evidence [,] shall be excluded but erroneous [admission of] rulings on evidence shall not preclude agency action on the record unless shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. [When a hearing will be expedited,] Any part of the evidence may be received in written form.

(2) All evidence shall be offered and made a part of the record in the case, and except for matters stipulated to and except as provided in subsection (4) of this section no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(3) Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence. Participants permitted to intervene by the agency shall have such rights as determined by the agency by rule or otherwise.

(4) Agencies may take notice of judicially cognizable facts, and they may take notice of general, technical or scientific facts within their specialized knowledge. Parties shall be notified at any time during the proceeding but in any event prior to the final decision of the material so noticed and they shall be afforded an opportunity to contest the facts so noticed. Agencies may utilize their experience, technical competence and specialized knowledge in the evaluation of the evidence presented to them.

(5) No sanction shall be imposed or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party, and as supported by, and in accordance with, reliable, probative and substantial evidence.

(6) Agencies may, at their discretion, be represented at hearings by the Attorney General.

Section 13. ORS 183.460 is amended to read:

183.460. Whenever in a contested case a majority of the officials of the agency who are to render the final order have not heard the case or considered the record, the order, if adverse to a party [, *but not including*] **other than** the agency itself, shall not be made until a proposed order, including findings of fact and conclusions of law, has been served upon the parties and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the officials who are to render the decision [, *who shall in such case personally consider the whole record or such portions thereof as may be cited by the parties*].

Section 14. ORS 183.480 is amended to read:

183.480. (1) [(a)] Any person adversely affected or aggrieved by an order or any party to an agency proceeding is entitled to judicial review of a final order, whether such order is affirmative or negative in form, under ORS 183.480, 183.490 and 183.500. A petition for rehearing or reconsideration need not be filed as a condition of judicial review unless specifically otherwise provided by statute or agency rule.

[(b)] (2) Judicial review of final orders of agencies shall be solely as provided by ORS [183.480,] 183.490, [and] 183.500 and sections 15, 16 and 16a of this 1975 Act.

[(c)] (3) Except as provided in ORS 183.400, no action or suit shall be maintained as to the validity of any agency order except a final order as provided in ORS 183.480, 183.490 and 183.500 or except upon showing that the agency is proceeding without probable cause, or that the party will suffer substantial and irreparable harm if interlocutory relief is not granted.

[(d)] (4) Judicial review of orders issued pursuant to ORS 482.550 shall be as provided by ORS 482.560.

[(2)] *Jurisdiction for judicial review of contested cases is conferred upon the Court of Appeals, and the jurisdiction for judicial review of orders other than contested cases is conferred upon the Circuit Court for Marion County and upon the circuit court for the county in which the petitioner resides or has his principal business office. Proceedings for review shall be instituted by filing a petition in the case of contested cases in the Court*

of Appeals, and in the case of other orders at the election of the petitioner in the Circuit Court for Marion County, the circuit court for the county in which the petitioner resides, or the circuit court for the county in which the petitioner has his principal business office. The petition shall be filed within 60 days only following the date the order is served, or if a petition for reconsideration or rehearing has been filed, then within 60 days only following the date the order denying such petition is served. If the agency does not otherwise act, a petition for rehearing or reconsideration shall be deemed denied the 60th day following the date the petition was filed, and in such case petition for judicial review shall be filed within 60 days only following such date. Date of service shall be the date on which the agency delivered or mailed its order in accordance with ORS 183.470. The petition shall state the nature of the petitioner's interest, the facts showing how the petitioner is adversely affected or aggrieved by the agency order, and the ground or grounds upon which the petitioner contends the order should be reversed or remanded. True copies of the petition shall be served by registered or certified mail upon the agency and all other parties of record in the agency proceeding. No responsive pleading shall be required of the agency. The court, in its discretion, may permit other interested persons to intervene. However, this section does not authorize the court to grant any privilege, license, permit or right to such intervening parties where agency action is required by law for such grant.]

[(3) The filing of the petition shall not stay enforcement of the agency order, but the agency may do so, or the reviewing court may order a stay upon the giving of a bond or other undertaking or upon such other terms as it deems proper. All proceedings for review shall be given precedence on the docket over all other civil cases except those given equal status by statute. Any bond or other undertaking executed pursuant to this subsection shall be in favor of the State of Oregon for its benefit and for the benefit of whom it may concern and may be enforced by the agency or any other persons concerned in an appropriate proceeding as their interests may appear.]

[(4) Within 30 days after service of the petition, or within such further time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review, but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable. Except as specifically provided in this subsection, the cost of the record shall not be taxed to the petitioner or any intervening party. However, the court may tax such costs and the cost of agency transcription of record to a party filing a frivolous petition for review.]

[(5) If, on review of a contested case, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good and substantial reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon such conditions as the court deems proper. The agency may modify its findings and order by reason of the additional evidence and shall, within a time to be fixed by the court, file with the reviewing court, to become a part of the record, the additional evidence, together with any modifications or new findings or orders, or its certificate that it elects to stand on its original findings and order, as the case may be.]

[(6) Review of orders other than a contested case shall be conducted

by the court without a jury as a suit in equity. Review of a contested case shall be confined to the record, the court shall not substitute its judgment for that of the agency as to any issue of fact, and no additional evidence shall be received, except that in the case of disputed allegations of irregularities in procedure before the agency not shown in the record which, if proved, would warrant reversal or remand, the Court of Appeals may refer the allegations to a Master appointed by the court to take evidence and make findings of fact upon them.]

[(7) The court may affirm, reverse or remand the order. The court shall reverse or remand the order only if it finds:]

[(a) The order to be unlawful in substance or procedure, but error in procedure shall not be cause for reversal or remand unless the court shall find that substantial rights of the petitioner were prejudiced thereby and defects in the content of the notice required by ORS 183.415 not asserted at or prior to the commencement of the hearing before the agency shall not be cause for reversal or remand; or]

[(b) The statute, rule or order to be unconstitutional; or]

[(c) The rule which the order enforces or upon which the order is based or dependent, is invalid under the provisions of subsection (3) of ORS 183.400; or]

[(d) On review of a contested case, the order is not supported by reliable, probative and substantial evidence in the whole record; or]

[(e) On review of orders in other than contested cases, the facts do not support the order.]

[(8) In the case of reversal the court shall make special findings of fact based upon evidence in the record and conclusions of law indicating clearly all respects in which the agency's order is erroneous.]

SECTION 15. (1) Jurisdiction for judicial review of contested cases is conferred upon the Court of Appeals. Proceedings for review shall be instituted by filing a petition in the Court of Appeals. The petition shall be filed within 60 days only following the date the order upon which the petition is based is served unless otherwise provided by statute. If the agency does not otherwise act, a petition for rehearing or reconsideration shall be deemed denied the 60th day following the date the petition was filed, and in such cases, petition for judicial review shall be filed within 60 days only following such date. Date of service shall be the date on which the agency delivered or mailed its order in accordance with ORS 183.470.

(2) The petition need only state the nature of the petitioner's interest and the nature of the order the petitioner desires reviewed. Copies of the petition shall be served by registered or certified mail upon the agency, and all other parties of record in the agency proceeding.

(3) (a) The filing of the petition shall not stay enforcement of the agency order, but the agency may do so upon a showing of:

(A) Irreparable injury to the petitioner; and

(B) A colorable claim of error in the order.

(b) When a petitioner makes the showing required by paragraph (a) of this subsection, the agency shall grant the stay unless the agency determines that substantial public harm will result if the order is stayed. If the agency denies the stay, the denial shall be in writing and shall specifically state the substantial public harm that would result from the granting of the stay.

(c) When the agency grants a stay it may impose such reasonable conditions as the giving of a bond or other undertaking and that the petitioner file all documents necessary to bring the matter to issue before the Court of Appeals within specified reasonable periods of time.

(d) Agency denial of a motion for stay is subject to review by the Court of Appeals under such rules as the court may establish.

(4) Within 30 days after service of the petition, or within such further time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review, but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable. Except as specifically provided in this subsection, the cost of the record shall not be taxed to the petitioner or any intervening party. However, the court may tax such costs and the cost of agency transcription of record to a party filing a frivolous petition for review.

(5) If, on review of a contested case, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good and substantial reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon such conditions as the court deems proper. The agency may modify its findings and order by reason of the additional evidence and shall, within a time to be fixed by the court, file with the reviewing court, to become a part of the record, the additional evidence, together with any modifications or new findings or orders, or its certificate that it elects to stand on its original findings and order, as the case may be.

(6) At any time subsequent to the filing of the petition for review and prior to the date set for hearing the agency may withdraw its order for purposes of reconsideration. If an agency withdraws an order for purposes of reconsideration, it shall, within such time as the court may allow, affirm, modify or reverse its order. If the petitioner is dissatisfied with the agency action after withdrawal for purposes of reconsideration, he may file an amended petition for review and the review shall proceed upon the revised order.

(7) Review of a contested case shall be confined to the record, the court shall not substitute its judgment for that of the agency as to any issue of fact. In the case of disputed allegations of irregularities in procedure before the agency not shown in the record which, if proved, would warrant reversal or remand, the Court of Appeals may refer the allegations to a Master appointed by the court to take evidence and make findings of fact upon them.

(8) The court may affirm, reverse or remand the order. The court shall reverse or remand the order only if it finds:

(a) The order to be unlawful in substance or procedure, but error in procedure shall not be cause for reversal or remand unless the court shall find that substantial rights of the petitioner were prejudiced thereby; or

(b) The statute, rule or order to be unconstitutional; or

(c) The rule which the order enforces or upon which the order is based or dependent, is invalid under the provisions of subsection (3) of ORS 183.400; or

(d) The order is not supported by substantial evidence in the whole record.

SECTION 16. (1) Jurisdiction for judicial review of orders other than contested cases is conferred upon the Circuit Court for Marion County and upon the circuit court for the county in which the petitioner resides or has his principal business office. Proceedings for review under this section shall be instituted by filing a petition in the Circuit Court for Marion County or the circuit court for the county in which the petitioner resides or has his principal business office.

(2) Petitions for review shall be filed within 60 days only following the date the order is served, or if a petition for reconsideration or rehearing has been filed, then within 60 days only following the date the order denying such petition is served. If the agency does not otherwise act, a petition for rehearing or reconsideration shall be deemed denied the 60th day following the date the petition was filed, and in such case petition for judicial review shall be filed within 60 days only following such date. Date of service shall be the date on which the agency delivered or mailed its order in accordance with ORS 183.470.

(3) The petition shall state the nature of the petitioner's interest, the facts showing how the petitioner is adversely affected or aggrieved by the agency order and the ground or grounds upon which the petitioner contends the order should be reversed or remanded. The review shall proceed and be conducted by the court without a jury as a suit in equity, and the court shall have such powers as are conferred upon a court of equitable jurisdiction.

(4) In the case of reversal the court shall make special findings of fact based upon the evidence in the record and conclusions of law indicating clearly all aspects in which the agency's order is erroneous.

SECTION 16a. Upon judicial review of a final order of an agency when the reviewing court reverses or remands the order it may, in its discretion, award costs, including reasonable attorney fees, to the petitioner to be paid from funds appropriated to the agency.

SECTION 17. ORS 345.190, 345.200 and 345.230 are repealed.

Section 17a. Notwithstanding section 17 of this Act, if Senate Bill 30 (1975) becomes law, ORS 345.230 is not repealed, and ORS 345.230, as amended by section 15, chapter 478, Oregon Laws 1975 (Enrolled Senate Bill 30), is amended to read:

345.230. [(1) District courts shall have concurrent jurisdiction with the circuit courts in criminal actions brought under this chapter.]

[(2)] The remedies provided in this chapter are in addition to, and not exclusive of, any other remedies provided by law.

Section 18. ORS 654.290 is amended to read:

654.290. (1) Promulgation by the board or its designees of regulations, rules and standards authorized by ORS 654.001 to 654.295, and any judicial review thereof, shall be as provided in ORS 183.310 to 183.500.

(2) Notwithstanding subsection (1) of ORS 183.315, the issuance of orders pursuant to ORS 654.001 to 654.295, the conduct of hearings in contested cases and the judicial review thereof shall be as provided in ORS 183.310 to 183.500, except that:

(a) The board shall employ [hearing officers] referees to hold hearings in contested cases.

(b) The order of a [hearing officer] referee in a contested case shall be deemed to be a final order of the board.

(c) The Accident Prevention Division of the board shall have the same right to judicial review of the order of a [hearing officer] referee as any person who is adversely affected or aggrieved by such final order.

(d) Affected employees or their authorized representative shall be accorded an opportunity to participate as parties in hearings.

(3) [Hearing officers employed by the board] Referees shall be members in good standing of the Oregon State Bar and possess such other qualifications as the board may prescribe, and shall be employed in accordance with ORS 656.724. [receive compensation comparable to that of referees employed under ORS chapter 656.]

Section 18a. If Senate Bill 481 (1975) becomes law, on the effective date of chapter —, Oregon Laws 1975 (Enrolled Senate Bill 481), section 18 of this Act is repealed and ORS 654.290, as amended by section 37,

chapter —, Oregon Laws 1975 (Enrolled Senate Bill 481), is amended to read:

654.290. (1) Promulgation by the director or his designees of regulations, rules and standards authorized by ORS 654.001 to 654.295, and any judicial review thereof, shall be as provided in ORS 183.310 to 183.500.

(2) Notwithstanding subsection (1) of ORS 183.315, the issuance of orders pursuant to ORS 654.001 to 654.295, the conduct of hearings in contested cases and the judicial review thereof shall be as provided in ORS 183.310 to 183.500, except that:

(a) The director shall employ [*hearing officers*] referees to hold hearings in contested cases.

(b) The order of a [*hearing officer*] referee in a contested case shall be deemed to be a final order of the director.

(c) The director shall have the same right to judicial review of the order of a [*hearing officer*] referee as any person who is adversely affected or aggrieved by such final order.

(d) Affected employes or their authorized representative shall be accorded an opportunity to participate as parties in hearings.

(3) [*Hearing officers employed by the board*] Referees shall be members in good standing of the Oregon State Bar and possess such other qualifications as the director may prescribe, and shall be employed in accordance with ORS 656.724. [*receive compensation comparable to that of referees employed under ORS chapter 656.*]

Section 19. ORS 656.740, as amended by section 1, chapter 341, Oregon Laws 1975 (Enrolled Senate Bill 380), is amended to read:

656.740. (1) A person may contest a proposed order declaring him to be a noncomplying employer or a proposed assessment of civil penalty by filing with the board, within 15 days of receipt of notice thereof, a written request for a hearing. Such a request need not be in any particular form, but shall specify the grounds upon which the person contests the proposed order or assessment.

(2) Where any insurance carrier, including the State Accident Insurance Fund, is alleged by an employer to have contracted to provide him with workmen's compensation coverage for the period in question, the board shall join such insurance carrier as a necessary party to any hearing relating to such employer's alleged noncompliance and shall serve the carrier, at least 30 days prior to such hearing, with notice thereof. If the carrier does not file with the board, within 15 days of receipt of such notice, a written denial of such coverage, the carrier shall be conclusively presumed to have so insured the employer.

(3) A hearing relating to a proposed order declaring a person to be a noncomplying employer, or to a proposed assessment of civil penalty under ORS 656.735, shall not be granted unless a request for hearing is filed within the period specified in subsection (1) of this section, and if a request for hearing is not so filed, the order or penalty, or both, as proposed shall be a final order of the board and shall not be subject to review by any agency or court.

(4) Notwithstanding subsection (1) of ORS 183.315, the issuance of orders assessing civil penalties pursuant to ORS chapter 656, the conduct of hearings and the judicial review thereof shall be as provided in ORS 183.310 to 183.500, except that:

(a) The order of a referee in a contested case shall be deemed to be a final order of the board.

(b) The Compliance Division of the board shall have the same right to judicial review of the order of a referee as any person who is adversely affected or aggrieved by such final order.

Chapter 183

1975 REPLACEMENT PART

Administrative Procedures and Rules of State Agencies

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183.010[Repealed by 1971 c.734 s.21]

183.020[Repealed by 1971 c.734 s.21]

183.030[Repealed by 1971 c.734 s.21]

183.040[Repealed by 1971 c.734 s.21]

183.050[Repealed by 1971 c.734 s.21]

183.060[1957 c.147 s.1; repealed by 1969 c.292 s.3]

183.310 Definitions for ORS 183.310 to 183.500. As used in ORS 183.310 to 183.500:

(1) "Agency" means any state board, commission, department, or division thereof, or officer authorized by law to make rules or to issue orders, except those in the legislative and judicial branches.

(2) "Contested case" means a proceeding before an agency:

(a) In which the individual legal rights, duties or privileges of specific parties are required by statute or Constitution to be determined only after an agency hearing at which such specific parties are entitled to appear and be heard; or

(b) Where the agency has discretion to suspend or revoke a right or privilege of a person; or

(c) For the suspension, revocation or refusal to renew or issue a license required to pursue any commercial activity, trade, occupation or profession where the licensee or applicant for a license demands such hearing; or

(d) Where the agency by rule or order provides for hearings substantially of the character required by ORS 183.415, 183.425 and 183.450 to 183.470.

(3) "License" includes the whole or part of any agency permit, certificate, approval, registration or similar form of permission required by law to pursue any commercial activity, trade, occupation or profession.

(4) "Order" means any agency action expressed verbally or in writing directed to a named person or named persons, other than employes, officers or members of an agency, but including agency action under ORS chapter 657 making determination for purposes of unemployment compensation of employes of the state and agency action under ORS chapter 240 which grants, denies, modifies, suspends or revokes any right or privilege of such person.

(5) "Party" means each person or agency entitled as of right to a hearing before the agency, or named or admitted as a party.

(6) "Person" means any individual, partnership, corporation, association, governmental subdivision or public or private

organization of any character other than an agency.

(7) "Rule" means any agency directive, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include:

(a) Internal management directives, regulations or statements between agencies, or their officers or their employes, or within an agency, between its officers or between employes, unless hearing is required by statute, or action by agencies directed to other agencies or other units of government.

(b) Declaratory rulings issued pursuant to ORS 183.410 or 305.105.

(c) Intra-agency memoranda.

(d) Executive orders of the Governor.

(e) Rules of conduct for persons committed to the physical and legal custody of the Corrections Division of the Department of Human Resources, the violation of which will not result in:

(A) Placement in segregation or isolation status in excess of seven days.

(B) Institutional transfer or other transfer to secure confinement status for disciplinary reasons.

(C) Noncertification to the Governor of a deduction from the term of his sentence under ORS 421.120.

(D) Disciplinary procedures adopted pursuant to ORS 421.180.

[1957 c.717 s.1; 1965 c.285 s.78a; 1967 c.419 s.32; 1969 c.80 s.37a; 1971 c.734 s.1; 1973 c.386 s.4; 1973 c.621 s.1a]

183.315 Application of ORS 183.310 to 183.500 to certain agencies. (1) The provisions of ORS 183.341, 183.410, 183.415, 183.425, 183.440, 183.450, 183.460, 183.470 and 183.480 do not apply to the Department of Revenue, State Accident Insurance Fund, Public Utility Commissioner, Workmen's Compensation Board, or State Board of Parole.

(2) Notwithstanding ORS 183.310 to 183.500, except as provided in this section, ORS 183.310 to 183.500 does not apply with respect to actions of the Governor authorized under ORS chapter 240.

(3) The provisions of ORS 183.415, 183.425, 183.440, 183.450 and 183.460 do not apply to the Employment Division, ORS 183.470 does not apply to the Public Utility Commissioner, and ORS 183.410 does not apply to the Employment Division.

(4) The provisions of ORS 183.415 to 183.500 do not apply to orders issued to persons who have been committed pursuant to ORS 137.124 to the custody of the Corrections Division.

[1971 c.734 s.19; 1973 c.612 s.3; 1973 c.621 s.2; 1973 c.694 s.1; 1975 c.759 s.1]

183.317 Exemption of Employment Division. Notwithstanding ORS 183.315, the Employment Division shall be exempt from the provisions of ORS 183.310 to 183.500 to the extent that a formal finding of the United States Secretary of Labor is made that such provision conflicts with the terms of the federal law, acceptance of which by the state is a condition precedent to continued certification by the United States Secretary of Labor of the state's law.

[1971 c.734 s.187]

Note: 183.317 was not added to and made a part of 183.310 to 183.500 by legislative action.

183.320[1957 c.717 s.15; repealed by 1971 c.734 s.21]

183.330 General requirements for rulemaking agencies; service of orders.

(1) In addition to other rulemaking requirements imposed by law, each agency shall publish a description of its organization and the methods whereby the public may obtain information or make submissions or requests.

(2) An order shall not be effective as to any person or party unless it is served upon him either personally or by mail. This subsection is not applicable in favor of any person or party who has actual knowledge of the order.

[1957 c.717 s.2; 1971 c.734 s.4; 1975 c.759 s.3]

183.335 Prerequisites to adoption of rules; emergency adoption of temporary rule; application; substantial compliance required. (1) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice of the proposed adoption, amendment or repeal:

(a) In the manner established by rule adopted by the agency which provides a reasonable opportunity for interested persons to be notified of the agency's proposed action;

(b) In the bulletin referred to in ORS 183.360 at least 10 days prior to the effective date; and

(c) To persons who have requested notice pursuant to subsection (6) of this section.

(2) The notice required by subsection (1) of this section shall state the subject matter

and purpose of the intended action in sufficient detail to inform a person that his interests may be affected, and the time, place and manner in which interested persons may present their views on the intended action.

(3) When an agency proposes to adopt, amend or repeal a rule, it shall give interested persons reasonable opportunity to submit data or views. Opportunity for oral hearing shall be granted upon request received from 10 persons or from an association having not less than 10 members within 15 days after agency notice. The agency shall consider fully any written or oral submission.

(4) Upon request of an interested person received within 15 days after agency notice pursuant to subsection (1) of this section, the agency shall postpone the date of its intended action no less than 10 nor more than 90 days in order to allow the requesting person an opportunity to submit data, views or arguments concerning the proposed action. Nothing in this paragraph shall preclude an agency from adopting a temporary rule pursuant to subsection (5) of this section.

(5) Notwithstanding subsection (1) of this section, if an agency finds that its failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned, and sets forth the specific reasons for its finding, it may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt a rule without notice. Such rule is temporary and may be effective upon filing with the Secretary of State pursuant to ORS 183.355 for a period of not longer than 120 days. The subsequent adoption of an identical rule under subsection (1) of this section is not precluded.

(6) Any person may request in writing that an agency mail him copies of its notices of intended action given pursuant to paragraph (a) of subsection (1) of this section and filed in the office of the Secretary of State pursuant to subsection (1) of ORS 183.355. Upon receipt of any request the agency shall acknowledge the request, establish a mailing list and maintain a record of all mailings made pursuant to the request. Agencies may establish procedures for establishing and maintaining the mailing lists current and, by rule, establish fees necessary to defray the costs of mailings and maintenance of the lists.

(7) This section does not apply to rules establishing an effective date for a previously effective rule or establishing a period

during which a provision of a previously effective rule will apply.

(8) This section does not apply to ORS 279.025 to 279.031 and 279.310 to 279.990.

(9) No rule adopted after October 5, 1973, is valid unless adopted in substantial compliance with this section.

(10) In addition to all other requirements with which rule adoptions must comply, no rule adopted after May 6, 1975, is valid unless adopted in compliance with ORS 171.707.

[1971 c.734 s.3; 1973 c.612 s.1; 1975 c.136 s.11; 1975 c.759 s.4]

183.340[1957 c.717 s.3 (3); 1971 c.734 s.6; repealed by 1975 c.759 s.5 (183.341 enacted in lieu of 183.340)]

183.341 Model rules of procedure; establishment; compilation; publication; agencies required to adopt procedural rules. (1) The Attorney General shall prepare model rules of procedure appropriate for use by as many agencies as possible. Any agency may adopt all or part of the model rules but such adoption shall comply with the rulemaking procedures under this chapter. Notice of such adoption shall be filed with the Secretary of State in the manner provided by ORS 183.355 for the filing of rules. The model rules may be amended from time to time by the Attorney General after notice and opportunity for hearing as required by rulemaking procedures under this chapter.

(2) All agencies shall adopt rules of procedure to be utilized in the adoption of rules and conduct of proceedings in contested cases or, if exempt from the contested case provisions of this chapter, for the conduct of proceedings.

(3) The Attorney General shall compile and the Secretary of State shall publish in the Oregon Administrative Rules:

(a) The Attorney General's model rules adopted under subsection (1) of this section;

(b) The procedural rules of all agencies that have not adopted the Attorney General's model rules; and

(c) The notice procedures required by subsection (1) of ORS 183.335.

(4) Agencies shall adopt rules of procedure which will provide a reasonable opportunity for interested persons to be notified of the agency's intention to adopt, amend or repeal a rule. Rules adopted pursuant to this subsection shall be approved by the Attorney General.

(5) No rule adopted after September 13, 1975, is valid unless adopted in substantial

compliance with the rules adopted pursuant to subsection (4) of this section.

[1975 c.759 s.6 (enacted in lieu of 183.340)]

183.350(1957 c.717 s.3 (1), (2); repealed by 1971 c.734 s.21)

183.355 Filing and taking effect of rules; filing of executive orders; copies. (1) Each agency shall file in the office of the Secretary of State a certified copy of each rule adopted by it.

(2) Each rule is effective upon filing as required by subsection (1) of this section, except that:

(a) If a later effective date is required by statute or specified in the rule, the later date is the effective date.

(b) A temporary rule becomes effective upon filing with the Secretary of State, or at a designated later date prior to publication only if the agency finds the rule is necessary for the public interest or the interest of the parties concerned and the statement of the reasons therefor is filed with the rule. The agency shall take appropriate measures to make temporary rules known to the persons who may be affected by them.

(3) When a rule is amended or repealed by an agency, the agency shall file a certified copy of the amendment or notice of repeal with the Secretary of State who shall appropriately amend the compilation required by subsection (1) of ORS 183.360.

(4) A certified copy of each executive order issued, prescribed or promulgated by the Governor shall be filed in the office of the Secretary of State.

(5) No rule of which a certified copy is required to be filed shall be valid or effective against any person or party until a certified copy is filed in accordance with this section. However, if an agency, in disposing of a contested case, announces in its decision the adoption of a general policy applicable to such case and subsequent cases of like nature the agency may rely upon such decision in disposition of later cases.

(6) The Secretary of State shall, upon request, supply copies of rules, or orders or designated parts of rules or orders, making and collecting therefor fees prescribed by ORS 177.130. All receipts from the sale of copies shall be deposited in the State Treasury to the credit of the General Fund.

[1971 c.734 s.5; 1973 c.612 s.2; 1975 c.759 s.7]

183.360 Publication of rules and orders; exceptions; judicial notice; citation

(1) The Secretary of State shall compile, index and publish all rules adopted by each

agency pursuant to ORS 183.330 and 183.341. The compilation shall be supplemented or revised as often as necessary and at least once every six months. Such compilation supersedes any other rules. The Secretary of State may make such compilations of other material published in the bulletin as he deems desirable.

(2) The Secretary of State may, in his discretion, omit from the compilation rules the publication of which would be unduly cumbersome or expensive if the rule in printed or processed form is made available on application to the adopting agency, and if the compilation contains a notice summarizing the omitted rule and stating how a copy thereof may be obtained.

(3) The Secretary of State shall publish at at least monthly intervals a bulletin which:

(a) Briefly indicates the agencies that are proposing to adopt, amend or repeal a rule, the subject matter of the rule and the name, address and telephone number of an agency officer or employe from whom information and a copy of any proposed rule may be obtained;

(b) Contains the text or a brief description of all rules filed under ORS 183.355 since the last bulletin indicating the effective date of the rule; and

(c) Contains executive orders of the Governor.

(4) Courts shall take judicial notice of rules and executive orders filed with the Secretary of State. The compilation required by subsection (1) of this section shall be titled Oregon Administrative Rules and may be cited as "O.A.R." with appropriate numerical indications.

[1957 c.717 s.4 (1), (2), (3); 1961 c.464 s.1; 1971 c.734 s.7; 1973 c.612 s.4; 1975 c.759 s.7a]

183.370 Distribution of published rules. The bulletins and compilations may be distributed by the Secretary of State free of charge as provided for the distribution of legislative materials referred to in ORS 171.225. Other copies of the bulletins and compilations shall be distributed by the Secretary of State at a cost determined in the manner provided in ORS 2.160 for the distribution of copies of Supreme Court Reports. Any agency may compile and publish its rules or all or part of its rules for purpose of distribution outside of the agency only after it proves to the satisfaction of the Secretary of State that agency publication is necessary. [1957 c.717 s.4 (4); 1959 c.260 s.1; 1969 c.174 s.4; 1975 c.759 s.8]

183.380 [1957 c.717 s.4 (5); repealed by 1971 c.734 s.21]

183.390 Petitions requesting adoption of rules. An interested person may petition an agency requesting the promulgation, amendment or repeal of a rule. The Attorney General shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition. Not later than 30 days after the date of submission of a petition, the agency either shall deny the petition in writing or shall initiate rulemaking proceedings in accordance with ORS 183.335.

[1957 c.717 s.5; 1971 c.734 s.8]

183.400 Judicial determination of validity of rule. (1) The validity of any rule may be determined upon a petition by any person to the Court of Appeals in the manner provided for review of orders in contested cases. The court shall have jurisdiction to review the validity of the rule whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question, but not when the petitioner is a party to an order or a contested case in which the validity of the rule may be determined by a court.

(2) The validity of any applicable rule may also be determined by a court, upon review of an order in any manner provided by law or pursuant to ORS 183.480 or upon enforcement of such rule or order in the manner provided by law.

(3) The court shall declare the rule invalid only if it finds that the rule: (a) Violates constitutional provisions or; (b) exceeds the statutory authority of the agency or; (c) was adopted without compliance with applicable rulemaking procedures.

(4) In the case of disputed allegations of irregularities in procedure which, if proved, would warrant reversal or remand, the Court of Appeals may refer the allegations to a Master appointed by the court to take evidence and make findings of fact. The court's review of the Master's findings of fact shall be de novo on the evidence.

[1957 c.717 s.6; 1971 c.734 s.9; 1975 c.759 s.9]

183.410 Agency determination of applicability of rule or statute to petitioner; effect; judicial review. On petition of any interested person, any agency may in its discretion issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by it. A declaratory ruling is

binding between the agency and the petitioner on the state of facts alleged, unless it is altered or set aside by a court. However, the agency may, where the ruling is adverse to the petitioner, review the ruling and alter it if requested by the petitioner. Binding rulings provided by this section are subject to review in the Court of Appeals in the manner provided in ORS 183.480 for the review of orders in contested cases. The Attorney General shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition. The petitioner shall have the right to submit briefs and present oral argument at any declaratory ruling proceeding held pursuant to this section.

[1957 c.717 s.7; 1971 c.734 s.10; 1973 c.612 s.5]

183.415 Notice, hearing and record in contested cases. (1) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice, served personally or by registered or certified mail.

(2) The notice shall include:

(a) A statement of the party's right to hearing, or a statement of the time and place of the hearing;

(b) A statement of the authority and jurisdiction under which the hearing is to be held;

(c) A reference to the particular sections of the statutes and rules involved; and

(d) A short and plain statement of the matters asserted or charged.

(3) Parties may elect to be represented by counsel and to respond and present evidence and argument on all issues involved.

(4) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

(5) An order adverse to a party may be issued upon default only upon prima facie case made on the record of the agency. When an order is effective only if a request for hearing is not made by the party, the record may be made at the time of issuance of the order, and if the order is based only on material included in the application or other submissions of the party, the agency may so certify and so notify the party, and such material shall constitute the evidentiary record of the proceeding if hearing is not requested.

(6) Testimony shall be taken upon oath or affirmation of the witness from whom received. The officer presiding at the hearing

shall administer oaths or affirmations to witnesses.

(7) The record in a contested case shall include:

(a) All pleadings, motions and intermediate rulings.

(b) Evidence received or considered.

(c) Stipulations.

(d) A statement of matters officially noticed.

(e) Questions and offers of proof, objections and rulings thereon.

(f) Proposed findings and exceptions.

(g) Any proposed, intermediate or final order.

(8) A verbatim oral, written or mechanical record shall be made of all motions, rulings and testimony. The record need not be transcribed unless requested for purposes of rehearing or court review. The agency may charge the party requesting transcription the cost of a copy of transcription, unless the party files an appropriate affidavit of indigency. However, upon petition, a court having jurisdiction to review under ORS 183.480 may reduce or eliminate the charge upon finding that it is equitable to do so, or that matters of general interest would be determined by review of the order of the agency.

[1971 c.734 s.13]

183.418 Interpreter for handicapped person in contested case. (1) When a handicapped person is a party to a contested case, he is entitled to a qualified interpreter to interpret the proceedings to the handicapped person and to interpret the testimony of the handicapped person to the agency.

(2) (a) Except as provided in paragraph (b) of this subsection, the agency shall appoint the qualified interpreter for the handicapped person; and the agency shall fix and pay the fees and expenses of the qualified interpreter if:

(A) The handicapped person makes a verified statement and provides other information in writing under oath showing his inability to obtain a qualified interpreter, and provides any other information required by the agency concerning his inability to obtain such an interpreter; and

(B) It appears to the agency that the handicapped person is without means and is unable to obtain a qualified interpreter.

(b) If the handicapped person knowingly and voluntarily files with the agency written statement that he does not desire qualified interpreter to be appointed for him,

the agency shall not appoint such an interpreter for the handicapped person.

(3) As used in this section:

(a) "Handicapped person" means a person who cannot readily understand or communicate the English language, or cannot understand the proceedings or a charge made against him, or is incapable of presenting or assisting in the presentation of his defense, because he is deaf, or because he has a physical hearing impairment or physical speaking impairment.

(b) "Qualified interpreter" means a person who is readily able to communicate with the handicapped person, translate the proceedings for him, and accurately repeat and translate the statements of the handicapped person to the agency.

[1973 c.386 s.6]

Note: (1) 183.418 was not added to and made a part of 183.310 to 183.500.

183.420 [1957 c.717 s.8 (1); repealed by 1971 c.734 s.21]

183.425 Depositions or subpoena of material witness. On petition of any party to a contested case, the agency may order that the testimony of any material witness may be taken by deposition in the manner prescribed by law for depositions in civil actions. The petition shall set forth the name and address of the witness whose testimony is desired, a showing of the materiality of his testimony, and a request for an order that the testimony of such witness be taken before an officer named in the petition for that purpose. If the witness resides in this state and is unwilling to appear, the agency may issue a subpoena as provided in ORS 183.440, requiring his appearance before such officer.

[1971 c.734 s.14; 1975 c.759 s.11]

183.430 Hearing on refusal to renew license; exceptions. (1) In the case of any license which must be periodically renewed, where the licensee has made timely application for renewal in accordance with the rules of the agency, such license shall not be deemed to expire, despite any stated expiration date thereon, until the agency concerned has issued a formal order of grant or denial of such renewal. In case an agency proposes to refuse to renew such license, upon demand of the licensee, the agency must grant hearing as provided by ORS 183.310 to 183.500 before issuance of order of refusal to renew. This subsection does not apply to any emergency or temporary permit or license.

(2) In any case where the agency finds a serious danger to the public health or safety and sets forth specific reasons for such findings, the agency may suspend or refuse to renew a license without hearing, but if the licensee demands a hearing within 90 days after the date of notice to the licensee of such suspension or refusal to renew, then a hearing must be granted to the licensee as soon as practicable after such demand, and the agency shall issue an order pursuant to such hearing as required by ORS 183.310 to 183.500 confirming, altering or revoking its earlier order. Such a hearing need not be held where the order of suspension or refusal to renew is accompanied by or is pursuant to, a citation for violation which is subject to judicial determination in any court of this state, and the order by its terms will terminate in case of final judgment in favor of the licensee.

[1957 c.717 s.8 (3), (4); 1965 c.212 s.1; 1971 c.734 s.11]

183.440 Subpenas in contested cases.

(1) The agency shall issue subpoenas to any party to a contested case upon request on good cause being shown and, to the extent required by agency rule, upon a statement or showing of general relevance and reasonable scope of the evidence sought. Witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the agency, shall receive fees and mileage as prescribed by law for witnesses in civil actions.

(2) If any person fails to comply with any subpoena so issued or any party or witness refuses to testify on any matters on which he may be lawfully interrogated, the judge of the circuit court of any county, on the application of the agency or of a designated representative of the agency or of the party requesting the issuance of the subpoena, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

[1957 c.717 s.8 (2); 1971 c.734 s.12]

183.450 Evidence in contested cases.
In contested cases:

(1) Irrelevant, immaterial or unduly repetitious evidence shall be excluded but erroneous rulings on evidence shall not preclude agency action on the record unless shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible. Agencies shall

give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Any part of the evidence may be received in written form.

(2) All evidence shall be offered and made a part of the record in the case, and except for matters stipulated to and except as provided in subsection (4) of this section no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(3) Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence. Participants permitted to intervene by the agency shall have such rights as determined by the agency by rule or otherwise.

(4) Agencies may take notice of judicially cognizable facts, and they may take notice of general, technical or scientific facts within their specialized knowledge. Parties shall be notified at any time during the proceeding but in any event prior to the final decision of the material so noticed and they shall be afforded an opportunity to contest the facts so noticed. Agencies may utilize their experience, technical competence and specialized knowledge in the evaluation of the evidence presented to them.

(5) No sanction shall be imposed or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party, and as supported by, and in accordance with, reliable, probative and substantial evidence.

(6) Agencies may, at their discretion, be represented at hearings by the Attorney General.

[1957 c.717 s.9; 1971 c.734 s.15; 1975 c.759 s.12]

183.460 Examination of evidence by agency in contested cases. Whenever in a contested case a majority of the officials of the agency who are to render the final order have not heard the case or considered the record, the order, if adverse to a party other than the agency itself, shall not be made until a proposed order, including findings of fact and conclusions of law, has been served upon the parties and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the officials who are to render the decision.

[1957 c.717 s.10; 1971 c.734 s.16; 1975 c.759 s.13]

183.470 Orders in contested cases. Every order adverse to a party to the proceeding, rendered by an agency in a contested case, shall be in writing or stated in the record, may be accompanied by an opinion and a final order shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the agency's order. Parties to the proceeding shall be notified of a final order by delivering or mailing a copy of the order or accompanying findings and conclusions to each party or, if applicable, his attorney of record.

[1957 c.717 s.11; 1971 c.734 s.17]

183.480 Judicial review of contested cases. (1) Any person adversely affected or aggrieved by an order or any party to an agency proceeding is entitled to judicial review of a final order, whether such order is affirmative or negative in form, under this section and ORS 183.490 and 183.500. A petition for rehearing or reconsideration need not be filed as a condition of judicial review unless specifically otherwise provided by statute or agency rule.

(2) Judicial review of final orders of agencies shall be solely as provided by ORS 183.482, 183.484, 183.490, 183.495 and 183.500.

(3) Except as provided in ORS 183.400, no action or suit shall be maintained as to the validity of any agency order except a final order as provided in this section and ORS 183.490 and 183.500 or except upon showing that the agency is proceeding without probable cause, or that the party will suffer substantial and irreparable harm if interlocutory relief is not granted.

(4) Judicial review of orders issued pursuant to ORS 482.550 shall be as provided by ORS 482.560.

[1957 c.717 s.12; 1963 c.449 s.1; 1971 c.734 s.18; 1975 c.759 s.14]

183.482 Jurisdiction for review of contested cases; procedure; scope of court authority. (1) Jurisdiction for judicial review of contested cases is conferred upon the Court of Appeals. Proceedings for review shall be instituted by filing a petition in the Court of Appeals. The petition shall be filed within 60 days only following the date the order upon which the petition is based is served unless otherwise provided by statute. If the agency does not otherwise act, a peti-

tion for rehearing or reconsideration shall be deemed denied the 60th day following the date the petition was filed, and in such cases, petition for judicial review shall be filed within 60 days only following such date. Date of service shall be the date on which the agency delivered or mailed its order in accordance with ORS 183.470.

(2) The petition need only state the nature of the petitioner's interest and the nature of the order the petitioner desires reviewed. Copies of the petition shall be served by registered or certified mail upon the agency, and all other parties of record in the agency proceeding.

(3) (a) The filing of the petition shall not stay enforcement of the agency order, but the agency may do so upon a showing of:

(A) Irreparable injury to the petitioner; and

(B) A colorable claim of error in the order.

(b) When a petitioner makes the showing required by paragraph (a) of this subsection, the agency shall grant the stay unless the agency determines that substantial public harm will result if the order is stayed. If the agency denies the stay, the denial shall be in writing and shall specifically state the substantial public harm that would result from the granting of the stay.

(c) When the agency grants a stay it may impose such reasonable conditions as the giving of a bond or other undertaking and that the petitioner file all documents necessary to bring the matter to issue before the Court of Appeals within specified reasonable periods of time.

(d) Agency denial of a motion for stay is subject to review by the Court of Appeals under such rules as the court may establish.

(4) Within 30 days after service of the petition, or within such further time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review, but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable. Except as specifically provided in this subsection, the cost of the record shall not be taxed to the petitioner or any intervening party. However, the court may tax such costs and the cost of agency transcription of record to a party filing a frivolous petition for review.

(5) If, on review of a contested case, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good and substantial reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon such conditions as the court deems proper. The agency may modify its findings and order by reason of the additional evidence and shall, within a time to be fixed by the court, file with the reviewing court, to become a part of the record, the additional evidence, together with any modifications or new findings or orders, or its certificate that it elects to stand on its original findings and order, as the case may be.

(6) At any time subsequent to the filing of the petition for review and prior to the date set for hearing the agency may withdraw its order for purposes of reconsideration. If an agency withdraws an order for purposes of reconsideration, it shall, within such time as the court may allow, affirm, modify or reverse its order. If the petitioner is dissatisfied with the agency action after withdrawal for purposes of reconsideration, he may file an amended petition for review and the review shall proceed upon the revised order.

(7) Review of a contested case shall be confined to the record, the court shall not substitute its judgment for that of the agency as to any issue of fact. In the case of disputed allegations of irregularities in procedure before the agency not shown in the record which, if proved, would warrant reversal or remand, the Court of Appeals may refer the allegations to a Master appointed by the court to take evidence and make findings of fact upon them.

(8) The court may affirm, reverse or remand the order. The court shall reverse or remand the order only if it finds:

(a) The order to be unlawful in substance or procedure, but error in procedure shall not be cause for reversal or remand unless the court shall find that substantial rights of the petitioner were prejudiced thereby; or

(b) The statute, rule or order to be unconstitutional; or

(c) The rule which the order enforces or upon which the order is based or dependent, is invalid under the provisions of subsection (3) of ORS 183.400; or

(d) The order is not supported by substantial evidence in the whole record.
[1975 c.759 s.15]

Note: 183.482 was not added to and made a part of ORS chapter 183, or any series therein, by legislative action.

183.484 Jurisdiction for review of orders other than contested cases; procedure; requirement for reversal of orders. (1) Jurisdiction for judicial review of orders other than contested cases is conferred upon the Circuit Court for Marion County and upon the circuit court for the county in which the petitioner resides or has his principal business office. Proceedings for review under this section shall be instituted by filing a petition in the Circuit Court for Marion County or the circuit court for the county in which the petitioner resides or has his principal business office.

(2) Petitions for review shall be filed within 60 days only following the date the order is served, or if a petition for reconsideration or rehearing has been filed, then within 60 days only following the date the order denying such petition is served. If the agency does not otherwise act, a petition for rehearing or reconsideration shall be deemed denied the 60th day following the date the petition was filed, and in such case petition for judicial review shall be filed within 60 days only following such date. Date of service shall be the date on which the agency delivered or mailed its order in accordance with ORS 183.470.

(3) The petition shall state the nature of the petitioner's interest, the facts showing how the petitioner is adversely affected or aggrieved by the agency order and the ground or grounds upon which the petitioner contends the order should be reversed or remanded. The review shall proceed and be conducted by the court without a jury as a suit in equity, and the court shall have such powers as are conferred upon a court of equitable jurisdiction.

(4) In the case of reversal the court shall make special findings of fact based upon the evidence in the record and conclusions of law

indicating clearly all aspects in which the agency's order is erroneous.
[1975 c.759 s.16]

Note: 183.484 was not added to and made a part of ORS chapter 183, or any series therein, by legislative action.

183.485 Mandate of court on review of contested case. (1) The court having jurisdiction for judicial review of contested cases shall direct its mandate to the agency issuing the order being reviewed and may direct its mandate to the circuit court of any county designated by the prevailing party.

(2) Upon receipt of the court's mandate, the clerk of the circuit court shall enter a judgment or decree in the journal and docket it pursuant to the direction of the court to which the appeal is made.
[1973 c.612 s.7]

Note: 183.485 was not added to and made a part of 183.310 to 183.500 by legislative action.

183.490 Agency may be compelled to act. The court may, upon petition as described in ORS 183.480, compel an agency to act where it has unlawfully refused to act, or unreasonably delayed action.
[1957 c.717 s.13]

183.495 Awarding costs and attorney fees when order reversed or remanded. Upon judicial review of a final order of an agency when the reviewing court reverses or remands the order it may, in its discretion, award costs, including reasonable attorney fees, to the petitioner to be paid from funds appropriated to the agency.
[1975 c.759 s.16a]

Note: 183.495 was not added to and made a part of ORS chapter 183, or any series therein, by legislative action.

183.500 Appeals. Any party to the proceedings before the circuit court may appeal from the decree of that court to the Court of Appeals. Such appeal shall be taken in the manner provided by law for appeals from the circuit court in suits in equity.
[1957 c.717 s.14; 1969 c.198 s.76]

183.510 [1957 c.717 s.16; repealed by 1971 c.734 s.21]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.
Done at Salem, Oregon,
October 1, 1975.

Thomas G. Clifford
Legislative Counsel.

PROPOSED AMENDMENTS TO OAR CHAPTER 340, SECTIONS 11-005 THROUGH
11-135 (NEW MATTER UNDERLINED, DELETED MATTER IN BRACKETS AND LINED-OUT)

SECTION ONE. 11-005 is amended as follows:

11-005 DEFINITIONS. Unless otherwise required by context, as used in this subdivision:

- (1) "Adoption" means the carrying of a motion by the Commission with regard to the subject matter or issues of an intended agency action.
- (2) "Agency action" has the same meaning as given in ORS 183.310.
- [+1+] (3) "Commission" means the Environmental Quality Commission.
- [+2+] (4) "Department" means the Department of Environmental Quality.
- [+3+] (5) "Director" means the Director of the Department or any of his authorized delegates.
- (6) "Direct interest" for purpose of rule making procedure means a monetary or other concern, right, claim, share, or participation of a person in the subject matter which is distinct from those common to citizens in general.
- (7) "Filing" means the completed mailing to or service upon the Director. Such filing is adequate where filing is required of any document with regard to any matter before the Commission, Department, or Director except a claim of personal liability.
- [+4+] (8) "License" [~~includes the whole or part of any Department permit, certificate, approval, registration, or similar form of permission required by law to pursue any commercial activity, trade, occupation, or profession.~~] has the same meaning as given in ORS 183.310.
- [+5+] (9) "Order" has the same meaning as given in ORS 183.310.
- [+6+] (10) "Party" has the same meaning as given in ORS 183.310 and includes the Department in all contested case hearings before the Commission

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~~[and-before-the]~~ or Department or any of their presiding officers.

~~[(7)]~~ (11) "Person" [includes-individuals, corporations, associations, firms, partnerships, joint-stock-companies, public-and-municipal-corporations, political-subdivision, the-state-and-any-agencies-thereof, and the-Federal-Government-and-any-agencies-thereof.] has the same meaning as given in ORS 183.310.

(12) "Presiding Officer" means any individual designated by the Commission or the Director to preside in any contested case, public, or other hearing. Any employee of the Department who actually presides in any such hearing is presumptively designated by the Commission or Director, such presumptive designation to be overcome only by a written statement to the contrary bearing the signature of the Commission Chairman or the Director.

~~[(8)]~~ (13) "Rule" has the same meaning as given in ORS 183.310.

SECTION TWO. 11-007 is amended as follows:

11-007 PUBLIC INFORMATIONAL HEARINGS

(1) Whenever there is [held] required or permitted a [public] hearing which is [not] neither a contested case hearing [or] nor a rule making hearing as defined in [Chapter-183-of-Oregon-Revised-Statutes,] ORS Chapter 183, [the-procedures-set-forth-in-section-11-025-and-section-11-035-(2)-shall-be-followed-] the presiding officer shall follow any applicable procedural law, including case law, and rules and take appropriate procedural steps to accomplish the purpose of the hearing. Interested persons may, on their own motion or that of the presiding officer, submit written briefs or oral argument to assist the presiding officer in his resolution of the procedural matters set forth herein.

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- (2) Prior to the submission of testimony by members of the general public, the Director shall present and offer for the record a summary of the questions the resolution of which, in his preliminary opinion, will determine the matter at issue. He shall also present so many of the facts relevant to the resolution of these questions as he then possesses and which can practicably be presented in that forum.
- (3) Following the public informational hearing by the Director, or within a reasonable time after receipt of the report of the presiding officer, the Director shall take action upon the matter. Prior to or at the time of such action, the Director shall issue a written report in which he addresses separately each substantial distinct issue raised in the hearings record.

SECTION THREE. 11-008 is hereby repealed.

SECTION FOUR. 11-010 is amended as follows:

- 11-010 NOTICE OF RULE MAKING. (1) Except as specifically provided otherwise by statute, ~~[the-Commission-shall-give]~~ notice of ~~[its]~~ intention to adopt, amend, or repeal any ~~[rules]~~ rule(s) ~~[by-publication-not-less-than twenty-(20)-days-prior-to-the-date-of-the-proposed-action-in-the-bulletin published-by-the-Secretary-of-State]~~ shall be in compliance with applicable state and federal laws and rules, including ORS Chapter 183 and subsections (2) and (3) of this section.
- (2) A copy of the notice shall be furnished to such news media ~~[as-the-Commission-may-deem-appropriate]~~ as may be found on the list established pursuant to ORS 183.335 (6) and to such other news media as may be deemed appropriate due to the subject matter of the intended action.
 - (3) ~~[A-copy-of-the-notice-shall-be-mailed-to-persons-on-the-mailing-list~~

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~~established pursuant to ORS 183.335 (3)]~~ In addition to meeting the requirements of ORS 183.335 (2), the notice shall contain the following:

(a) Where practicable and appropriate, a copy of the rule proposed to be adopted.

(b) Where the proposed rule is not set forth verbatim in the notice, a statement of the time, place, and manner in which a copy of the proposed rule may be obtained.

(c) Whether the presiding officer will be a hearing officer or a member of the Commission.

(d) The manner in which persons not planning to attend the hearing may offer for the record written testimony on the proposed rule.

~~[(4) -- Each rule-making notice shall contain a description of the Commission's intended action, setting forth the subjects and issues involved in sufficient detail to inform a person that his interest may be affected. Where practicable and appropriate, a copy of the rule proposed to be adopted, amended, or repealed shall be included. -- If the proposed rule, amendment, or repeal thereof is not set forth verbatim in the notice, the notice shall state the time, place, and manner in which the rule or amendment may be obtained.]~~

~~[(5) -- When the Commission is required by law to hold a public hearing on the proposed rule-making, or contemplates that a public hearing is necessary or appropriate, the notice shall additionally include:~~

~~(a) -- The time and place of the public hearing.~~

~~(b) -- The manner in which interested parties may present their views at the hearing.~~

~~(c) -- A designation of the person who is expected to preside at and~~

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~~the time and place therefor.~~

~~(d) -- A statement that a public hearing will be held if the Commission receives a request for public hearing within fifteen (15) days after the Commission's notice from ten (10) or more persons or from an association having not less than ten (10) members.]~~

SECTION FIVE. 11-015 and 11-020 are hereby repealed.

SECTION SIX. 11-025 is amended as follows:

11-025 CONDUCT OF RULE MAKING HEARING. (1) The hearing shall be conducted

before the Commission, with the Chairman as the presiding officer, or before any member of the Commission, [~~the Director~~] or other [~~person designated by the Commission to be the~~] presiding officer.

(2) At the commencement of the hearing, any person wishing to be heard shall

advise the presiding officer of his name, address, and/or affiliation

~~[-- Additional persons may be heard at the discretion of the presiding officer. -- The presiding officer shall provide an appropriate]~~ on a pro-

vided form for listing witnesses [~~which shall indicate the name of the~~

~~witness, whether the witness favors or opposes the proposed action]~~ and

such other information as the presiding officer may deem appropriate.

Additional persons may be heard at the discretion of the presiding officer.

(3) At the opening of the hearing the presiding officer shall state, or have

stated, the purpose of the hearing.

~~[(4) -- At public informational hearings, prior to the submission of testimony~~

~~by members of the general public, the Director shall present and offer~~

~~for the record a summary of the questions the resolution of which, in his~~

~~preliminary opinion, will determine the matter at issue. -- He shall also~~

~~present so many of the facts relevant to the resolution of these questions~~

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~~as he then possesses and which can be practicably be presented in that forum.]~~ In his discretion, the presiding officer may present:

(a) A statement of the issues whose resolution would, in his estimation, determine the matter at issue.

(b) A statement of such relevant facts as he deems to be presently understood by the agency.

[+5+] (4) The presiding officer shall thereupon describe the manner in which interested [~~parties~~] persons may present their views at the hearing.

[+6+] (5) ~~Subject to the discretion of the Presiding Officer, the order of presentation shall be:~~

~~(a) -- Statements of proponents.~~

~~(b) -- Statements of opponents.~~

~~(c) -- Statements of any other witnesses present and wishing to be heard.~~

The Presiding Officer shall order the presentations in such manner as he deems appropriate to the purpose of the hearing.

[+7+] (6) The Presiding Officer and any member of the Commission shall have the right to question or examine any witness making a statement at the hearing. The Presiding Officer may, at his discretion, permit other persons to examine witnesses.

[+8+] (7) There shall be no rebuttal or additional statements given by any witness except as requested by the Presiding Officer. However, when such additional statement is given, the Presiding Officer [~~shall~~] may allow an equal opportunity for reply by those whose statements were rebutted.

[+9+] (8) The hearing may be continued with recesses as determined by the presiding officer until all listed witnesses present and wishing to make a statement have had an opportunity to do so.

[+10+] (9) The Presiding Officer shall, where practicable and appropriate,

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receive all physical and documentary evidence presented by witnesses.

~~[Exhibits shall be marked and shall identify the witness offering each exhibit.]~~ Unless otherwise required by law or rule, the exhibits shall be preserved by the Department for a period of one year or, at the discretion of the Commission or Presiding Officer, returned to the persons who submitted them.

~~(10)~~ (10) The Presiding Officer may, at any time during the hearing [set] impose reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial matter. Persons with a direct interest and those speaking for groups, associations, or governmental entities may be accorded preferential time limitations as may be extended also to any witness who, in the judgment of the Presiding Officer has such expertise, experience, or other relationship to the subject matter of the hearing as to render his testimony of special interest to the agency. If the Presiding Officer has reason to believe present are an unusual number of witnesses whose testimony has been elicited merely to indicate popular support of a given position based upon considerations beyond the agency's jurisdiction, the Presiding Officer may require such witnesses to designate a spokesman whose testimony shall alone be received, provided that any person may list himself by name, address, and affiliation, as in support of the testimony given by such spokesman, or may submit his written statement for the record within such reasonable time after adjournment and in such reasonable manner as the Presiding Officer shall announce.

~~(11)~~ (11) A verbatim oral, written, or mechanical record shall be made of all the hearing proceedings, or, in the alternative, a record in the form of minutes. Question and answer periods or other informalities before or

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after the hearing shall not be considered part of the record. The record shall be preserved for one year, unless otherwise required by law or rule.

SECTION SEVEN. 11-035 is amended as follows:

11-035 ACTION OF THE COMMISSION OR DIRECTOR. (1) Following the rule making hearing by the Commission, or after receipt of the report of the Presiding Officer, the Commission may adopt, amend, or repeal rules within the scope of the notice of intended action.

~~[(2) -- Following the public informational hearing by the Director, or within a reasonable time after receipt of the report by the Presiding Officer, the Director shall take action upon the matter. -- Prior to or at the time of such action, the Director shall issue a written report in which he addresses separately each substantial distinct issue raised in the hearings record.]~~

SECTION EIGHT. 11-040 and 11-045 are hereby repealed.

SECTION NINE. 11-050 is amended as follows:

11-050 TEMPORARY RULES. (1) ~~[The Commission may proceed without prior notice of hearing, or upon any abbreviated notice and hearing that it finds practicable and appropriate, to adopt a rule without the notice otherwise required by ORS Chapter 183 and by these rules.]~~ In adopting temporary rules pursuant to ORS 183.335 (2), ~~[In such a case,]~~ the Department shall[*

~~(a) -- File a copy, certified by the Director or the Deputy Director of the Department, of the rule with the Secretary of State.~~

~~(b) -- File with the Secretary of State the Commission's findings that failure of the Commission to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned.~~

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~~The findings shall be supported by a statement of the specific facts and reasons.~~

~~(e)]~~ Take practicable and appropriate measures to make the temporary rule known to persons who may be affected by it.

~~[(d)--Furnish copies of the temporary rule to such news media as the Commission deems appropriate to comply with the notice requirement of these rules.]~~

SECTION TEN. 11-055, 11-060, 11-065, 11-070, 11-075, 11-080, 11-085, 11-090, and 11-095 are hereby repealed.

SECTION ELEVEN. 11-097 is amended as follows:

11-097 SERVICE OF WRITTEN NOTICE. (1) Whenever a statute or rule requires that the Commission or Department serve a written notice upon a party other than for purposes of ORS 183.335 or for purposes of notice to members of the public in general, the notice shall be personally delivered or sent by registered or certified mail.

~~[(2)--An employee of the Department or any other competent person over the age of 18 years may serve a written notice.~~

~~(3)]~~ (2) The Commission or Department perfects service of a written notice when the notice is posted, addressed to, or personally delivered to:

(a) The party, or

(b) Any person designated by law as competent to receive service of a summons or notice for the party; or

(c) Following appearance of Counsel for the party, the party's counsel.

~~[(4)]~~ (3) A party holding a license or permit issued by the Department, or an applicant therefor, shall be conclusively presumed able to be served at the address given in his application, as it may be amended from time to time, until the expiration date of the license or permit.

SECTION ELEVEN CON'T

[45] (4) Service of written notice may be proven by a certificate executed by the person effecting service.

[46] (5) Service by mailing to a party's last known address or that of his counsel is presumed perfected in timely fashion, unless it is learned otherwise, for all documents other than agency final orders, as defined by ORS Chapter 183, or such orders as give the party a right to be heard as a matter of law or rule.

SECTION TWELVE. 11-100 is amended as follows:

11-100 WRITTEN NOTICE OF OPPORTUNITY FOR A HEARING.

(1) Except as otherwise provided in ~~[section-11-095]~~ ORS 183.430 (2), before the Commission or Department shall be order suspend, revoke, refuse to renew, or refuse to issue a license, or enter a final order in any other contested case an opportunity for hearing after reasonable written notice.

(2) Written notice of opportunity for a hearing, in addition to the requirements of ORS 183.415 (2), shall include:

~~{a}--A statement of the party's right to request a hearing or a designation of the time and place of the hearing.~~

~~{b}--A statement of the authority and jurisdiction under which the hearing would be held.~~

~~{c}--A reference to the particular sections of the statutes and rules involved.~~

~~{d}--A short and plain statement of the matters asserted or charged.~~

~~{e}~~ (a) A statement that an answer will or will not be required if the party requests a hearing, and, if so, the consequence of failure to answer. A statement of the consequence[s] of failure to answer may be satisfied by serving a copy of section 11-107 upon the party.

(b) A statement that the party may elect to be represented by legal

SECTION TWELVE CON'T

counsel.

SECTION THIRTEEN. Added to and made a part of 11-107 is the following:

(4) Notwithstanding the provisions of this section, parties may vary their pleadings, orally or in writing at any time, with the prior approval of the Presiding Officer after notice to the other parties.

SECTION FOURTEEN. 11-115 is hereby repealed and a new section 11-115 is hereby adopted to read:

11-115 SUBPOENAS AND DEPOSITIONS. Subpoenas and Depositions shall be as provided by ORS 183.425, ORS 183.440, and ORS 468.120 and shall be preceded by a showing of good cause, general relevance, and reasonable scope with regard to the evidence sought.

SECTION FIFTEEN. 11-120 (12) is hereby repealed. A new section 11-121 is hereby adopted to read as follows:

11-121 THE RECORD. The Presiding Officer shall certify such exhibits and transcript as may be necessary for review of final orders and proposed final orders. The Commission or Director may review tape recordings of proceedings in lieu of a prepared transcript.

SECTION SIXTEEN. 11-125 is hereby amended as follows:

11-125 EVIDENTIARY RULES. (1) [~~The rules of evidence as in equity proceedings shall apply to all hearings in contested cases~~] In applying the standard of admissibility of evidence set forth in ORS 183.450, the Presiding Officer may refuse to admit hearsay evidence inadmissible in the courts of this state where he is satisfied that the declarant is reasonably available to testify and his out of court statement is significant but would not commonly be found reliable because of its lack of corroboration in the record or its lack of clarity and completeness.

(2) All offered evidence, not objected to, will be received by the Presiding

SECTION SIXTEEN CON'T

Officer subject to his power to exclude or limit cumulative, repetition, irrelevant, or immaterial matter.

- (3) Evidence objected to may be received by the Presiding Officer with rulings on its admissibility or exclusion to be made at the time a final order is issued.

SECTION SEVENTEEN. 11-132 is amended as follows:

11-132 PRESIDING OFFICER'S PROPOSED ORDER IN HEARINGS BEFORE THE COMMISSION.

- (1) In a contested case before the Commission, if a majority of the members of the Commission have not heard the case or considered the record, the Presiding Officer shall prepare a written proposed order [~~and-judgment~~] including findings of fact and conclusions of law. Copies of the proposed order [~~and-judgment~~] shall be filed with the Commission and parties in accordance with section 11-097 (regarding service of written notice).
- (2) The parties shall have fourteen (14) days from the date of mailing or personal service in which to file with the Commission and serve upon the other parties a request that the Commission review the proposed order [~~and-judgment~~].
- (3) Unless a timely request for Commission review is filed with the Commission, or unless within the same time limit the Commission, upon the motion of its Chairman or a majority of the members, decides to review it, the proposed order [~~and-judgment~~] of the Presiding Officer shall become the final order [~~and-judgment~~] of the Commission.
- (4) If Commission review is invoked, then the parties shall be given thirty (30) days from the date of mailing or personal service of the Presiding Officer's proposed order [~~and-judgment~~], or such further time as the Director or Commission may allow, to file with the Commission and serve upon the other parties written exceptions and arguments to the proposed

SECTION SEVENTEEN CON'T

order [~~and-judgment~~]. Such exceptions and arguments shall include proposed alternative findings of fact, conclusions of law, and order [~~and judgment~~] and shall include specific references to those portions of the record upon which the party relies. As to any finding of fact made by the Presiding Officer, [~~to-which-no-exception-or-an-inadequate-exception-is-taken~~] the Commission may make an identical finding without any further consideration of the record.

Further the Commission may make a finding identical to that proposed by all parties other than the agency without any further consideration of the record.

- (5) Following the expiration of the time allowed the parties to present exceptions and arguments, the Chairman may at his discretion schedule the matter for oral argument before the Commission.
- (6) Notwithstanding whether the procedures set out in subsection (1) through (5) of this section have been completed, a majority of the members of the Commission may at any time personally consider the whole record or appropriate portions thereof and issue a final order [~~and-judgment~~] based thereon.
- (7) In reviewing a proposed order [~~and-judgment~~] prepared by a Presiding Officer, the Commission may, based upon the record made before the Presiding Officer or appropriate portions thereof, substitute its judgment for that of the Presiding Officer in making any particular finding of fact, conclusion or law, or order. [~~or-judgment~~]
- (8) In reviewing a proposed order [~~and-judgment~~] prepared by a Presiding Officer, the Commission [~~shall-not~~] may take [~~any~~] additional evidence. [~~unless-it-is-shown-to-the-satisfaction-of-the-Commission-that-the-additional-evidence-is-material-and-that-there-were-good-and-substantial~~

SECTION SEVENTEEN CON'T

~~reasons-for-failure-to-present-it-in-the-hearing-before-the-Presiding Officer.]~~ Requests to present additional evidence shall be submitted by motion and shall be supported by an affidavit specifying the reasons for the failure to present it at the hearing before the Presiding Officer. If the Commission grants the motion, or so decides of its own motion, it may hear the additional evidence itself or remand to a Presiding Officer upon such conditions as it deems just.

SECTION EIGHTEEN. 11-133 is hereby repealed. A new section 11-133 is hereby adopted to read as follows:

11-133 PRESIDING OFFICER'S PROPOSED ORDER IN HEARING BEFORE THE DEPARTMENT.

- (1) In a contested case before the Department, the Director shall exercise powers and have duties in every respect identical to those of the Commission in contested cases before the Commission.
- (2) Notwithstanding subsection (1) of this section, the Commission may, as to any contested case over which it has final administrative jurisdiction, upon motion of its Chairman or a majority of its members, remove to the Commission any contested case before the Department at any time during the proceedings in a manner consistent with ORS Chapter 183.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

SUBJECT: DEQ's proposed revisions of Administrative Procedures for hearings DATE: February 24, 1976

FROM: John Wlastelicia

TO: The Files

Tony Garvin, Assistant to Regional Counsel, called today to let me know they had completed a review of DEQ's proposed revisions to Administrative Procedures for Agency hearings.

In Mr. Garvin's opinion the proposed revisions adequately provide for conformance to federal requirements in program areas delegated to the State.

cc: Pete McSwain

OFFICE OF QUALITY MANAGEMENT

RECEIVED

FEB 24 1976

DEPT. OF ENVIRONMENTAL QUALITY



ENVIRONMENTAL QUALITY COMMISSION

1234 S.W. MORRISON STREET • PORTLAND, ORE. 97205 • Telephone (503) 229-5696

ROBERT W. STRAUB
GOVERNOR

MEMORANDUM

To : Environmental Quality Commission
From : Director
Subject: Agenda Item No. G, June 25, 1976 EQC Meeting

Emergency Rules Extending Enforcement Tolerance for the
Motor Vehicle Emission Inspection Program through
June 30, 1977

Background

At its meeting of March 28, 1975, the Environmental Quality Commission adopted rules which became effective May 25, 1975, governing operation of the Motor Vehicle Emission Control Inspection Program. The inspection program began mandatory operation under these rules July 1, 1975. However, by then the 1975 Oregon legislative assembly had enacted a bill changing the inspection program from an annual requirement to one required only prior to vehicle license renewal -- thus, every other year.

Discussion

A major feature of these rules adopted by the Commission was the enforcement tolerance provision. The enforcement tolerance provides a measure of leniency for the standards and the anti-tampering provisions, and allows a partial phase-in to the standards. This provision has been in effect for our first year of operation. The legislative change, however, has effected a two-year inspection cycle, rather than the annual inspection cycle originally anticipated at the adoption of the rules.

The original intent on the enforcement tolerance was to provide the extra leniency for one year or one inspection cycle. The legislative change to a biennial inspection, therefore, means that only about half of the autos would have been inspected under the provisions of the tolerance. The proposed change, allowing for continued use of the tolerance through June, 1977, provides for maintaining the original Commission intent of an enforcement



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tolerance through the first inspection cycle. It also maintains equity between those people whose vehicles have already been inspected and those whose vehicles will come due after June 30 this year. A staff analysis on the impact of removal or modification of the enforcement tolerance for the next inspection cycle will be completed this next year.

The Commission, at its October 24, 1975 meeting, authorized public hearings to consider amendments to the inspection rules. It was intended to hold these hearings during the first quarter of 1976. However, with the appointment of the House Task Force on Emission Control, the plans were changed to wait until the task force had completed its hearings and issued its report, so that their recommendations could be considered in the various housekeeping amendments. The House report has now been received and the Department has scheduled a public hearing on proposed rules changes. However, it is physically impossible to complete the rule changing process by June 30, 1976, and it is necessary to ask the Commission for an emergency rule to take care of the urgent conditions which will occur come this July 1, if the enforcement tolerance is allowed to expire.

Director's Recommendation

It is recommended that the Commission enter a finding that failure to act promptly will result in serious prejudice to the public interest because of the lack of equity in allowing the enforcement tolerance provided in OAR 340-24-320 and 330 to expire; and that the Commission adopt as a temporary rule these proposed rules providing for the extension of the enforcement tolerance through June, 1977.



LOREN KRAMER
Director

WPJ:mg
June 4, 1976
Attachment: Proposed Rules

Motor Vehicle Emission Control Inspection Test Criteria, Methods
and Standards.

340-24-320 Light Duty Motor Vehicle Emission Control Test Criteria

(1) No vehicle emission control test shall be considered valid if the vehicle exhaust system leaks in such a manner as to dilute the exhaust gas being sampled by the gas analytical system. For the purpose of emission control tests conducted at state facilities, except for diesel vehicles, tests will not be considered valid if the exhaust gas is diluted to such an extent that the sum of the carbon monoxide and carbon dioxide concentrations recorded for the idle speed reading from an exhaust outlet is 9% or less. For purposes of enforcement through June, [~~1976~~] 1977, a 1% carbon dioxide tolerance shall be added to the values recorded.

(2) No vehicle emission control test shall be considered valid if the engine idle speed either exceeds the manufacturer's idle speed specifications by over 200 RPM on 1968 and newer model vehicles, or exceeds 1,250 RPM for any age model vehicle. For purposes of enforcement through June, [~~1976~~] 1977, a 100 RPM tolerance shall be added to the idle speed limits.

(3) No vehicle emission control test conducted after June, [~~1976~~] 1977, for a 1968 or newer model vehicle shall be considered valid if any element of the following factory-installed motor vehicle pollution control systems have been disconnected, plugged, or otherwise made inoperative in violation of ORS 483.825(1), except as noted in subsection (5):

- (a) Positive crankcase ventilation PVC system
- (b) Exhaust modifier system
 - (A) Air injection reactor system

- (B) Thermal reactor system
- (C) Catalytic converter system - (1975 and newer model vehicles only)
- (c) Exhaust gas recirculation (EGR) systems - (1973 and newer model vehicles only)
- (d) Evaporative control system - (1971 and newer model vehicles only)
- (e) Spark timing system
 - (A) Vacuum advance system
 - (B) Vacuum retard system
- (f) Special emission control devices
 - Examples:
 - (A) Orifice spark advance control (OSAC)
 - (B) Speed control switch (SCS)
 - (C) Thermostatic air cleaner (TAC)
 - (D) Transmission controlled spark (TCS)
 - (E) Throttle solenoid control (TSC)

(4) No vehicle emission control test conducted after June, [1976] 1977, for a 1968 or newer model vehicle shall be considered valid if any element of the factory-installed motor vehicle pollution control system has been modified or altered in such a manner so as to decrease its efficiency or effectiveness in the control of air pollution in violation of ORS 483.825(2), except as noted in subsection (5). For the purposes of this subsection, the following apply:

(a) The use of a non-original equipment aftermarket part (including a rebuilt part) as a replacement part solely for purposes of maintenance according to the vehicle or engine manufacturer's instructions, or for repair or replacement of a defective or worn out part, is not considered to be a

violation of ORS 483.825(2), if a reasonable basis exists for knowing that such use will not adversely effect emission control efficiency. The department will maintain a listing of those parts which have been determined to adversely effect emission control efficiency.

(b) The use of non-original equipment aftermarket part or system as an add-on, auxiliary, augmenting, or secondary part or system, is not considered to be a violation of ORS 483.825(2), if such part of system is listed on the exemption list maintained by the department.

(c) Adjustments or alterations of a particular part or system parameter, if done for purposes of maintenance or repair according to the vehicle or engine manufacturer's instructions, are not considered violations of ORS 483.825(2).

(5) A 1968 or newer model motor vehicle which has been converted to operate on gaseous fuels shall not be considered in violation of ORS 483.825(1) or (2) when elements of the factory-installed motor vehicle air pollution control system are disconnected for the purpose of conversion to gaseous fuel as authorized by ORS 483.825(3).

(6) For the purposes of these rules, a motor vehicle with an exchange engine shall be classified by the model year and manufacturer make of the exchange engine, except that any requirement for evaporative control systems shall be based upon the model year of the vehicle chassis.

(7) Electric vehicles are presumed to comply with all requirements of these rules and those applicable provisions of ORS 468.360 to 468.405, 481.190 to 481.200, and 483.800 to 483.825, and may be issued the required certificates of compliance and inspection upon payment of the required fee.

340-34-330 Light Duty Motor Vehicle Emission Control Idle Emission
Standards

Notwithstanding any contrary dates relative to the enforcement tolerances
detailed in subsections (1) and (2), all enforcement tolerances are extended
through June 1977.



ENVIRONMENTAL QUALITY COMMISSION

1234 S.W. MORRISON STREET • PORTLAND, ORE. 97205 • Telephone (503) 229-5696

ROBERT W. STRAUB
GOVERNOR

MEMORANDUM

TO: Environmental Quality Commission
FROM: Director
SUBJECT: Agenda Item H, June 25, 1976, EQC Meeting

Staff Report - Noise Emissions from New and In-Use Motor Vehicles - Request to Hold a Public Hearing to Consider:

- 1) Petition from Motorcycle Industry to Amend Noise Rules Pertaining to Motorcycles
- 2) Need for Revision of Noise Rules for New and In-Use Automobiles
- 3) Staff Recommendations for "Housekeeping" Amendments

Background

Oregon Revised Statute Chapter 467 directs the Environmental Quality Commission to "investigate and after appropriate public hearing, establish maximum permissible levels of noise emission for each category . . ." In the Fall of 1973, the Department proposed rules establishing maximum permissible levels of noise emission for various categories of sources, and held public hearings on the proposed rules throughout the state.

Subsequent to public informational hearings, the Commission held a formal hearing to consider the noise rules for adoption. At the July 19, 1974 EQC meeting in Portland, the Commission approved and adopted the new and in-use motor vehicle noise rules and associated procedure manuals.

The Department has received a petition to amend OAR, Chapter 340, Section 35-025, Noise Control Regulations for the Sale of New Motor Vehicles, and Section 35-030, Noise Control Regulations for In-Use Motor Vehicles. This petition addresses proposed amendments to the rules as they relate to the sale and operation of motorcycles.

In April the Department was given separate presentations by two major automotive manufacturers on the effects of the automobile and light truck noise standard. These representatives indicated that petitions



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would be forthcoming to amend the 1979 model year standards. Although we have not received petitions, we believe that now is an opportune time to address their concerns.

We have been working with these rules for approximately two years and now find that some "housekeeping" revisions are desirable. Therefore, the Department will submit several amendments for consideration.

Evaluation

1. Motorcycle Industry Petition

The Motorcycle Industry Council, a national organization representing most motorcycle manufacturers, has submitted a petition to amend the noise control standards. Present noise rules place all motorcycles, except those used in sanctioned racing events, in a single category. The petitioner requests the separation of road and off-road motorcycles, with less stringent standards for the off-road category. They also wish to delay the next programmed noise reduction for the sale of new motorcycles in OAR 340, 35-025, by two years for road motorcycles and six years for off-road motorcycles. The final goal for road motorcycles would be delayed for nine years. The final standard for off-road motorcycles would be 5 dBA louder than the standard set for road motorcycles.

The petitioner suggests that all off-road and racing motorcycles be identified with a visual device to enable enforcement personnel to identify the category of the motorcycle while it is being operated. They also ask that the in-use motorcycle rules, under OAR 340, 35-030, reflect the proposed changes suggested for the sale of new vehicle standards. It is also suggested that a rule prohibiting the operation of an off-road motorcycle on a public road be considered.

2. Revisions to New and In-Use Automobile Noise Rules

The Department has been contacted by at least two major automotive manufacturers regarding the noise standards for automobiles and light trucks. The present standard for this category of vehicle is 80 dBA with a reduction of 5 decibels to 75 dBA in 1979. These two major manufacturers are concerned with the 1979 standard at this time due to the long lead time needed to design and implement the required noise reduction measures.

The manufacturers have verbally notified the Department that they will submit a petition to amend the new vehicle standards requesting that the present standard remain in effect without a 5 decibel reduction in 1979. We are requesting the Commission to consider this matter at this time rather than wait for a petition in order to more efficiently consider this matter. Notice of any public hearing could be served upon the auto manufacturers with a transmittal letter stating that testimony should be offered now to avoid the expense of repeated public hearings on successive petitions.

The primary concerns that were related to us by the manufacturers are:

- 1) The reduction from 80 dBA to 75 dBA does not reduce the typical operational noise levels of automobiles and light trucks enough to warrant the increased cost.
- 2) The State of California has amended their rule to eliminate the 75 dBA standard and will remain at 80 dBA.
- 3) The Federal EPA will probably pre-empt state rules for this category in approximately 1981.

3. Staff "Housekeeping" Recommendations

The noise rules for motor vehicles were adopted approximately two years ago. We believe now is an appropriate time to request several "housekeeping" revisions in the rules. These revisions would add to deficient portions of the rules, correct some organizational problems and modify portions that are presently, or will be, federally pre-empted by EPA noise standards.

Recommendations will be presented in the following areas:

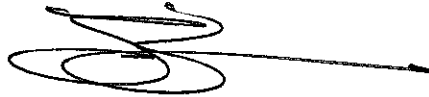
- a) Add specific procedures to obtain an exemption for the sale of "racing" motor vehicles that is currently being covered by a policy agreement.
- b) Amend the heavy truck standards to reflect the new EPA rules which pre-empt DEQ rules in this category.
- c) Amend the ambient rule for motor vehicles operated off public roads to include the operator as well as the property owner.
- d) Revise the stationary test standards and procedures for automobiles and light trucks.
- e) Add metric as well as English units in weights and measures.
- f) Consider several organizational amendments to clarify the rules.

Director's Recommendation

It is the Director's recommendation that the Commission authorize the Department to hold a public hearing, before a hearings officer, at a time and location to be set by the Director. The hearings officer will receive testimony limited to:

- 1) Petition from the Motorcycle Industry Council to amend the noise rules pertaining to motorcycles;
- 2) Needs expressed by automotive manufacturers to revise the noise rules for new and in-use automobiles and light trucks; and

3) Staff recommendations for "housekeeping" amendments.

A handwritten signature in black ink, consisting of a large, stylized 'S' shape with a horizontal line extending to the right.

LOREN KRAMER
Director

JH:ct
6/9/76



ENVIRONMENTAL QUALITY COMMISSION

1234 S.W. MORRISON STREET • PORTLAND, ORE. 97205 • Telephone (503) 229-5696

ROBERT W. STRAUB
GOVERNOR

MEMORANDUM

To: Environmental Quality Commission
From: Director
Subject: Agenda Item I, June 25, 1976, EQC Meeting

Consideration of Amendment of Subsurface Sewage Disposal
Rules Pertaining to Seepage Pits

Background

At the March 12, 1976 EQC meeting consideration was given to the proposed adoption of a temporary rule which had been drafted for the purpose of permitting under certain specified conditions the installation of seepage pits in Wasco County. During the discussion of that proposed temporary rule it was pointed out that in the past seepage pits had been installed in certain other counties in soil formations which like those in Wasco County do not comply fully with present rules. It was, therefore, concluded by the Commission members that any new or amended rule pertaining to seepage pits should be applicable statewide and should not be limited to just Wasco County. The staff was directed to give this matter further study and to submit a revised proposal for consideration at the April 30, 1976 EQC meeting.

On April 1, 1976 DEQ staff members conferred further with the Wasco County Health Department sanitarians and also made a cursory inspection of Murray's Addition, a subdivision located west of the City of The Dalles and fairly close to the Chenoweth Sewer District. Development of this subdivision was started several years ago and presently includes some 125 or more single-family residences located on relatively small city-sized lots. Most of the existing homes are served by individual septic tanks followed by seepage pits. Neither the soil conditions nor the lot sizes are suitable for standard drain-field (disposal trench) installations. According to the County Health Department during the past 20 years only two of these seepage pits have failed to contain the sewage beneath the ground surface. On April 1, 1976 one of them was observed discharging inadequately treated sewage effluent into an adjacent roadside ditch.



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The County Health Department is currently trying to promote the installation of public sewers in the Murray's Addition in order to provide more adequate facilities for both existing and new homes which may be built there in the future and also to solve a serious sewage disposal problem existing at the Foley Lakes Mobile Homes Park located adjacent to and downstream from the above subdivision. Because of the need for public sewers in that area the county is not anxious to permit the installation of any more seepage pit systems in the Murray's Addition.

In addition to the above subdivision seepage pits have during the past several years been installed to serve a few other, but much smaller, developments in the vicinity of The Dalles.

On April 13 and 14, 1976 a more detailed inspection of sites and soil formations in The Dalles area was made by Fred Lissner of the State Department of Water Resources, Dennis Illingworth of the Wasco County Health Department, and by Dr. Robert Paeth and Bob Free of DEQ.

Discussion

In a meeting on March 31, 1976 with residents of Murray's Addition the DEQ regional staff learned that the failure rate of seepage pits is far greater than indicated by Wasco County. According to statements made by the residents at least 30 of the seepage pit installations have had to be repaired and some of them more than once.

The two-day inspection by Fred Lissner and Dr. Paeth confirmed that in the sites in question in Wasco County the subsurface formations consist mostly of deposits of volcanic tuff, open permeable gravel and sand, well fractured basalt, fractured sandstone, and fractured basalt underlain by pillow basalt. The volcanic tuff and non-fractured sandstone are fairly impermeable and therefore not suitable for subsurface disposal of sewage. The open gravel and sand and other highly fractured formations are very permeable. Consequently they are quite suitable for subsurface sewage disposal but may not provide sufficient treatment for protection of the quality of underground water aquifers.

Although data are not available to show that any ground waters which are or may be used for domestic purposes have been polluted by drainage from existing seepage pits, Mr. Lissner is greatly concerned that such pollution might occur at any time.

There are some locations in Wasco County that consist of blow sand that is both permeable enough for sewage disposal by means of either drain fields or seepage pits and also fine enough to provide treatment and thereby protection of underground aquifers, particularly in low-density population areas. Under present rules seepage pits are permitted only in clean coarse gravel formations. Under the variance procedure, however, they could also be permitted in clean coarse sand such as the blow sand mentioned above.

Conclusions

1. Seepage pits have been used for the past several years for disposal of sewage in a limited number of areas in northern Wasco County and to a lesser extent in other areas of the state, particularly in sand formations in coastal counties.
2. In the Wasco County sites with subsurface formation of either open gravel, fractured basalt, or fractured sandstone seepage pits can be expected to dispose of sewage without overflow to the ground surface but because of the fairly high permeability of such formations seepage pits may not provide adequate protection of underground water supplies.
3. Such areas, if they have small lots and potential for high population density, should be developed using area-wide sewerage systems rather than individual on-site systems.
4. There are certain areas in Wasco County and elsewhere in the state that have clean coarse sand formations which would be suitable under certain conditions for installation of seepage pits both from the standpoint of sewage disposal and protection of underground waters.
5. The present rules governing subsurface sewage disposal permit the installation of seepage pits only in areas with clean coarse gravel. Variances can be granted, however, to permit seepage pits in clean coarse sand formations if all other conditions are satisfactory for subsurface disposal of sewage.
6. Before the meeting of the Commission on April 30, 1976 neither the Wasco County Health Department nor any other county had requested that the current rules pertaining to seepage pits be revised or amended. Mr. Irv Reiersen stated to the Commission on April 30, 1976 that he had requested a rule change by letter to Mr. Kenneth Spies. A copy of the only letter Mr. Spies is aware of is attached for your information. There is no such request contained in that letter. If a public hearing is authorized to be held in the near future for consideration of other amendments to the subsurface sewage disposal rules, consideration should be given at that time to an amendment permitting the installation of seepage pits in clean coarse sand so as to eliminate the necessity of seeking a variance in such cases.

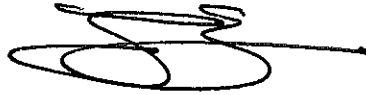
Recommendations

It is the Director's recommendation that

- (1) No temporary rule be adopted at this time as an amendment to OAR 340-71-030(5) pertaining to the installation of seepage pits.
- (2) In an area with clean coarse sand and other conditions suitable for installation of a seepage pit the use of such a facility be

permitted through the granting of a variance if the lot in question cannot be served by a standard drain field installation or other approvable system.

- (3) The Department be directed to hold public hearings for the purpose of considering the banning of further installations of cesspools and seepage pits throughout the state.

A handwritten signature in black ink, appearing to be 'Loren Kramer', with a long horizontal stroke extending to the right.

LOREN KRAMER
Director

KHS:md
6/10/76

Attachment: Copy of Irv Reiersen's letter dated January 23, 1976 to Kenneth Spies.

WASCO-SHERMAN
PUBLIC HEALTH DEPARTMENT
TELEPHONE (503) 296-4636
400 EAST FIFTH STREET
COURT HOUSE ANNEX
THE DALLES, OREGON 97058

January 23, 1976

296-4636

Mr. Kenneth Spies
Department of Environmental Quality
1234 S.W. Morrison Street
Portland, Oregon 97205

RE: Dry Wells

Dear Mr. Spies:

In your telephone conversation with this office, you requested information regarding dry-wells that are operating in this area.

We have one subdivision (Murray's Addition) that has over 100 dry wells that have been in operation from seven to over twenty years. Only two have failed in the last twenty years. Those failures were due to improper construction. Tooley Acres, another housing area is being served by dry wells. About twenty installations are in this area. They have been installed during the past fifteen years. We have experienced minimal failures in this area. Columbia Crest with ten homes, has dry wells that have been in existence for the past fifteen to twenty years, are operating satisfactory.

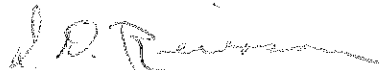
Other areas outside The Dalles city limits have dry wells, but are scattered depending upon the water table and soil formation.

The large home areas named above, the water table is not a problem since the housing is situated on high ground.

I feel that dry wells in this area are serving a useful purpose. Otherwise, homes could have not been constructed because of a sandstone formation that would not allow subsurface drain lines.

Sincerely,

John M. Campbell, M.D.
Health Officer



By: I. D. Reiersen, R.S.
Supervising Sanitarian

IDR/rn

RECEIVED

JAN 28 1976

SOLID WASTE SECTION



ENVIRONMENTAL QUALITY COMMISSION

1234 S.W. MORRISON STREET • PORTLAND, ORE. 97205 • Telephone (503) 229-5696

ROBERT W. STRAUB
GOVERNOR

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item J, June 25, 1976, EQC

Variance Request to allow open burning in a Special Control Area near City of Drain, Douglas County, Oregon.

Introduction

By letter dated June 1, 1976, S. D. Spencer & Son Construction, Vancouver, Washington, requested a variance from the Department's rules and regulations which prohibit the open burning of land clearing debris within special control areas. The proposed open burning would be applied to brush and trees cleared from 2.7 miles of right-of-way for improvement to State Highway 99, beginning immediately north of the City of Drain, Douglas County.

Background

Oregon Administrative Rules, Chapter 340, Section 23-010 (3) prohibits the open burning of land clearing debris, other than otherwise exempted by law, after July 1, 1974, within the boundaries of special control areas. The subject project is located within the boundaries of a special control area specified in OAR Chapter 340, Section 21-010 - more specifically the Umpqua Basin Special Control Area. Land clearing debris means waste generated in clearing any site, as defined in OAR Chapter 340, Section 23-005 (3).

Discussion

S. D. Spencer & Son Construction has been awarded the prime contract for a highway improvement project in Douglas County, following the opening of competitive bids by the Oregon State Highway Division and expects to start construction approximately June 28, 1976. The project includes the clearing of approximately 34 acres of brush and trees along existing Highway 99 right-of-way between Drain and Rock Creek for a distance of 2.7 miles. Prior to submitting the bid, this firm, as well as other potential bidders, contacted the Department's Regional Office in Roseburg regarding which rules and regulations might apply to subject project. The Department's rules and regulations on open burning were provided.



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MEMORANDUM

Agenda Item J, June 25, 1976, EQC

Page 2

Possible alternatives to open burning include the utilization of a "pit-incinerator" [defined by OAR, Chapter 340, Section 23-005 (2) to provide controlled burning] or land filling. The major advantage to pit-incineration is that it tends to reduce visible smoke, after startup, to a greater degree than open burning normally does. The nearest solid waste disposal site currently under Department permit is the Yoncalla site, operated by Douglas County Department of Public Works, located approximately six miles from the construction area. This site is small and unable to accommodate large volumes of land clearing debris. The closest approved landfill potentially having adequate space is the Central Roseburg Landfill, some 36 miles south of the project. The staff questions the merit, however, of using valuable domestic landfill space for land clearing debris. It may be possible to locate a limited-use landfill for this land clearing debris in the vicinity of the project. We are not aware if S. D. Spencer & Son has explored this alternative.

The population density along the construction route is sparse and rural in nature. (There are about 36 homes spread over the 2.7 miles). The City of Drain (population 1200), located near the beginning of the project, is the nearest urban center. Lumber processing facilities (sawmill and a plywood plant) are the only major industrial or commercial air contaminant sources in the vicinity.

The project is within the Douglas County Air Quality Attainment Area. The Eugene-Springfield Air Quality Maintenance Area is approximately 23 air miles north of the site and the Roseburg Primary Abatement Area is 26 miles to the south.

All burning is proposed to be handled by the "high-stack" method, a method of placing combustibles in stacked piles of manageable size to induce a hot, updraft type of fire. The contractor estimates that open burning will be conducted over a 30 day period beginning as soon as a variance authorization is granted. Douglas Forest Protective Association has indicated that they are prepared to issue a burning permit and expect to have close surveillance of the burn to assure that it is properly contained.

Summary and Conclusions

1. S. D. Spencer & Son Construction requests variance from the Department's Rules and Regulations on open burning of land clearing debris within a Special Control Area.
2. The proposed open burning would be applied to the clearing of brush and trees from a 2.7 mile stretch of right-of-way for State Highway improvements beginning adjacent to the City of Drain, Douglas County.
3. The project, while within the Umpqua Special Control Area, is in a sparsely settled rural setting except for the City of Drain (population 1200).

4. While the use of "pit-incinerators" could be expected to provide some smoke reduction compared to utilizing the high-stack burn technique, particularly during initial fire start-up, overall air quality improvement benefits after startup would not be significant.
5. Landfilling of clearing debris at a current Department approved site has limited practicability due either to space limitations or travel distances.
6. The Department considers the project location non-critical as it relates to open burning's impact on ambient air quality.
7. The project is within an Air Quality Attainment Area. The nearest Primary Abatement Area is Roseburg, 26 miles south of the project.
8. The Environmental Quality Commission is empowered to grant this variance in accordance with ORS 468.345 (b).

Director's Recommendations

The Director recommends that the Environmental Quality Commission find that strict compliance with the rule is inappropriate because special circumstances render strict compliance unreasonable, burdensome or impractical due to special physical conditions, and grant a variance to OAR Chapter 340, Section 23-010, to S. D. Spencer and Son Construction, to allow open burning of land clearing debris from a 2.7 mile highway improvement project near Drain, Douglas County, subject to the following conditions:

1. All burning shall be accomplished by the "high-stack" method.
2. Material which is not consumed in the primary open burn shall not be left to smolder in a manner to cause a nuisance smoke condition.
3. No materials such as tires, asphalt, oil or rubber products which normally emit dense smoke or noxious odors or create a public nuisance shall be used to maintain the fire except that limited quantities of diesel oil may be used to start each pile to hasten startup and minimize initial smokey conditions.
4. Burning shall be conducted only at a time when good atmospheric ventilation exists to give any smoke an opportunity to disperse.
5. All burning shall be coordinated with the Douglas Forest Protective Association and any required burning permits be obtained.

6. This variance may be revoked if the Department determines that Spencer and Son Construction is not complying with the conditions of the variance or if unforeseen deterioration of air quality is caused.

A handwritten signature in black ink, appearing to read 'Loren Kramer', with a long horizontal line extending to the right.

LOREN KRAMER
Director

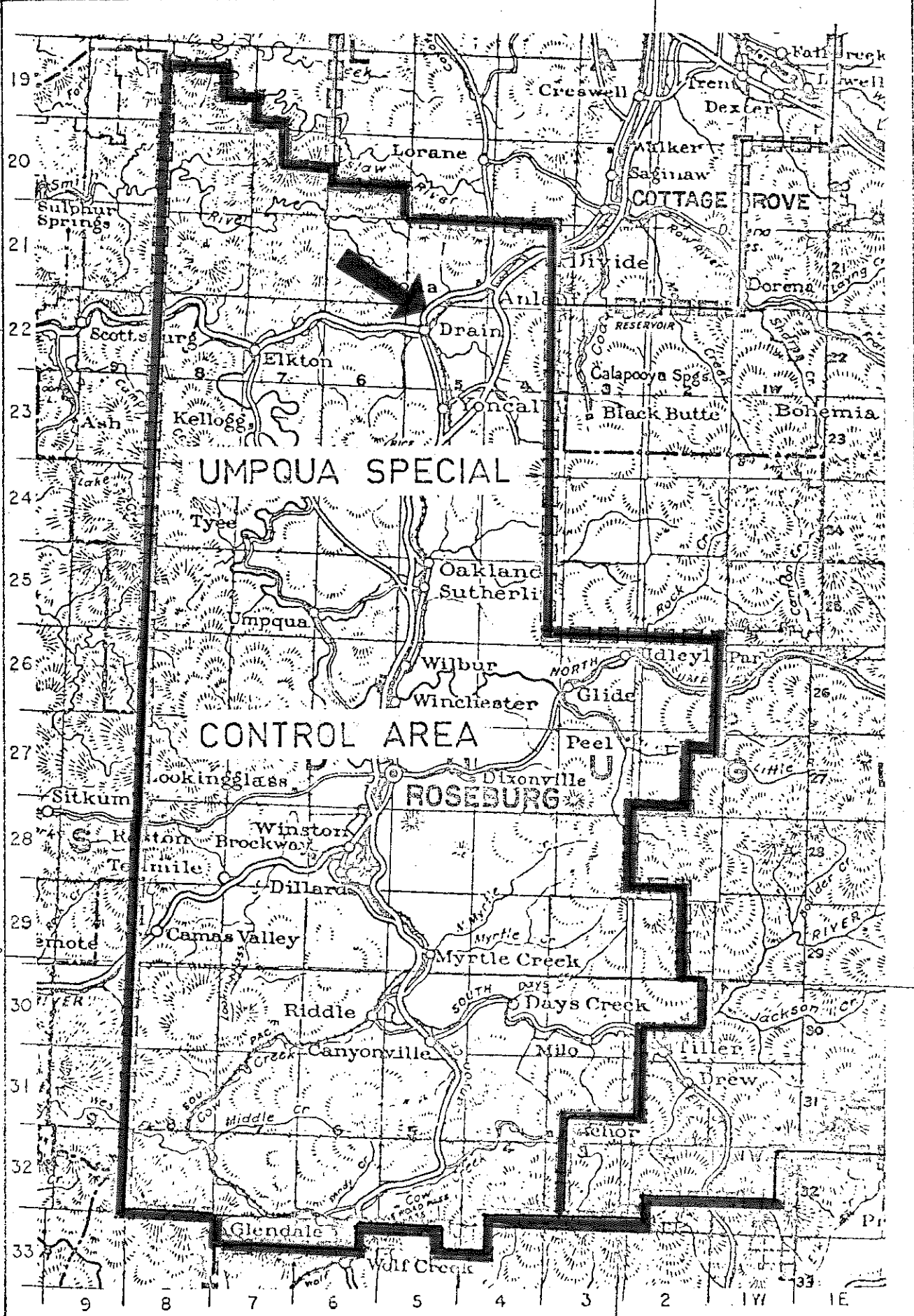
LK:bw

June 15, 1976

Attachments

- Map of Umpqua Special Control Area
- Map of Drain-Rock Creek Section of Project
- OSH Division Special Provisions page 7 & 8
- S. D. Spencer Letter of June 1, 1976 Requesting Variance

123°



UMPQUA SPECIAL

CONTROL AREA

ROSEBURG

123°

DRAIN ~ ROCK CR. SECTION

UMPQUA HIGHWAY

DOUGLAS COUNTY

MAY, 1976

Pavement Construction
& Drainage Curbs

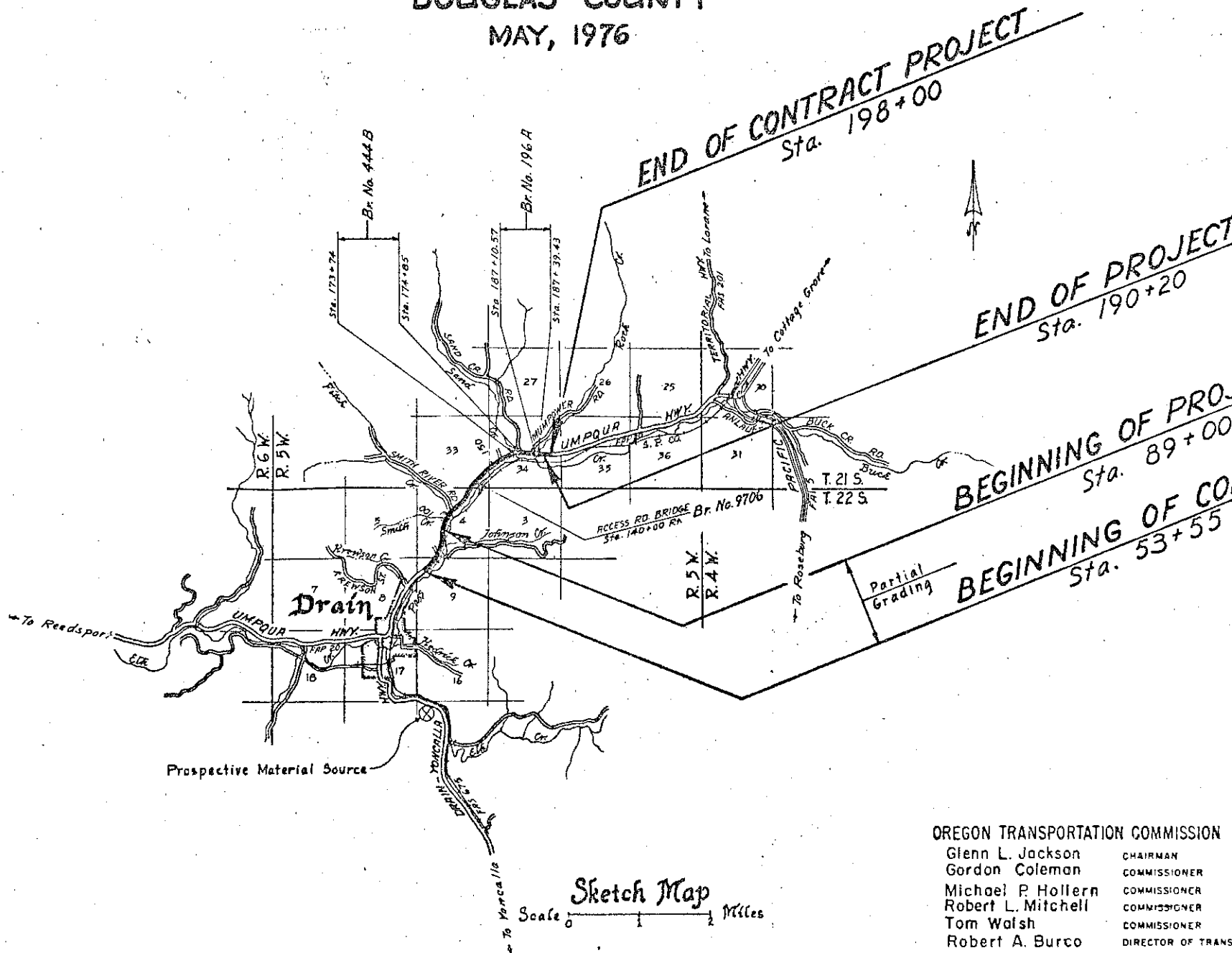
Millage

Inlets
Cutbanks

1
5
5
15
9706
444B

196A
Standards

Standards



OREGON TRANSPORTATION COMMISSION

Glenn L. Jackson	CHAIRMAN
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Michael P. Hollern	COMMISSIONER
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Robert A. Burco	DIRECTOR OF TRANSPORTATION

**SPECIAL PROVISIONS
AND SUPPLEMENTAL
STANDARD SPECIFICATIONS
FOR HIGHWAY CONSTRUCTION**

**OREGON STATE HIGHWAY DIVISION
SALEM, OREGON**

KIND OF WORK GRADING, PAVING, STRUCTURES AND SIGNING
SECTION DRAIN-ROCK CREEK
HIGHWAY UMPQUA
COUNTY DOUGLAS
PROPOSALS TO BE RECEIVED MAY 27, 1976

Drain-Rock Creek Section

(d-10) His plans for visual screening of landscape scars.

(d-11) The approval of owner of the property, if other than the contractor, for the contractor's proposed plans for the implementation of the requirements set forth in subparagraphs (d-1) through (d-10) above.

The criteria for Oregon State Highway Division approval or disapproval of the contractor's proposed operation and reclamation plan, as above required, will be whether or not the contractor's proposed plans are in conformance with the intent and spirit of all laws, statutes, ordinances, rules and regulations covering the protection of the environment.

It shall be understood that the provisions listed in paragraphs (a), (b), (c) and (d) above are not applicable under the following conditions:

1. When the contractor purchases material from an established continuously operated commercial source.
2. When the contractor sets up in, produces and furnishes material from an established continuously operated commercial source.

A "continuously operated commercial source" as above used shall be understood to be a quarry, a gravel deposit, a topsoil source, or a borrow material source in which an average of 5000 cubic yards of materials per year has been excavated in the previous three years.

106.13 Field Laboratory - A field laboratory will be required on this project.

SECTION 107 - LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

107.01 Laws to be Observed - In compliance with ORS 279.318, the following is a list of Federal, State and local agencies of which the Highway Division has knowledge that have enacted ordinances or regulations relating to environmental pollution and the preservation of natural resources that may affect the performance of State Highway Division contracts.

FEDERAL AGENCIES

Agriculture, Department of
Forest Service
Soil Conservation Service

Drain-Rock Creek Section

FEDERAL AGENCIES - contd.

Defense, Department of
Army Corps of Engineers

Environmental Protection Agency

Health, Education and Welfare, Department of

Interior, Department of
Bureau of Sport Fisheries and Wildlife
Bureau of Outdoor Recreation
Bureau of Land Management
Bureau of Indian Affairs
Bureau of Reclamation

Labor, Department of
Occupational Safety and Health Administration

Transportation, Department of
Coast Guard
Federal Highway Administration

STATE AGENCIES

Agriculture, Department of
Environmental Quality, Department of
Fish and Wildlife, Department of
Forestry, Department of
Geology and Mineral Industries, Department of
Human Resources, Department of
Land Conservation and Development Commission
Soil and Water Conservation Commission
State Engineer
State Land Board
Water Resources Board

LOCAL AGENCIES

City Councils
County Courts
County Commissioners, Boards of
Planning Commissions

107.07 Liability for Monies Due State Commissions - Chapter 771, 1975 Oregon Laws repeals ORS 279.510. The reference to this law in subsection 107.07 of the Standard Specifications is hereby deleted.

S. D. SPENCER & SON

Construction, Trucking and Equipment Rental

4614 N.E. 72nd Avenue • Phones: Vancouver 256-1220 • Portland 285-9232

VANCOUVER, WASHINGTON 98661

June 1, 1976

Mr. Harold Patterson
Air Quality Division
1234 S. W. Morrison
Portland, Oregon 97205

*ADC - Douglas Co, General
Plane Coordinator. H
Patterson - on preparation
of staff report*

Re: Drain to Rock Creek
Open Burning

Dear Mr. Patterson:

Pursuant to conversations we have had with your Mr. Donald Neff of the Roseburg office, we respectfully request a variance to the Open Burning Regulations of the Oregon Administrative Rules, Chapter 34, Section 23-010(3).

From a practical consideration, we would appreciate the hearing and decision at your hearing to be held in Portland, Oregon on June 25, 1976. Mr. Neff has indicated that his office could complete their staff recommendations by the week ending June 5, 1976.

The request of variance is requested for the following:

1. The burning will take place on Oregon State Right-of-Way for a new hwy. from Drain (1-1/2 miles north) to Rock Creek.
2. Clearing of right-of-way (approximately 34 acres) brush, trees, etc. is extremely difficult and expensive except by open burning.
3. There is no solid waste disposal area close at hand (the County's site at Yoncalla is too small to accept the quantity); therefore, the material

Mr. Harold Patterson
June 1, 1976
Page 2

would have to be hauled to Roseburg, Ore. (36 miles to the south).

4. There would be no significant impact on the community because of the low density population rate. Significantly, the industry of the Drain area is principally forest products; therefore, neither the physical or psychological effect of burning is offensive to the majority.

Our burning would follow the "hi stacking" method therefore providing efficiency and a minimum of contaminants.


Should you require any additional information, please do not hesitate to call our Roseburg office: Telephone 1-672-6705

Mail: S. D. Spencer & Son
P. O. Box 982
Roseburg, Oregon 97470

Sincerely,

S. D. Spencer & Son

By


Otis Jordan

OJ/jlw
cc: Vancouver
✓ Mr. Donald Neff



ENVIRONMENTAL QUALITY COMMISSION

1234 S.W. MORRISON STREET • PORTLAND, ORE. 97205 • Telephone (503) 229-5696

ROBERT W. STRAUB
GOVERNOR

MEMORANDUM

To: Environmental Quality Commission
From: Director
Subject: Agenda Item K, June 25, 1976, EQC Meeting

Tax Credit Applications

Attached are review reports on 10 requests for Tax Credit Action. These reports and the recommendations of the Director are summarized on the attached table.

Director's Recommendation

It is recommended that the Commission act on the ten (10) tax credit requests as follows:

1. Issue certificates for 8 applications (T-722R, T-739, T-754, T-755, T-760, T-762, T-763 and T-765).
2. Deny 2 applications (T-725 and T-757).
3. Reissue Certificate No. 666 in the amount of \$137,171. Typographical error of \$6,000 in previously issued certificate (\$131,171).

A handwritten signature in black ink, appearing to read "Loren Kramer".

Loren Kramer
Director

Attachments

Tax Credit Summary
Tax Credit Review Reports
Letter from SWF Corp. requesting reissuance of Certificate No. 666.



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<u>Applicant/Plant Location</u>	<u>Appl. No.</u>	<u>Facility</u>	<u>Claimed Cost</u>	<u>% Allocable to Pollution Control</u>	<u>Director's Recommendation</u>
Georgia-Pacific Company Toledo	T-722R	Electrostatic Precipitator	\$ 100,706.30	40% or more but less than 60%	Issue
Terminal Properties Portland	T-725	Gravity oil separator, Chemical feeder	9,572.00		Deny
Lamb Weston Hermiston	T-739	Primary clarifier, pump station, etc.	501,549.00	Less than 20%	Issue
Boise Cascade Corp. Salem	T-754	SO ₂ Analyzers	19,577.00	80% or more	Issue
Boise Cascade Corp. Salem	T-755	Mist Eliminator	522,574.00	80% or more	Issue
Columbia Corporation Cascade Locks	T-757	Planer shaving cyclone	20,151.00		Deny
Babler Brothers, Inc. Portland	T-760	Portable asphalt batch plant	89,350.00	80% or more	Issue
Martin Marietta, Inc. The Dalles	T-762	Settling pond and outfall	173,605.42	80% or more	Issue
Eugene F. Burrill Lumber White City	T-763	Multiclone and heat exchanger	38,244.00	80% or more	Issue
Fremont Lumber Co. Lakeview	T-765	Replacement and improvement of existing facilities	181,436.00	80% or more	Issue

Proposed May and June, 1976 Totals:

Air Quality	\$ 951,887.30
Water Quality	675,154.42
Land Quality	0
	<u>\$ 1,627,041.72</u>

Calendar Year Totals to date: (Excluding
May and June totals)

Air Quality	\$ 4,316,082.47
Water Quality	4,402,112.85
Land Quality	592,514.64
	<u>\$ 9,310,709.96</u>

Total Certificates Awarded (monetary values)
since inception of Program (excluding
proposed May and June 1976 certificates)

Air Quality	\$ 99,258,244.22
Water Quality	84,809,269.63
Land Quality	19,453,032.91
	<u>\$ 203,520,546.76</u>

State of Oregon
Department of Environmental Quality
Tax Relief Application Review Report

1. Applicant

Ostrander Construction Company
909 Terminal Sales Building
Portland, Oregon 97205

The applicant owns and operates the Fremont Sawmill Company, a lumber mill in Lakeview, Lake County, Oregon.

2. Description of Facility

The facility claimed in this application consists of fuel handling and storage projects, and a boiler re-bricking project. It includes:

a. Hogged fuel conveyor, installed	\$115,808.45
b. Hogged fuel storage house expansion, installed	48,829.06
c. Hogged fuel boiler re-bricking	16,798.74

The facility was begun May 15, 1975 and was completed and placed in operation on June 23, 1975.

Certification is claimed under current statutes and the percentage claimed for pollution control is 100%.

Facility costs: \$181,436 (Accountant's certification was provided.)

3. Evaluation of Application

The Department required Fremont Sawmill at Lakeview to phase out or modify their wigwam wood waste burner by Stipulation and Order 72-0710037 signed July 24, 1972 by the applicant. The Department approved enlargement of the existing fuel house and modifications to the conveyor system on July 25, 1974. These changes were to allow phase out of the wigwam. They fulfilled prior approval requirements.

The Fremont Sawmill mentions, in a May 30, 1975 letter to the Department, that "the insurance company....demanded that we rebrick the number one boiler". Re-bricking a boiler is scheduled maintenance and is not considered eligible for tax credit by the Department. It is conceded that air pollution could be decreased when boilers are re-bricked, other factors being equal.

The three hog fuel boilers were tested in June 1974 and demonstrated marginal compliance. The three boilers were observed on November 19, 1975 and were in visual compliance. The test in June 1974 recorded lower opacity readings than in November 1975, but this could be caused by an decreased steaming rate rather than re-bricking or a different fuel composition.

The wigwam waste burner has been in continuous retirement since December 1975. Yard clean up burns had been made from May 1975 to that time. In May and June 1975 the mill used the unmodified wigwam burner to dispose of hogged fuel which could not be sold on the open market, and could not be burned during the re-bricking of two boilers (item 2.c. above).

The mill is currently experiencing problems in disposing of all its wood waste. The Department has given permission to use the wigwam for such emergency situations, rather than closing the mill when wood waste fuel storage capacity is exceeded. The wigwam has yet to be used this year, however, as the plant has never run out of fuel storage.

It is concluded that the boiler re-bricking is maintenance and not allocable to air pollution control. The fuel handling and expanded storage facilities are vital to retiring the wigwam waste burner, and are 100% allocable to air pollution control. Therefore 91% of the claimed costs (items 2.a. and 2.b.) are allocable.

4. Director's Recommendation

It is recommended that a Pollution Control Facility Certificate bearing the cost of \$181,436 with 80% or more allocated to pollution control be issued for the facility claimed in Tax Credit Application Number T-765.

PBB:h

State of Oregon
Department of Environmental Quality

Tax Relief Application Review Report

1. Applicant

Eugene F. Burrill Lumber co.
8425 Agate Road
White City, Oregon

The applicant owns and operates a lumber mill in the industrial suburb, White City, north of Medford, Oregon.

2. Description of Facility

The facility claimed in this application consists of additions to their wood waste fired boiler to lessen the emission of pollutants.

The claim is for:

a. Cyclo-blast multiclone	\$14,000
b. Cyclo-blast combustion air heat exchange	14,000
c. Reinjection of char and ash	4,850
d. Installation labor	4,290
e. Installation material, etc.	1,104

The facility was begun on October 27, 1975, completed on December 26, 1975, and placed in operation on December 29, 1976.

Certification is claimed under the 1969 statute. The percentage claimed for pollution control is 100%.

Facility costs: \$38,244 (Accountants' certification was provided.)

3. Evaluation of Application

The applicant was required by the Department to test his boiler for compliance to the Department's particulate emission concentration rule. In preparation for this test, the applicant bought some new features for his 11 year old boiler. Two of these features, the multiclone and the heat exchanger, lower particulate emissions. A third feature, cinder re-injection, can increase air pollution, but lessens the solid waste disposal problem caused by wood waste boilers. Where Air Quality rules can be met, the Department encourages re-injection of cinders, so that the combustible fraction can be burned rather than land-filled.

The applicant submitted a Notice of Construction and Request for Preliminary Certification for tax credit on October 10, 1975. The Department approved the plan and granted preliminary certification for tax relief on October 20, 1975. However, the Department did not give a promise for 100% tax credit because of the staff's reservations.

The boiler had been observed before the alteration at 5 to 15% opacity. After the alteration it was read at 16% opacity. Before the alteration it may have been emitting at from 0.103 to 0.140 gr/scf (range of that type of boiler) in particulate concentration. After the alteration it was measured at 0.155 gr/scf.

The re-injection of the cinders has apparently overcome the other two features to perhaps raise the air pollution (from about 18 to 22 tons/yr). However, the boiler does meet the 0.200 gr/scf rule, the 20% opacity rule. Therefore, since the lessening of the cinder solid waste problem is a very minor contribution to Medford's solid waste situation, it would seem proper to deny pollution tax credit for the re-injection feature. Since this feature costs less than 20% of the project, such a denial actually makes no difference in the Department's recommendation to the Commission.

It is therefore concluded that 87% of the claimed facility is allocable to air pollution control.

4. Director's Recommendation

It is recommended that a Pollution Control Facility Certificate bearing the cost of \$38,244 with 80% or more allocated to pollution control be issued for the facility claimed in Tax Credit Application No. T-763.

LOREN KRAMER
Director

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Martin Marietta Aluminum, Inc.
Reduction Division
P. O. Box 711
The Dalles, Oregon 97058

The applicant owns and operates a 250 ton per day primary aluminum reduction plant in The Dalles, Oregon in Wasco County. The application was received April 8, 1976.

2. Description of Claimed Facility

The claimed facility consists of a 16 hour settling pond and submerged outfall. The facility was designed and constructed to allow it to be used as part of a scrubber recirculation system if the Department so requires.

The claimed facility was approved in May 1975.

The claimed facility was constructed and placed in operation in October 1975.

Certification must be made under the 1969 Act and the percentage claimed for pollution control is 100%.

Facility costs: \$173,605.42 (Accountant's certification was submitted.)

3. Evaluation of Application

Prior to installation of the claimed facility, only primary scrubber water received any treatment prior to discharge. Further, the waste water was easily visible as it entered the Columbia River by flowing over the river's rock banks. With the claimed facility, all waste water including primary and secondary scrubber water and storm runoff is allowed to settle prior to its discharge to the Columbia River via a submerged outfall. The discharge is no longer visible.

It is the Department's determination that the facility was constructed under a preliminary certificate of approval as required by ORS 468.175.

Inspection of the claimed facility showed that it was well-designed, well-constructed, and operates satisfactorily.

T-762

April 26, 1976

Page 2

4. Director's Recommendation

It is recommended that a Pollution Control Facility Certificate bearing the cost of \$173,605.42, with 80% or more of the cost allocated to pollution control be issued for the facility claimed in Tax Application number T-762.

RJN:em

State of Oregon
Department of Environmental QualityTax Relief Application Review Report

1. Applicant

Babler Brothers, Inc.
4617 S. E. Milwaukie Avenue
Portland, Oregon 97202

The applicant owns and operates a portable asphalt batch plant in eastern Oregon and Washington.

2. Description of Facility

The facility claimed in this application consists of a wet scrubber; a Stansteel Model DL40 scrubber including wet collector model 280D, draft system, electrical, freight, and installation costs.

The facility began installation on April 25, 1975 and was completed and placed in operation on May 20, 1975.

Certification is claimed under current statutes and the percentage claimed for pollution control is 100%.

Facility costs: \$89,350 (A company accountant's certification was provided.)

3. Evaluation of Application

The company was required by the Department and the U. S. Environmental Protection Agency to meet the new source 0.04 gr/scf federal particulate emission concentration standard. The claimed facility was proposed to the Department in an Air Contaminant Discharge Permit application. No other forms were requested by the Department. The Air Contaminant Discharge Permit was approved May 5, 1975 requiring compliance testing. A test on June 6, 1975 demonstrated compliance, and was approved on July 29, 1975 by the Department.

The plant operated, with the claimed facility cleaning the exhaust air, in Oregon from May 20, 1975 to July 29, 1975. On July 29, 1975 dismantling began until the plant was completely moved by August 29, 1975 to Dallesport in Washington State (just across the Oregon border). The plant is still located in Washington State, but may return to Oregon State next year.

The wet scrubber produces a wet slurry. The slurry is dumped into settling ponds and has no economic worth.

It is concluded that the claimed facility is 100% allocable to air pollution control, but should only receive Oregon tax credit for that proportion of its total operating time each year that takes place in Oregon. For example, if the facility operates 1/2 of its total operating time in Oregon and 1/2 of its total operating time in Washington for any given tax year, only 50% Oregon tax credit should be claimed and allowed.

Appl. T-760

Page 2

Director's Recommendation

It is recommended that a Pollution Control Facility Certificate bearing the cost of \$89,350 with 80% or more allocated to pollution control be issued for the facility claimed in Tax Credit Application T-760 and that said tax credit be allowed for the proportionate share of its total operating time that takes place in Oregon in any tax year starting with tax year 1975 and ending not later than tax year 1985.

LOREN KRAMER
Director

PBB:ds

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
TAX RELIEF APPLICATION REVIEW REPORT

Applicant

Columbia Corporation
Cascade Locks Lumber Co.
P. O. Box 427
Cascade Locks, Oregon 97014

The applicant owns and operates Cascade Locks Lumber Company planing mill at Cascade Locks, Hood River County. The applicant installed a cyclone to trap wood shavings generated at the planing mill.

Description of Claimed Facilities:

The claimed facility is a planer shaving cyclone.
The claimed facility was placed in operation in October 1975.
Certification is claimed under ORS 468.165(1)(b) as a facility which obtains useful material or energy resources from material that would otherwise be solid waste.
Facility cost \$20,151.00 (Accountant's certification was attached to application).
Notice of construction was not submitted to the Department prior to construction as required under ORS 468.175.

Evaluation of Application

The Columbia Corporation acquired the Cascade Locks Lumber Company in 1969, since that time shavings generated by the planing mill have been purchased on a continuing basis by various hardboard producing companies. In 1974 the company started to haul the shavings by truck instead of barge. The reason for installation of the claimed facility was to trap wood shavings into a storage bin before loading the trucks. This cyclone cannot be considered a "pollution control facility" utilizing solid waste because the planer shavings were not a solid waste prior to installation of the claimed facility.

The Department concludes that the claimed facility does not meet the provisions of ORS 468.165(1)(b) and/or 468.175 and is therefore not eligible for certification.

Director's Recommendation

It is recommended that this application be rejected and the facility claimed in Tax Credit Application No. T-757 not be certified. The facility does not serve the pollution control function stated in the application.

MS:mm

State of Oregon
Department of Environmental Quality
Tax Relief Application Review Report

1. Applicant

Boise Cascade Corporation
P. O. Box 2089
Salem, Oregon 97308

The applicant owns and operates a sulfite pulp and paper mill in downtown Salem, Oregon.

2. Description of Facility

The facility claimed in this application are sulfur dioxide (SO₂) recording meters located on the roofs of the Civic Center and Pioneer Trust Building in downtown Salem, and wind measurement devices on the roof of the mill's recovery boiler building. The facility consists of:

- a. Two SO₂ ambient air analyzers, Technicon
- b. One Wind Indicator unit to measure and record wind speed and direction, and ambient air temperature
- c. Engineering and labor

The facility was begun, completed, and placed in operation in May, 1975.

Certification is claimed under the 1969 law and the percentage claimed for pollution control is 100%.

Facility costs: \$19,577 (accountant's certification was provided).

3. Evaluation of Application

Boise Cascade was asked by the Department to provide continuous monitoring of SO₂ per letters in August and September of 1974. The Department reviewed the adequacy of the equipment before it was purchased.

The Department operates the SO₂ monitors, while Boise Cascade operates the wind station, providing data to the Department as requested. The claimed facility is an effective aid in measuring and controlling SO₂ in downtown Salem. The claimed facility provides no monetary return to the applicant.

Therefore, it is concluded that 100% of the claimed facility can be allocated to air pollution control.

4. Director's Recommendation

It is recommended that a Pollution Control Facility Certificate bearing the cost of \$19,577 with 80% or more allocated to pollution control be issued for the facility claimed in Tax Credit Application No. T-754.

PBB:df

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Lamb-Weston, a Division of Amfac Foods
Lamb-Weston
P. O. Box 23517
Portland, Oregon 97223

The applicant owns and operates a potato processing plant near Hermiston, Oregon, in Umatilla County.

2. Description of Claimed Facility

The claimed facility consists of the following basic components:

- a. A 75 foot diameter primary clarifier
- b. 2 Shaker screens
- c. Solids hoppers
- d. Rotating vacuum filter
- e. Primary pump station
- f. Related controls, valves, and piping

The claimed facility was placed in operation in December 1972.

Certification must be made under the 1969 Act and the percentage claimed for pollution control is 100%.

Facility costs: \$501,549 (Accountant's certification was submitted).

3. Evaluation of Application

Without the claimed facility, gross solids in the potato processing waste water would not have been removed prior to irrigation. These solids would probably have caused clogging of the irrigation system and overloaded the land disposal field with solid materials. With the claimed facility, the solids are removed from the waste water and sold as cattle feed.

The claimed facility was approved by the Department prior to construction. Since the facility was constructed prior to 1973, a certificate of preliminary approval (pursuant to ORS 468.175) was not required.

The claimed return on investment for the facility is 21.5%. Policy recently approved by the Director will not allow a facility to be certified for over 20% for pollution control if the return on investment exceeds 20% (see attached memo).

Inspection of the claimed facility showed that it is well designed and that it operates satisfactorily.

T-739
April 27, 1976
Page 2

4. Director's Recommendation

It is recommended that a Pollution Control Facility Certificate bearing the cost of \$501,549 with less than 20% of the cost allocated to pollution control be issued for the facility claimed in Tax Application No. T-739.

RJN:em
Attachment

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Terminal Properties Company
3900 N. W. Yeon Avenue
Portland, Oregon 97210

The applicant owns and operates an automobile receiving and transfer operation in Northwest Portland.

The application was received on December 19, 1975.

2. Description of Claimed Facility

The claimed facility consists of a chemical feeder and storage system for supplying emulsion breaking chemicals to the waste water, a tank in which the chemicals above are added to the waste water to break any oil-water emulsions, a gravity oil-water separator for removing the oil from the water, and related piping, valves, and controls.

The claimed facility was completed and put into operation in December 1974. The plans for the facility were not approved by the Department but the Department was notified by letter from the City of Portland of the applicant's intent to construct the claimed facilities over 5 months prior to the start of construction. The Department did not request plans following receipt of the letter. It is the staff's determination that the letter from the City of Portland satisfied ORS 468.175 which requires an applicant to provide notice of construction of the claimed facility.

Certification must be made under the 1969 Act and the percentage claimed for pollution control is 100%.

Facility costs: The application claims \$9,572 as the cost of the facility (Receipts and expense ledgers were submitted to verify the costs). Included in the claimed costs are engineering fees related to acquiring a permit to discharge wastes to the City of Portland sewer system. This amount is \$540.00 and it is the staff's determination that this is not related to the costs of the claimed facility and should be deducted from the \$9,572.

3. Evaluation of the Application

Prior to the installation of the claimed facilities, untreated truck wash water was being discharged to the City of Portland sewer system. The untreated wash water did not comply with the City's regulations requiring waste waters to contain less than 100 mg/l oil and grease and be within a pH range of 5.5 to 9.0.

The claimed facility was installed to pretreat the wash water to meet the City's regulations. A sample of the effluent was taken at the time the claimed facility was inspected by the Department. The results indicate that the claimed facility was not meeting the City's regulations. Data supplied by the City of Portland also indicates that the system does not comply with the regulations.

The Department informed the company that analysis of the effluent indicated that the claimed system was not meeting City standards and suggested that they either improve the system and submit data showing that it can meet the City standards or submit a certification from the City of Portland substantiating that the claimed facility was adequate. No response has been received indicating that either of these alternatives have been accomplished. ORS 468.170 requires the Commission to act on an application within 120 days of the date of filing. Failure to act in 120 days constitutes rejection of the application. This application has been on file over 120 days as of April 18, 1976.

4. Conclusions

The facility does not appear to operate satisfactorily nor does it appear to provide an effluent which meets the City of Portland sewer regulations. Further, the Department has been unable to take action on the application within 120 days as required by law. Consequently certification as a pollution control facility should be denied at this time. The applicant may re-apply when satisfactory performance has been demonstrated.

5. Director's Recommendations

It is recommended that a Pollution Control Facility Certificate for the facility claimed in Tax Application T-725 be denied for the reason that said facility does not operate satisfactorily to achieve the desired pollution control objective.

State of Oregon
Department of Environmental Quality
Tax Relief Application Review Report

1. Applicant

Georgia-Pacific Corporation
900 S. W. Fifth Avenue
Portland, Oregon 97204

The applicant owns and operates an unbleached kraft pulp and linerboard mill at Toledo, Lincoln County, Oregon.

2. Description of Claimed Facility

The facility claimed in this application consists of the rebuilding of No. 3 Electrostatic Precipitator, which consisted of replacing worn out parts and putting in better designed parts to improve performance. The areas covered are:

- 1. Installation of parts \$94,763.40
- 2. Material and Supplies, including re-designed ductwork to improve air flows 5,942.90

The facility was begun in December, 1973, and was completed and placed into operation in April, 1974.

The application is submitted under current statutes and the percentage for pollution control is 100%.

Facility costs: \$100,706.30 (Accountant's certification was provided).

3. Evaluation of Application

Georgia-Pacific was required to reduce particulate emissions from their No. 3 Recovery Furnace by the compliance conditions of their Air Contaminant Discharge Permit. The project was begun and acknowledged by the Department. Measurements show that Na₂SO₄ emissions dropped from 4,800 pounds per day to 80 pounds per day because of this project.

Since the project involved Precipitator upgrading and not just repair, the project is eligible for tax credit.

Georgia-Pacific detailed the value of the recovered chemical at \$37,842/yr. with recovery expenses of \$18,209/yr. and depreciation of \$6,713.75/yr. being incurred. The net worth recovered is \$12,919.25/yr. The Department policy is to allow a pollution control tax credit of increasing amounts as the return on investment falls below 20%. For this project, the return on investment is 12.83%, so the Department concludes that 40% of the project is allocable to air pollution control.

4. Director's Recommendation

It is recommended that a Pollution Control Facility Certificate bearing the cost of \$100,706.30 with 40% or more but less than 60% allocated to pollution control be issued for the facility claimed in Tax Credit Application No. T-722R.

2300 Southwest First Avenue
Portland, Oregon 97201
Telephone (503) 224-4300

June 25, 1976

Environmental Quality Commission
%Department of Environmental Quality
1234 S. W. Morrison Street
Portland, Oregon 97205

RE: Tax Credit Application No. T-757
Cascade Locks Lumber Co.

Gentlemen:

We submit our rebuttal to the DEQ's Tax Relief Application Review Report dated May 12, 1976, regarding the above company (copy enclosed).

The industrial waste generated at Cascade Locks Lumber Company consists of sawdust and wood shavings from the planing mill. The waste was being scattered by the wind and was lost for utilization as a result. The Pollution Control Facility was needed to prevent the emission of wind blown particles and enable the company to remove and truck it elsewhere.

The apparent basis for the denial by the DEQ is that the sawdust and wood shavings did not constitute solid waste as it was sold to another party. It is our position that the sawdust and wood shavings resulting from the planing of the lumber is a solid waste and that there is nothing in the statute that depends upon whether the waste is sold or not.

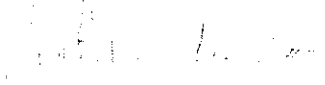
"Solid waste" means all...commercial, industrial, demolition, and construction waste. ORS 459.005(11)

Waste is commonly defined as...an unneeded, useless or superfluous material; discarded or excess material, or ashes, garbage, by-products, etc. Websters New World Dictionary.

Nowhere does the legislative or dictionary definition of waste depend upon whether it can be sold. Within the definition, the sawdust and wood shavings constitute solid waste.

The claimed facility cured an air pollution problem and enabled the company to truck it elsewhere. Based on the above, the company requests that the facility be certified.

Yours very truly,


John L. Chesnutt
Corporate Tax Accountant

JLC:lk

Date 5/12/76

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
TAX RELIEF APPLICATION REVIEW REPORT

Applicant

Columbia Corporation
Cascade Locks Lumber Co.
P. O. Box 427
Cascade Locks, Oregon 97014

The applicant owns and operates Cascade Locks Lumber Company planing mill at Cascade Locks, Hood River County. The applicant installed a cyclone to trap wood shavings generated at the planing mill.

Description of Claimed Facilities:

The claimed facility is a planer shavings cyclone.

The claimed facility was placed in operation in October 1975.

Certification is claimed under ORS 468.165(1)(b) as a facility which obtains useful material or energy resources from material that would otherwise be solid waste.

Facility cost \$20,151.00 (Accountant's certification was attached to application).

Notice of construction was not submitted to the Department prior to construction as required under ORS 468.175.

Evaluation of Application

The Columbia Corporation acquired the Cascade Locks Lumber Company in 1969, since that time shavings generated by the planing mill have been purchased on a continuing basis by various hardboard producing companies. In 1974 the company started to haul the shavings by truck instead of barge. The reason for installation of the claimed facility was to trap wood shavings into a storage bin before loading the trucks. This cyclone cannot be considered a "pollution control facility" utilizing solid waste because the planer shavings were not a solid waste prior to installation of the claimed facility.

The Department concludes that the claimed facility does not meet the provisions of ORS 468.165(1)(b) and/or 468.175 and is therefore not eligible for certification.

Director's Recommendation

It is recommended that this application be rejected and the facility claimed in Tax Credit Application No. T-757 not be certified. The facility does not serve the pollution control function stated in the application, AND THE REQUEST FOR PRELIMINARY CERTIFICATION FOR TAX CREDIT AS REQUIRED BY ORS 468.175 WAS NOT SUBMITTED TO THE
MS:mm DEPARTMENT OF ENVIRONMENTAL QUALITY.



State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

P.W. M^oSwan
INTEROFFICE MEMO

To: EQC and Division Heads
From: Bud Kramer *Bud*
Subject: June 25, 1976 EQC Meeting

Date: May 7, 1976

The June meeting has been scheduled for the Portland City Council Chambers at City Hall, 1220 S. W. 5th Avenue. The employees of the Department have organized a retirement party for Ken Spies in Portland that date beginning at 5:00 p.m., and I am certain many of the staff and EQC members would want to attend. We will schedule a meeting in Jackson County at a later date.

LK:cm

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