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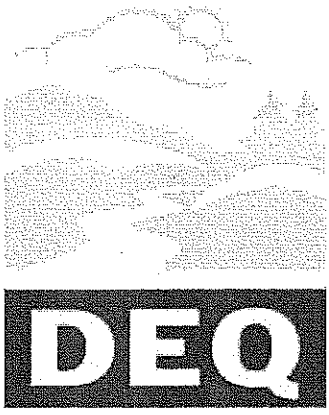
OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS



State of Oregon
Department of Environmental Quality

Environmental Quality Commission

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ENVIRONMENTAL QUALITY COMMISSION MEETING

January 26, 1979

Room 602, Multnomah County Courthouse
1021 S. W. Fourth Avenue
Portland, Oregon

9:00 am A. Minutes of the November 17, 1978 EQC Meeting

B. Monthly Activity Reports for November and December 1978

C. Tax Credit Applications

PUBLIC FORUM - Opportunity for any citizen to give a brief oral or written presentation on any environmental topic of concern. If appropriate, the Department will respond to issues in writing or at a subsequent meeting. The Commission reserves the right to discontinue this forum after a reasonable time if an unduly large number of speakers wish to appear.

PUBLIC HEARING AUTHORIZATIONS (authorizes future public hearings)

D. Request for authorization to conduct a public hearing on the question of amending administrative rules governing subsurface and alternative sewage disposal (OAR 340-71-010 to 71-045)

E. Request for authorization to conduct a public hearing on the question of amending the administrative rules for the management of hazardous wastes (OAR Chapter 340, Division 6, Subdivision 3)

F. Request for authorization to conduct a public hearing on the question of repealing OAR 340-62-060(2) pertaining to hazardous waste management

G. Request for authorization to conduct a public hearing on potential amendments to Oregon's Water Quality standards (OAR Chapter 340, Division 4).

H. Request for authorization to hold a public hearing to modify Veneer Dryer Rule by including emission limits and compliance date for waste wood direct-fired veneer dryers (OAR 340-25-315)

CONTESTED CASE AND OTHER REVIEWS

10:00am I. Ladd and Larry Henderson - Petition for Declaratory Ruling as to applicability of OAR 340-71-015(5) (Availability of a community or area-wide sewerage system)

(more)

10:30 am J. Contested Case Reviews:

(1) DEQ v. Arline Laharty, Motion to Dismiss Respondent's Request for Review
(2) DEQ v. George Suniga, Inc., Contested Case Review
(3) DEQ v. Kenneth Brookshire, Request for extended filing of exceptions

PROPOSED RULE ADOPTIONS (action items)

K. Noise Control Rules - Consideration of adoption of proposed amendments to noise control regulations for new automobiles and light trucks (OAR 340-35-025)

L. Subsurface Rules - Adoption of amendments to administrative rules governing subsurface and alternative sewage disposal (OAR 340-71-020 and 72-010)

M. Subsurface Rules - Adoption of temporary rule, Geographic Region Rule C, amending administrative rules governing subsurface and alternative sewage disposal (OAR 340-71-030(10)

N. Used Oil Recycling - Proposed adoption of rules pertaining to used oil recycling

11:30 am O. Medford-Ashland AQMA - Adoption of rules to amend Oregon's Clean Air Act Implementation Plan involving an emission offset rule for new or modified emission sources in the Medford-Ashland Air Quality Maintenance Area.

OTHER ACTION ITEMS

1:30 pm P. Sunrise Village, Bend - Reconsideration of appeal of subsurface sewage disposal requirements

Q. Chem-Nuclear - Proposed modification of the Chem-Nuclear license for operation of the Arlington Hazardous Waste Disposal Site

R. Certification of plans for sewerage system as adequate to alleviate health hazard (pursuant to ORS 222.898) for areas contiguous to:

(1) City of Monroe
(2) City of Corvallis
(3) City of Klamath Falls (Stewart Lenox area within Westside Sanitary District)

S. NPDES July 1, 1977 Compliance Date - Request for approval of Stipulated Consent Order Addendum for City of Amity

T. Curry County - Request by Curry County for extension of date for Solid Waste Plan adoption

U. Variance Request - Louis Dreyfus Corporation and Bunge Corporation request for variance from OAR 340-28-070 regarding loading of ships with grain.

Because of uncertain time spans involved, the Commission reserves the right to deal with any item at any time in the meeting, except items I, J, O, and P. Anyone wishing to be heard on an agenda item that doesn't have a designated time on the agenda should be at the meeting when it commences to be certain they don't miss the agenda item.

The Commission will breakfast (7:30 am) at the Standard Plaza Building, Conference Room B, 1100 S. W. Sixth; and lunch in Room 511, DEQ Headquarters,

MINUTES OF THE ONE HUNDRED FIFTH MEETING
OF THE
OREGON ENVIRONMENTAL QUALITY COMMISSION

January 26, 1979

On Friday, January 26, 1979, the one hundred fifth meeting of the Oregon Environmental Quality Commission convened in Room 602 of the Multnomah County Courthouse, 1021 S. W. Fourth Avenue, Portland, Oregon.

Present were all Commission members: Mr. Joe B. Richards, Chairman; Dr. Grace S. Phinney, Vice-Chairman; Mr. Ronald M. Somers; Mrs. Jacklyn L. Hallock; and Mr. Albert Densmore. Present on behalf of the Department were its Director William H. Young and several members of the Department staff.

Staff reports presented at this meeting, which contain the Director's recommendations mentioned in these minutes, are on file in the Director's Office of the Department of Environmental Quality, 522 S. W. Fifth Avenue, Portland, Oregon.

AGENDA ITEM A - MINUTES OF THE NOVEMBER 17, 1978 EQC MEETING

It was MOVED by Commissioner Somers, seconded by Commissioner Hallock and carried unanimously that the minutes of the November 17, 1978 EQC meeting be approved as presented.

AGENDA ITEM B - MONTHLY ACTIVITY REPORTS FOR NOVEMBER AND DECEMBER 1978

It was MOVED by Commissioner Somers, seconded by Commissioner Hallock and carried unanimously that the Monthly Activity Reports for November and December 1978 be accepted.

AGENDA ITEM C - TAX CREDIT APPLICATIONS

Mr. Lew Krauss, Rough and Ready Lumber Company, Cave Junction, appeared regarding the proposed denial of their request for Preliminary Certification for Tax Credit. Mr. Krauss presented some background on his Company's solid waste problem. He said that in their feasibility study of the project they relied on obtaining tax credits for the whole project including the dry kiln portion.

Mr. Richard Miller, representing Mr. Krauss, said he felt they had stated their argument on why they should be granted Preliminary Certification for Tax Credit in materials already submitted to the Commission. In summary, he said, they felt the boiler and dry kilns were interrelated. Mr. Miller said they felt the kiln met the substantial purpose test of ORS 468.165 because it directly utilized solid waste by the use of materials for their heat content.

Mr. Miller said they felt that if their facility in some way did not dry lumber but used some type of blower system to blow the heat energy to other facilities within the sawmill, or to other industries, then it would not differ from the generator that was approved for Publishers Paper at the Commission's last meeting. He said that if the Commission agreed, they should at least approve the element within the dry kiln which converted the steam into heat energy and perhaps not the enclosure itself.

Commissioner Phinney said it seemed to her that once the heat was produced that was the end of the line as far as utilization of waste material was concerned. She said the energy in the steam would not be converted in this instance, but just extracted and used.

Commissioner Densmore commented that the Department and Commission had struggled with tax credits before and it was a judgment call as to just what was substantial purpose. Mr. Ernest Schmidt, DEQ Solid Waste Division, commented that in the case of the Publishers Paper matter the Department found that the substantial purpose test was met. He said that in the case of Rough and Ready Lumber, the argument would have to be made and accepted that they were drying lumber in order to get rid of solid waste.

In response to Commissioner Phinney, Mr. Schmidt said the Department would be happy to look into the pieces of the facility that were relevent to the solid waste nature of the project. Chairman Richards said that if the application was denied, it would not preclude the applicant from making a separate application on those parts of the facility.

It was MOVED by Commissioner Somers, seconded by Commissioner Densmore and carried with Commissioner Densmore desenting that tax credit applications T-1023, T-1035, T-1036, T-1037 and T-1039 be approved and that Rough and Ready Lumber Company's request for Preliminary Certification for Tax Relief for dry kilns be denied.

PUBLIC FORUM

Mr. Jan Sokol, Vice-Chairperson of the Portland Air Quality Maintenance Area Advisory Committee and representing OSPIRG, appeared regarding the Commission's granting of a variance allowing open burning the the Portland metropolitan area until February 28. He said he understood that on granting the variance the Commission stated that burning days would be allowed on conservative forecasts. He said that the day after the variance was granted the nephelometer readings in Downtown Portland were the highest in four years and burning was still allowed. Mr. Sokol said that contrary to the importance the EQC placed on publicity of alternatives to burning, all he had seen in the last week were three small newspaper articles.

Mr. Sokol said he had received several citizen complaints about particulate matter in the area and respiratory difficulties.

Mr. Sokol said he understood there had been a substantial increase in the number of illegal fires since the variance had been granted. He wanted to know what sort of enforcement activity the Department was using in order to eliminate the illegal fires.

Mr. Sokol requested that the Department give 10 days notice to all parties involved, hold a hearing, and revoke the variance. He said that at the Commission's January 19 conference call, there was no testimony that there was any immediate health or fire hazard. He recommended waiting until the better burning days in April or May.

Ms. Melinda Renstrom, appeared on behalf of the Oregon Environmental Council regarding the open burning variance. She said that the air quality had been worse in the last week since the variance was granted than anyone would have imagined. She requested a report from the DEQ staff regarding the effects of open burning during the last week.

Ms. Renstrom said that if burning had to be done, it should be done after a few weeks when the wood was not so green. She also said they would like to see some coordination with municipalities on disposal of this material without burning.

Mr. E. J. Weathersbee, Administrator of DEQ's Air Quality Division, said they were preparing a complete analysis of the air quality during the last week for the AQMA Advisory Committee and it should be finished soon. He said it was true that the nephelometer readings had been high on the day after burning was allowed. One complaint had been recorded by the Northwest Region he said, and he could testify that it was very smoky that day. However, Mr. Weathersbee continued, they had recorded quite a few complaints about not being allowed to burn because weather conditions did not permit.

Mr. Weathersbee said it came down to balancing the quality of the air against the need to dispose of the storm-caused debris. He said he had instructed the meteorologist who made the burning advisories to tighten up on his criteria, look at the conditions of existing air quality at the time, and to be more conservative in allowing burning.

AGENDA ITEM D - REQUEST FOR AUTHORIZATION TO CONDUCT A PUBLIC HEARING ON THE QUESTION OF AMENDING ADMINISTRATIVE RULES GOVERNING SUBSURFACE AND ALTERNATIVE SEWAGE DISPOSAL (OAR 340-71-010 to 71-045)

AGENDA ITEM E - REQUEST FOR AUTHORIZATION TO CONDUCT A PUBLIC HEARING ON THE QUESTION OF AMENDING THE ADMINISTRATIVE RULES FOR THE MANAGEMENT OF HAZARDOUS WASTES (OAR 340, DIVISION 6, SUBDIVISION 3)

AGENDA ITEM F - REQUEST FOR AUTHORIZATION TO CONDUCT A PUBLIC HEARING ON THE QUESTION OF REPEALING OAR 340-62-060(2) PERTAINING TO HAZARDOUS WASTE MANAGEMENT

AGENDA ITEM G - REQUEST FOR AUTHORIZATION TO CONDUCT A PUBLIC HEARING ON POTENTIAL AMENDMENTS TO OREGON'S WATER QUALITY STANDARDS (OAR 340, DIVISION 4)

AGENDA ITEM H - REQUEST FOR AUTHORIZATION TO HOLD A PUBLIC HEARING TO MODIFY VENEER DRYER RULE BY INCLUDING EMISSION LIMITS AND COMPLIANCE DATE FOR WASTE WOOD DIRECT-FIRED VENEER DRYERS (OAR 340-25-315)

It was MOVED by Commissioner Somers, seconded by Commissioner Phinney and carried unanimously that public hearings requested in items D, E, F, G, and H be authorized.

Mr. Tom Donaca, Associated Oregon Industries, appeared regarding Agenda Item E, a request for public hearing on amendments to the rules for hazardous waste management. He said that there were now 82 pages of proposed EPA regulations regarding hazardous waste management. Mr. Donaca said that if the Commission adopted the proposed rules they would be embarking on a new program in the State which was considerably broader in scope than the area of disposal alone. Prior to the hearing, he said, they felt the Commission should receive from the staff a full evaluation of what it would take to run this program and then the Commission should make some specific determinations about whether or not they intend to assume the jurisdiction allowed under the Resource Conservation Recovery Act or have it remain with EPA. Mr. Donaca said he did not believe there currently was adequate staff to run the proposed program. He suggested that a hearing not be held until late March or April to afford the Commission the time to review the proposed program and make any budget adjustments necessary.

Mr. Fred Bromfeld, DEQ's Hazardous Waste Section, said Mr. Donaca had mentioned this matter to them previously and they had considered it. He said the Federal Government was scheduled to promulgate their proposed rules in December 1979, or the first of 1980, provided they did not get tied up in court as to the adequacy of the rules. There would be a two-year interim authorization period, he said, where a State would have time to evaluate the federal program to determine whether or not it desired to take primacy in the management of hazardous waste. Mr. Bromfeld said what the Department was proposing was not based on what the federal government intended to do, but on what the Department, in going to the 1977 Legislature, believed was necessary for an adequate Oregon hazardous waste management program. He said that presently the Department had three persons in the hazardous waste section and had authorization to hire two more people, and the Department believed that five prople were adequate to administer the program proposed by the rules.

AGENDA ITEM I - LADD AND LARRY HENDERSON - PETITION FOR DECLARATORY RULING AS TO APPLICABILITY OF OAR 340-71-015(5) (AVAILABILITY OF A COMMUNITY OR AREA-WIDE SEWERAGE SYSTEM)

Mr. Ladd Henderson said that it had been two years since DEQ originally denied a permit to construct a subsurface disposal system for their mobile home park. Throughout this time, he said, they had been trying to bring up the question of the improper use of OAR 340-71-015(5) in denying their permit. One of the provisions of this rule, he said, was that they be able to connect to a sewage treatment plant that was in compliance. Mr. Henderson said that the Hood River sewage treatment plant had never been in compliance. Therefore, he said, that rule could not be used to deny them a permit because there was no alternative other than a subsurface disposal system available to them.

Mr. Robert Haskins, Assistant Attorney General representing the Department in this matter, pointed out that this was a separate proceeding from proceedings previously before the Commission. This Petition for Declaratory Judgment was a discretionary matter on the part of the Commission, he said. Mr. Haskins said the issue was whether or not the Commission should refer this petition to a Hearing Officer for a hearing and create a contested case, or to exercise their discretion to dismiss without considering the merits of the petition. He urged the Commission to dismiss the case without considering the merits of the petition because the petitioners had had their rightful opportunity to litigate and had chosen not to.

Mr. Haskins said the rule the petitioners claim was used incorrectly provided that the community sewerage system be in compliance at the time of connection. He said the petitioners had not hooked up to the system, therefore the rule required the Commission to look to the future when the connection would be made and predict whether the Hood River sewage treatment plant would be maintained and operated in compliance. He pointed out that the petitioners had a State Court remedy to review the February 1977 denial and failed to utilize it.

Mr. Henderson said he could be hooked onto the City system within the next two hours and if the sewage treatment plant was in compliance at that time he would go by the rule and hook into the City system. Otherwise, he said, they would request the Commission to consider their petition and look at the improper use of an administrative rule over a two-year period of time.

It was MOVED by Commissioner Somers, seconded by Commissioner Hallock, and carried unanimously that the Commission exercise their discretion not to hear the petition.

AGENDA ITEM J(1) - CONTESTED CASE REVIEW - DEQ v. ARLINE LAHARTY, MOTION TO DISMISS RESPONDENT'S REQUEST FOR REVIEW

In response to Commissioner Somers, Mr. Robert Haskins, Department of Justice, said the Department's position on this matter was fully set forth in the Motion before the Commission. He requested time to respond to the respondent's argument, if needed.

Mr. R. Randall Taylor, representing Arline Laharty, said he file a brief memorandum in opposition to the Motion. He said the property had been ordered to be abandoned because of the installation of a subsurface sewage disposal system without a permit. In an attempt to resolve this problem, he continued, negotiations took place between himself, Mr. Haskins and members of the Department staff. Mr. Taylor said that no acceptable alternative had been reached although steps were being taken to determine whether or not an experimental application or reapplication for a variance would be in order.

Mr. Taylor asked that the Motion to Dismiss the Exceptions be denied on the basis that Exceptions could be filed within 30 days of the date of the Commission's Order. If the Exceptions would be filed, he said, they would basically be some technical ones concerning the amount of evidence that was introduced, and a request to be made for supplemental evidence to determine whether or not the system was functioning properly.

Mr. Haskins said that almost a year before the respondent had received an extension in response to a Motion to Dismiss. He also said that several extension requests had been made and granted since that time.

It was MOVED by Commissioner Somers, seconded by Commissioner Densmore and carried unanimously that the Motion to Dismiss be granted.

AGENDA ITEM J(3) - DEQ v. KENNETH BROOKSHIRE, REQUEST FOR EXTENDED FILING OF EXCEPTIONS

Mr. Robert Haskins, Department of Justice, told the Commission that on November 22, 1978 the Department's Hearing Officer filed and served Findings of Fact, Conclusions of Law, Final Order and Judgment, and informed the respondent that he had 14 days from the date of the mailing to file with the Commission a request for Commission review of the proposed Order. He said that on the 16th day the Department received a letter from Mr. Brookshire requesting a 30 day extension to answer the Findings of Fact.

Mr. Haskins said the Commission's rule did not provide any exceptions or allow the Director, the Hearing Officer, or the Department's attorney to waive timely filing. The Order became final by operation of law, he said. At most, Mr. Haskins said, the respondent's letter could be considered a petition for rehearing or reconsideration under the Administrative Procedures Act.

Mr. Haskins urged the Commission to recognize through their rule that the Order had become final by operation of law. In response to Chairman Richards, Mr. Haskins said that if the Commission were to follow his recommendation they should take no action and therefore the Order would stand as final. Chairman Richards said it would also be appropriate to deny Mr. Brookshire's request for additional time.

Chairman Richards informed Mr. Brookshire that his remarks at this meeting were being tape recorded and asked his consent to be taped. Mr. Kenneth Brookshire, St. Paul, Oregon, replied that he had no objection to being taped at this meeting.

Mr. Brookshire said the letter the Department had received on the 16th day had been mailed on the 13th day. Mr. Brookshire stated that although he did not know that the Commission's decision would be, all he wanted was the Department "off my back." He said that if the Commission and the Department has something against him then it should be settled in Court.

Mr. Brookshire maintained that his property had veen vandalized and the burning was no fault of his own. He said his constitutional rights had been violated in that a tape made by Department staff at the time of the indicent had been denied him for review.

It was MOVED by Commissioner Somers, seconded by Commissioner Phinney, and carried unanimously that no further action be taken on this matter and the original Order would stand.

AGEND ITEM K - CONSIDERATION OF ADOPTION OF PROPOSED AMENDMENTS TO NOISE CONTROL REGULATIONS FOR NEW AUTOMOBILES AND LIGHT TRUCKS (OAR 340-35-025)

Mr. Peter McSwain, EQC Hearing Officer, said it was discovered after the Commission adopted this rule on November 17, 1978, that the Department had failed to file a draft of the proposed rule with Legislative Counsel and Legislative Counsel Committee as required by ORS 171.707. Therefore, he said it was necessary that these rule amendments be readopted.

It was MOVED by Commissioner Somers, seconded by Commissioner Hallock, and carried unanimously that the proposed amendments to noise control regulations for new automobiles and light trucks (OAR 340-35-025) be adopted.

AGENDA ITEM L - ADOPTION OF AMENDMENTS TO ADMINISTRATIVE RULES GOVERNING SUBSURFACE AND ALTERNATIVE SEWAGE DISPOSAL (OAR 340-71-020 and 72-010)

Mr. Jack Osborne, of DEQ's Subsurface and Alternative Sewage Disposal Section, said that Agenda Item L dealt with amendments to the subsurface rules requested by Legislative Counsel. He said the original rules were adopted in March 1978 and Legislative Counsel felt that those rules were not within the authority of the Commission to adopt in that manner. Mr. Osborne continued that the proposed amendments now before the Commission attempted to deal with Legislative Counsel's concern.

If the proposed amendments were adopted, Mr. Osborne said, it was likely they would be reamended within the next six months.

Mr. Tom Donaca, Associated Oregon Industries, appeared on behalf of Jack Monroe of the Oregon Association of Realtors. In regard to the proposed amendment to rescind 340-71-020(1)(i) in its entirety and substitute the following language:

> "(i) Subsurface sewage disposal systems for single family dwellings designed to serve lots or parcels created after March 1, 1978 shall be sized to accommodate a minimum of a three (3) bedroom house",

Mr. Donaca said it seemed the new language accomplished the same thing as the prior language. Their concern, he said, was that there was an assumption that somehow a three bedroom house was sacrosanct, however there was a large demand for two-bedroom single-family housing. He said that the proposed rule seemed to be proscribing lot sizes which would put the Commission into a land use planning area, and also took away from local jurisdictions an opportunity to densify. Mr. Donaca said it would be more appropriate to use a performance standard.

Chairman Richards told Mr. Donaca that the Department had been told they were not in compliance with State Law by reason of the criteria the Commission had set. He said he saw this as a stop-gap measure to legalize a previously adopted attitude. Chairman Richards said he would be more comfortable adopting at this meeting what the Commission thought they did before, and extensively hear the matter on the merits through the hearing process. Mr. Donaca said they would be more comfortable if there were some way other than the variance procedure for a planned-unit development with two-bedroom homes to qualify.

It was MOVED by Commissioner Somers, seconded by Commissioner Hallock and carried unanimously that proposed amendments to OAR 340-71-020(1)(i) and 340-72-010(5) be adopted.

AGENDA ITEM M - ADOPTION OF TEMPORARY RULE, GEOGRAPHIC REGION RULE C, AMENDING ADMINISTRATIVE RULES GOVERNING SUBSURFACE AND ALTERNATIVE SEWAGE DISPOSAL (OAR 340-71-030(10))

Commissioner Somers asked where the ultimate warning to the property owners was in the use of this experimental system. Mr. Jack Osborne, of DEQ's Subsurface Program, replied that this particular system, used in accordance with the rules would no longer be experimental. Director Young said that the Department was satisfied that the information it had on this particular system was sufficient to no longar designate it as experimental. He said this was the predictable result of most of the experimental systems.

It was MOVED by Commissioner Somers, seconded by Commissioner Hallock and carried unanimously that the Director's Recommendation to adopt the proposed temporary rule amendment to OAR 340-71-030 be approved and that the Hearing Officer be authorized to proceed with appropriate hearings for permanent rule amendment.

In response to a request by Jackson County, Commissioner Somers MOVED that a public hearing be authorized with respect to modification of the fee structure to accommodate the above rule amendment. The motion was seconded by Commissioner Densmore and carried unanimously.

Commissioner Densmore commended the staff and Jackson County for the work they did in this regard.

AGENDA ITEM N - PROPOSED ADOPTION OF RULES PERTAINING TO USED OIL RECYCLING

Commissioner Phinney asked if there was a time period designated for the signed to be put in place. Ms. Elaine Glendening, of the Department's oil recycling program, replied she was planning on allowing one month.

It was MOVED by Commissioner Somers, seconded by Commissioner Hallock and carried unanimously that the proposed rules pertaining to used oil recycling be adopted.

AGENDA ITEM Q - PROPOSED MODIFICATION OF THE CHEM-NUCLEAR LICENSE FOR OPERATION OF THE ARLINGTON HAZARDOUS WASTE DISPOSAL SITE

After some brief discussion, Commissioner Somers MOVED, Commissioner Phinney seconded and it was carried unanimously that the Director's Recommendation to issue the modified Chem-Nuclear license be approved.

AGENDA ITEM O - ADOPTION OF RULES TO AMEND OREGON'S CLEAN AIR ACT IMPLEMENTATION PLAN INVOLVING AN EMISSION OFFSET RULE FOR NEW OR MODIFIED EMISSION SOURCES IN THE MEDFORD-ASHLAND AIR QUALITY MAINTENANCE AREA

Mr. Dennis Belsky, of the Department's Air Quality Division, presented the staff report on this matter. He said that issues raised at the Commission's November meeding had been covered in the staff report. He also submitted an addendum to the staff report covering concerns of the Legislature's Committee on Trade and Economic Development.

Under the present situation, Commissioner Somers asked, how would a permit be issued. Mr. Belsky replied that currently in effect were the present State Implementation Plan and the Federal interpretative ruling as it pertained to new or expanded sources greater than 100 tons potential emissions. If the new source were over 100 tons the federal rule would come into effect, he said. Mr. Belsky said the proposed rule would lower the criteria, requiring offsets at a lower emission limit. He said that if the Commission were to defer action at this time, the Department did not have on file any new sources wishing permits which would trigger the offset process.

Chairman Richards indicated that letters had been received from Jackson County, and the Chairman of the Medford-Ashland Air Quality Advisory Committee. These letters are made a part of the Commission's record on this matter.

Mr. Belsky summarized the addendum requesting that the Commission defer action for 60 days on the proposed rule to allow the Legislative Committee on Trade and Economic Development to delve into the matter in more detail to their satisfaction and in the meantime allow time for the Department to approach EPA on obtaining an 18 month extension to attain additional reductions in particulate emissions to alleviate the primary and secondary violations apparent in the Medford-Ashland area.

Commissioner Densmore said that through the rule making process Legislative Counsel was made aware of the offset rule and the original particulate strategy by their submittal to them earlier.

In response to questions by Commissioner Densmore, Mr. Belsky said the Legislative Committee did not fully understand the situation and wanted to investigate the impact of the proposed rule on the Medford situation in particular as well as have the opportunity to review all the SIP-related work being carried on in Oregon's three AQMA's. As far as the request for an 18 month extension, he continued, it appeared that amount of time would be needed to develop the additional strategies to bring the area within the primary and secondary standards for TSP in Medford.

Ms. Pat Middelburg, acting Executive Officer for the Legislative Committee on Trade and Economic Development, said that before the Commission was a letter requesting delay of adoption of the rule to amend Oregon's Clean Air Act Implementation Plan involving the emission offset. She said they did not intend to delay the Commission's proceedings longer than 60 days. Hearings were already scheduled regarding the rule review process and to look at the Implementation Plan and control strategies for all AQMA's, she said. Ms. Middelburg said it was the Committee's intention to complete their review and have their comments back to the Commission no later than March 1.

Commissioner Somers asked what the Committee hoped to achieve that the people who had extensively studied the situation had not. Ms. Middelburg replied that she did not know what ultimate difference they would come up with, but what they were concerned about was the overall statewide impact of this particular offset rule to all areas of the State. She said it had potential economic impact throughout the State.

Commissioner Hallock said that there was nothing to prevent the Committee from looking at the rule even if the Commission didn't defer action. Commissioner Hallock said she was concerned about setting a precedent with this matter that the Commission would be unable to act on certain issues when the Legislature was in session. Chairman Richards replied that this might be more political than legal and what the Commission had to deal with was deciding if they would act differently if this request came from another group. He said that any legislative committee was entitled to ask.

Mr. E. J. Weathersbee, Administrator of the Department's Air Quality Division, said the staff would prefer a lesser time than 60 days if possible. He also asked clarification of the far-reaching request that no SIP submittals be made without the review and comment of the Committee on Trade and Economic Development. Chairman Richards said that the staff report did not fodus on the suggestion of the Committee that all SIP submittals be referred to them. He said he did not feel the Commission was doing that and asked help from legal counsel on what was being done in other states.

Mr. Weathersbee said the Committee's resolution would affect time schedules that the Department had to be thinking of in adopting other parts of the SIP amendments such as the transportation-related strategies. He said Federal Law required these submittals to have been made by January 1, 1979 and Oregon was acting on the good grace of EPA in delaying these submittals.

Commissioner Densmore said he was trying to look at this matter on its merits and it was his feeling that at a time when air quality in the area was worsening beyond the forecast made earlier upon which the basic strategy was developed, it would be most prudent for the Commission to adopt the offset policy and then cooperate with the Legislative Committee in explaining how this process was going to work. In his view, he said the Committee had no jurisdiction so far as the ultimate decision was concerned.

Chairman Richards said he would vote for a delay until the March 30 meeting on the condition that the Legislative Committee have the opportunity to take testimony and make its recommendation by March 1 to allow time for the staff to review it.

Commissioner Somers MOVED that action on this matter be deferred until the Commission's March 30 meeting to allow time for the Legislative Committee on Trade and Economic Development to take additional testimony and make their comments by March 1. The motion was seconded by Commissioner Phinney and carried with Commissioner Densmore desenting.

AGENDA ITEM P - SUNRISE VILLATE, BEND - RECONSIDERATION OF APPEAL OF SUBSURFACE SEWAGE DISPOSAL REQUIREMENTS

Mr. Richard Nichols, DEQ's Central Region Manager, presented the summation and Director's Recommendation from the staff report.

Mr. Tim Ward, developer of Sunrise Village, said that in February of 1977 the land was designated by the Bend area General Plan as a development alternative area to have an ultimate density of no greater than one unit per 20,000 square feet. Sewer and water for the area were not provided for by the Bend area General Plan, he said, the Sewer Services Facility Plan, or the Bend Urban Service Boundary. At that time, he continued, they went to the county planning department and DEQ, and both agencies advised that the best approach for developing the land would be a full-service planned-unit development providing its own community water and sewer systems.

Mr. Ward said that DEQ had withheld design approval for eight months for the following reasons:

1. The development not being in the city sewer system would disrupt the system,

2. The system was expensive,

3. Saying their being on the city sewer system violated land use planning when in fact to do otherwise would be a violation,

4. Not bringing up the subject of statewide goals until November and then wrongly citing their being in violation of guidelines as if they were goals or law.

Mr. Ward said DEQ had also discriminated against them by inconsistently applying policy by:

1. Requiring them to get a city sewer agreement two months before it was required of any other developer,

2. Allowing a school downstream from their development and within the planned sewer area to have a 16,000 gallon septic tank without a city sewer agreement or statement of compatibility even though they applied for a permit after them,

3. Giving septic tank approval to a development in September 1978 without requiring a city sewer agreement when the development was given plat approval the same day as they were and was specifically noted by the City as being within the sewer planning area,

4. Requiring them to get a compatibility statement before December 22, 1978 when no other development had been required to get this statement, and

5. DEQ failed to act in good faith with them in that on November 30, 1978 DEQ agreed to unconditionally allow them to form a sanitation district to operate their community sewer system and not have to go to the City for an agreement provided LCDC would not fault them for doing so.

In regard to the last point, Mr. Ward said LCDC said they would not fault DEQ, however DEQ has stipulated they must get City approval for the district which Mr. Nichols said he would actively discourage.

Mr. Ward asked the Commission to recognize the law and requested that DEQ issue them a permit according to the rules. He said there was no sewer system available to them and it appeared that none would be available in the near future.

It was MOVED by Commissioner Somers, seconded by Commissioner Densmore and carried unanimously that the following Director's Recommendation be approved, deleting the reference to concurrance by the City of Bend.

Director's Recommendation

Based upon the summation in the staff report, it is recommended that the Environmental Quality Commission direct the Department to not permit a community sewage disposal system for Sunrise Village unless the following conditions are met:

1. Detailed plans and specifications for the proposed sewerage system are approved by this Department.

2. A municipality, as defined by ORS 454.010(3), must control the proposed sewerage system. (This may be achieved by an agreement with the City of Bend to operate and maintain the system, or by formation of a county service district, or sanitary district.)

3. We must have a statement from Deschutes County indicating that they have tested your proposal in regard to the Statewide Lande Use Goals and found it compatible.

AGENDA ITEMS R (1), (2), and (3) - CERTIFICATION OF PLANS FOR SEWERAGE SYSTEM AS ADEQUATE TO ALLEVIATE HEALTH HAZARD (PURSUANT TO ORS 222.898) FOR AREAS CONTIGUOUS TO: (1) CITY OF MONROE, (2) CITY OF CORVALLIS, AND (3) CITY OF KLAMATH FALLS (STEWART LENOX AREA WITHIN WESTSIDE SANITARY DISTRICT

In reference to items (1) and (2), it was MOVED by Commissioner Somers, seconded by Commissioner Hallock and carried unanimously that the Director's Recommendation to approve the proposals of the Cities of Monroe and Corvallis and to certify said approvals to the Cities, be adopted.

In reference to item (3), Mr. Harold Sawyer, Administrator of the Department's Water Quality Division, said there was a problem in the Stewart Lenox area adjacent to Klamath Falls which had been evident for some time. He said the Department had sought resolution of this matter and the only apparent solution was the providing of sewers. He said this had moved through the mandatory health hazard annexation process and plans had been submitted in accordance with that process by the City of Klamath Falls through the Health Division to DEQ for review, approval and certification back that it would alleviate the health hazard. Mr. Sawyer said there was interest on behalf of Westside Sanitary District to provide a resolution of the problem in some other manner.

Mr. Sawyer said Westside Sanitary District had filed a petition with LCDC seeking nulification of the proposed involuntary annexation. It was the Department's understanding, he continued, that the question of jurisdiction on that petition would be heard on February 8. In addition, he said, they had petitioned the Health Division for an alternate plan for providing service to the area other than the one proposed by Klamath Falls. The Health Division had not forwarded that plan to DEQ as of this date, he said, but DEQ understood the Health Division had rejected the petition as not containing sufficient signatures. Provided to the Commission was a letter from Mr. E. R. Bashaw, attorney for Westside Sanitary District. This letter is made a part of the Commission's record on this matter. Mr. Sawyer said the letter raised question as to whether or not there were sufficient signatures on the petition for that plan to be forwarded from the Health Division to DEQ.

Chairman Richards said he assumed that Westside Sanitary District's request for delay was so that they could exhaust some additional remedies. He asked what choices the Commission would have. Mr. Sawyer replied it appeared there was a statutory requirement to act within 60 days from receipt of the plan, which would lapse before the next regular meeting of the Commission. He said he interpreted that within that 60 days the Commission must either approve the City's plan or reject it for cause.

Mr. Stevel Couch, attorney representing Westside Sanitary District, referenced Mr. Bashaw's letter and asked for a delay in the Commission's decision on this matter. Chairman Richards asked Mr. Couch to address whether the Commission legally had any choice other than to grant the City's petition.

Mr. Couch explained some alternatives the Commission might have and also explained what some other government entities were doing in regard to this matter. It was possible, he said, that LCDC might claim jurisdiction over this matter.

Mr. Couch said they were denying there was a health hazard in the area but they were trying to solve their own problem and did not want to annex to the City of Klamath Falls. He said they hoped it would be possible to sewer the area without affecting the funding. Mr. Couch said a proposed regional plan included a proposal to hook up to the South Suburban Sanitary District. However, he continued, they had no conclusions available as to cost-effectiveness.

This matter was very important to the residents of the area, Mr. Couch said. They did not want to be annexed to the City, he said. Mr. Couch realized it was an imposition on the Commission, but asked them to delay this matter until some alternatives could be researched.

Chairman Richards said that if the Commission were to refuse to entertain this petition, they would be making a land use planning decision which was not their area of jurisdiction. At the end of 60 days, he continued, the only thing more the Commission would know was whether or not LCDC took jurisdiction.

Commissioner Phinney MOVED that the Director's Recommendation to approve the proposal of the City of Klamath Falls and to certify said approval to the City be adopted, and the effective date be February 17 subject to Commission review before that date. The motion was seconded by Commissioner Hallock and carried unanimously.

AGENDA ITEM S - NPDES JULY 1, 1977 COMPLIANCE DATE - REQUEST FOR APPROVAL OF STIPULATED CONSENT ORDER ADDENDUM FOR CITY OF AMITY

Mr. Fred Bolton, Administrator of the Department's Regional Operations Division, said this would amend a Stipulated Order to coincide with a construction project now underway for the City of Amity. He said the Director's Recommendation was to amend the Stipulation and Final Order so that the City would be in compliance with their construction project in adding full secondary treatment to the City of Amity.

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

AGENDA ITEM T - REQUEST BY CURRY COUNTY FOR EXTENSION OF DATE FOR SOLID WASTE PLAN ADOPTION

It was MOVED by Commissioner Somers, seconded by Commissioner Densmore and carried unanimously that the following Director's Recommendation be approved:

DIRECTOR'S RECOMMENDATION

It is recommended that:

1. The County be required to adopt a solid waste management plan by April 1, 1979 and notify the Department of such adoption by April 15, 1979.

2. All other dates required in granting of the variance on September 22, 1978 be maintained.

AGENDA ITEM U - VARIANCE REQUEST - LOUIS DREYFUS CORPORATION AND BUNGE CORPORATION REQUEST FOR VARIANCE FROM OAR 340-28-070 REGARDING LOADING OF SHIPS WITH GRAIN

Chairman Richards noted that no one signed up to testify on this matter and that representatives of the companies involved were at the meeting and did not oppose the Director's Recommendation.

Mr. Babcock, representing Louis Dreyfus Corporation and Bunge Corporation in this matter said the only problem was that at the time they requested a variance the March 1, 1979 date appeared feasible, however because of some OSHA regulations, he wanted to amend the variance request to extend the date to April 1, 1979.

It was MOVED by Commissioner Somers, seconded by Commissioner Hallock and carried unanimously that the following Director's Recommendation be approved and that the March 1, 1979 dates be changed to April 1, 1979.

DIRECTOR'S RECOMMENDATION

Based upon the findings in the summation in the staff report, it is recommended that the Environmental Quality Commission:

1. Enter a finding that strict compliance is inappropriate at this time due to special circumstances which are considered unreasonable, burdensome, and impractical due to special physical conditions, would result in substantial curtailment or closing down of a significant portion of a business, and conditions exist which are beyond the control of the operators.

2. Grant the variance to Louis Dreyfus Corporation and Bunge Corporation in excess of the emissions standard described in OAR 340-28-070 until [~~March~~] April 1, 1979 subject to the following conditions:

   a. By not later than [~~March~~] April 1, 1979, Louis Dreyfus Corporation and Bunge Corporation will meet with representatives of ILWU Local 8 regarding the use of the ship loading dust control equipment and take the issue to arbitration if such should prove necessary.

b. The Department reserves the right to impost civil penalties for any violations recorded during the variance period should it become evident that a good faith effort is not being made.

STATUS OF OPEN BURNING VARIANCE

Chairman Richards asked for staff comment in light of comments made during the Public Forum section of the meeting.

Mr. Tom Bispham, of the Department's Northwest Region Office, said that review of the nephelometer readings showed there really wasn't any significant difference between that transpired the week before burning was allowed than during the days burning was allowed. In fact, he said, the SO_2 levels were up which would indicate they would be more closely associated with combustion fuels rather than open burning. He said that although Multnomah County had been extremely successful in their burning practices, the City of Portland has experienced some difficulty and were going to terminate their burning at West Delta Park. Mr. Bispham said his office had only received one complaint about burning, but numerous complaints about not being allowed to burn because weather conditions did not permit it had been received.

Director Young said concern had been expressed that illegal burning was increasing. Mr. Bispham replied that illegal burning happened throughout the year and they only know if illegal fires when a complaint is received or a field man spots an illegal fire when he is out. He said they had only received one complaint of illegal burning and it had been investigated.

Mr. Bispham said they were looking into waiting until noon to make the burning advisory because the area had been experiencing morning inversion situations.

EXECUTIVE SESSION

The Commission then went into Executive Session to consider pending litigation.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Carol A. Splettstaszer

Carol A. Splettstaszer
Recording Secretary

ROBERT W. STRAUB
GOVERNOR

Environmental Quality Commission

POST OFFICE BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item B, January 26, 1979, EQC Meeting

November and December Program Activity Reports

Discussion

Attached are the November and December Program Activity Reports.

ORS 468.325 provides for Commission approval or disapproval of plans and specifications for construction of air contaminant sources.

Water and Solid Waste facility plans and specifications 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:

1) to provide information to the Commission regarding the status of reported program activities and an historical record of project plan and permit actions;
2) to obtain confirming approval from the Commission on actions taken by the Department relative to air contamination source plans and specifications; and
3) to provide a log on the status of DEQ contested cases.

Recommendation

It is the Director's Recommendation that the Commission take notice of the reported program activities and contested cases, giving confirming approval to the air contaminant source plans and specifications listed on page 2 of both reports.

Bill

WILLIAM H. YOUNG

M. Downs:ahe
229-6485
01-12-79

DEPARTMENT OF ENVIRONMENTAL QUALITY

Monthly Activity Report

November, 1978
Month

TABLE OF CONTENTS

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality, Water Quality, Solid Waste Divisions (Reporting Unit) — November, 1978 (Month and Year)

SUMMARY OF PLAN ACTIONS

	Plans Received		Plans Approved		Plans Disapproved		Plans Pending
	Month	Fis.Yr.	Month	Fis.Yr.	Month	Fis.Yr.	
Air							
Direct Sources	27	92	11	89		2	44
Total	27	92	11	89		2	44
Water							
Municipal	96	614	107	606			54
Industrial	10	59	15	51			25
Total	106	673	122	657			79
Solid Waste							
General Refuse	1	9	3	10		2	2
Demolition		2					1
Industrial		8	1	14			
Sludge	1	2		2			1
Total	2	2	4	26		2	4
Hazardous Wastes							
GRAND TOTAL	135	786	137	772		4	127

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — November 1978 (Month and Year)

PLAN ACTIONS COMPLETED - 17

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Direct Stationary Sources			
Washington (NC 1211)	Tektronix, Inc. Induction Aluminum Furnace	9/26/78	Withdrawn
Lane (NC 1212)	Coast Manufacturing Yard Paving	11/78	(Tax Credit only) Withdrawn
Lane (NC 1229)	Bohemia, Inc. Boiler, Fuel Feed & Dryer Mod.	11/20/78	(Tax Credit only) Withdrawn
Marion (NC 1232)	Master Service Center Tire Re-tread Shop	11/6/78	Approved
Douglas (NC 1238)	Woolley Enterprises Rebuild Veneer Dryer with Burley Scrubber	10/23/78	Approved
Wallowa (NC 1249)	Wallowa Lake Forest Products Hog Boiler & Dry Kiln	10/24/78	Approved
Multnomah (NC 1254)	Louis Dreyfus Corp. Interior Dust Control System	10/16/78	Approved
Hood River (NC 1258)	Paul H. Klindt One Orchard Fan	10/16/78	Approved
Multnomah (NC 1260)	K. F. Jacobsen & Company New Asphalt Pug Mill	11/6/78	Approved
Multnomah (NC 1262)	Shell Oil Company Asphalt Storage Tank	11/16/78	Approved
Hood River (NC 1264)	Glacier Ranch Two Orchard Fans	10/31/78	Approved
Hood River (NC 1265)	Walter Wells & Sons Two Orchard Fans	10/31/78	Approved

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — November 1978 (Month and Year)

PLAN ACTIONS COMPLETED - 17, cont'd

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Direct Stationary Sources			
Multnomah (NC 1266)	Bird & Son, Inc. of Mass. Replacement Asphalt Heater	11/9/78	Approved
Harney (NC 1267)	Edward Hines Lumber Co. Lumber Sander with Baghouse	11/13/78	Approved
Klamath (NC 1269)	Weyerhaeuser Company Chip Cyclone	11/14/78	Approved
Jackson (NC 1270)	McGrew Bros. Sawmill, Inc. Pave Log Deck	11/16/78	Approved
Multnomah (NC 1273)	Anodizing, Inc. Caustic Alkali Scrubber	11/16/78	Approved

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — November 1978 (Month and Year)

SUMMARY OF AIR PERMIT ACTIONS

	Permit Actions Received		Permit Actions Completed		Permit Actions Pending	Sources Under Permits	Sources Reqr'g Permits
	Month	FY	Month	FY			
Direct Sources							
New	6	22	8	20	22		
Existing	0	19	6	34	13		
Renewals	31	43	12	48	70		
Modifications	12	46	14	55	10		
Total	49	130	40	157	115	1,883	1,918
Indirect Sources							
New	0	11	0	15	10*		
Existing							
Renewals							
Modifications	0	4	2	4	0		
Total	0	15	2	19	10	103	
GRAND TOTALS	49	145	42	176	125	1,986	

Number of Pending Permits	Comments
25	To be drafted by Northwest Region Office
13	To be drafted by Willamette Valley Region Office
28	To be drafted by Southwest Region Office
3	To be drafted by Central Region Office
1	To be drafted by Eastern Region Office
17	To be drafted by Program Operations
3	To be drafted by Program Planning & Development
90	
17	Permits awaiting next public notice
8	Permits awaiting end of 30-day public notice period
25	

*Tektronix Walker Rd., Phase IV, withdrawn

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — November 1978 (Month and Year)

PERMIT ACTIONS COMPLETED - 42

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Direct Stationary Sources - 40			
Benton	*Leading Plywood 02-2479 (Modification)	11/1/78	Addendum Issued
Benton	Brand S Corporation 02-2482 (Renewal)	11/14/78	Permit Issued
Benton	Hardrock Quarry 02-7089 (Existing)	11/14/78	Permit Issued
Clackamas	*Dutton Pacific Forest Prod. 03-1776 (Modification)	10/18/78	Addendum Issued
Clackamas	Riverside School 03-2588 (Modification)	6/7/78	Permit Issued
Clatsop	Valley Ridge 04-0022 (Modification)	11/14/78	Permit Issued
Columbia	Boise Cascade 05-1849 (New)	9/29/78	Permit Issued
Coos	Weyerhaeuser 06-0007 (Renewal)	10/13/78	Permit Issued
Douglas	Roseburg Lumber 10-0025 (Renewal)	10/13/78	Permit Issued
Douglas	*International Paper 10-0036 (Modification)	11/13/78	Permit Issued
Douglas	Champion Building Products 10-0037 (Renewal)	10/13/78	Permit Issued
Douglas	Woolley Enterprises 10-0054 (Renewal)	10/13/78	Permit Issued
Douglas	Roseburg Lumber 10-0078 (Renewal)	10/13/78	Permit Issued
Douglas	Roseburg Lumber 10-0083 (Renewal)	10/13/78	Permit Issued

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — November 1978 (Month and Year)

PERMIT ACTIONS COMPLETED - 42, cont'd

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Direct Stationary Sources (cont.)			
Jackson	Sacred Heart Elem. School 15-0126 (Existing)	11/14/78	Permit Issued
Klamath	Columbia Plywood 18-0014 (Renewal)	11/14/78	Permit Issued
Klamath	Boise Cascade 18-0018 (Renewal)	11/14/78	Permit Issued
Lake	*Lake County Forest Products 19-0017 (Modification)	10/18/78	Addendum Issued
Linn	Riverside Rock & Redi-Mix 22-0024 (New)	11/14/78	Permit Issued
Linn	Riverside Rock & Redi-Mix 22-2008 (New)	11/14/78	Permit Issued
Linn	*Champion International 22-5195 (Modification	11/17/78	Addendum Issued
Linn	North Santiam Sand & Gravel 22-6310 (Renewal)	11/14/78	Permit Issued
Linn	*Boise Cascade 22-7008 (Modification)	10/18/78	Addendum Issued
Linn	*Willamette Industries 22-7128 (Modification)	11/1/78	Addendum Issued
Marion	Newberg Sand & Gravel 24-3503 (Existing)	11/14/78	Permit Issued
Marion	Willamette University 24-5790 (New)	11/14/78	Permit Issued
Multnomah	Columbia Grain 26-2807 (Renewal)	10/13/78	Permit Issued
Multnomah	Farmers Union Central Exch. 26-2976 (Modification)	11/14/78	Permit Issued

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — November 1978 (Month and Year)

PERMIT ACTIONS COMPLETED - 42, cont'd

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Direct Stationary Sources (cont.)			
Multnomah	W. R. Grace & Company 26-2990 (New)	6/20/78	Permit Issued under 26-2530
Multnomah	Port of Portland 26-3004 (New)	11/14/78	Permit Issued
Polk	*Gould, Inc. 27-8012 (Modification)	8/15/78	Permit Issued
Washington	Southwest Ready Mix 34-2650 (Existing)	11/14/78	Permit Issued
Yamhill	*Coast Range Plywood 36-5296 (Modification)	10/18/78	Addendum Issued
Portable Sources			
Portable	O'Hair Construction 37-0071 (Modification)	11/14/78	Permit Issued
Portable	J. C. Compton 37-0078 (Renewal)	11/14/78	Permit Issued
Portable	Tidewater Contractors 37-0134 (Modification)	11/14/78	Permit Issued
Portable	Bob Angell, Inc. 37-0150 (Existing)	11/14/78	Permit Issued
Portable	L. V. Anderson & Sons 37-0172 (Existing)	11/14/78	Permit Issued
Portable	Johnson Rock Products 37-0201 (New)	11/14/78	Permit Issued
Portable	Western Pacific Construction 37-0212 (New)	11/14/78	Permit Issued

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — November 1978 (Month and Year)

PERMIT ACTIONS COMPLETED - 42 cont'd

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Indirect Sources - 2			
Washington	Washington Square Shopping Center 750 spaces, File No. 34-6022 Addendum No. 3	11/16/78	Final permit issued
Washington	Beaverton Mall, Phase II 575 spaces, File No. 34-8013 Addendum No. 1	11/8/78	Final permit issued

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality - SWC Section (Reporting Unit) — November 1978 (Month and Year)

PLAN ACTIONS COMPLETED - 122

Engineer	County	Name of Source/Project/Site & Type of Same	Rec'd	Date of Action	Action	Time to Complete Action
		Municipal Sources - 107				
	10	DOUGLAS CO	COW CREEK SAFETY REST AREA	V080778	091578	CMMTLTR	39
59	36	WILLAMINA	WILLAMINA LAGOON EXPANSION	V051678	091878	PROV APP	120
40	15	GOLD HILL	GOLD HILL STD	V071778	092978	PROV APP	72
40		GOLD HILL	SEWER IMPROVEMENTS	J090578	092978	PROV APP	24
04	12	MT VERNON	PRELIM COLL SYS & STP	V063078	092978	PROV APP	90
		ELK LAKE RES	SEWERAGE SYSTEM DESCH. CO	V090578	101178	CMMTS CRO	36
	26	PORTLAND	SW GAINES ST	K102078	110178	PROV APP	12
	26	PORTLAND	SE 82ND ST	K102078	110178	PROV APP	12
	26	PANA VISTA	NW 83RD PLACE REV	K101778	110178	PROV APP	15
	17	GRANTS PASS	MCBEE - CUMMINGS	K101978	110178	PROV APP	13
	16	JEFFERSON	JEFFERSON MOB HME SUBDIV	K101978	110178	PROV APP	13
	26	GRESHAM	CARLSBERRY PLACE	K101278	110178	PROV APP	20
		CORVALLIS	SW TUNISON - BUTTERFIELD	K101278	110178	PROV APP	20
		WILSONVILLE	ELLIGSEN RD AS BLT	K101678	110178	PROV APP	16
		NEWBERG	BARCLEY FARMS	K101378	110178	PROV APP	25
		DALLAS	HORIZON ESTATES	K101178	110178	PROV APP	27
		MULT CO	NE 122ND & BRAZEE	J092578	110178	PROV APP	07
		MCMINNVILLE	FLEISHAUER MEADOWS	J102678	110178	PROV APP	06
		SALEM	DOAKS FERRY RD	J092778	110278	PROV APP	36
		SALEM	HOOD 2	J103078	110278	PROV APP	30
		WINSTON	LOCUST COURT	J101278	110278	PROV APP	20
		TUALATIN	COMANCHE II	J091278	110278	PROV APP	21
		LINCOLN CITY	LOVE MINOR PART	K101878	110378	PROV APP	16
		LINCOLN CITY	RAYMOND TOWNSITE	K101878	110378	PROV APP	16
		MULT CO	SANDSTONE PHASE 1	J102378	110378	PROV APP	12
	36	DUNDEE	STP MODIFICATIONS	J092178	110678	PROV APP	46
	26	PORTLAND	SW COMUS-37TH-PASADENA	K101878	110678	PROV APP	19
	26	PORTLAND	JOHNS LANDING NOR OF SWEENY	K101878	110678	PROV APP	19
	26	PORTLAND	SW CAPITOL HILL RD	K101878	110678	PROV APP	19
		SALEM	WALLACE HILL WEST	K101178	110678	PROV APP	26
		HARRISBURG	HARRIS NORTH SUBD	K101678	110678	PROV APP	21
		SALEM	BATTLE CREEK PH 2	K100978	110678	PROV APP	28
		SANDY	GRASS MEADOWS SUBD	K101878	110678	PROV APP	19
		NEWBERG	AIRPARK HANCOCK LID 211	J092078	110678	PROV APP	47
		GRESHAM	GREEN APPLE TER	K101378	110778	PROV APP	25
		DOT	COW CREEK SAFETY REST AREA	V102578	110778	PROV APP	12
	20	JUNCTION CTTY	LAND DISPOSAL PLAN-BOWERS	V102578	110778	MEMO TO MWRO	12
	30	MILTONFREE H20	FPR	V100178	110778	CMMT LTR	36
		CCSD NO 1	WESTWELLOW SUBD	K101878	110778	PROV APP	20
54		NETARTS	PEARL STREET	V090778	110778	PROV APP	60
		REEDSPORT	STP EXPANSION	V091578	110778	PROV APP	22
		REEDSPORT	SEWER SYSTEM REHAB	V091578	110778	PROV APP	22
		CANYONVILLE	STP PRELIM	V091978	110778	PROV APP	51
	34	USA	CAROL GLEN SUBD	K110778	110878	PROV APP	01
	15	BCVSA	ARCHER DRIVE	K102078	110878	PROV APP	19

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality - SWC Section (Reporting Unit) — November 1978 (Month and Year)

PLAN ACTIONS COMPLETED - 122, cont'd

Engineer	County	Name of Source/Project/Site & Type of Same		Rec'd	Date of Action	Action	Time to Complete Action
		Municipal Sources - (Continued)					
		BCVSA	PHELAN EXT	K101978	110878	PROV APP	20
		BCVSA	EXT W SAGE RD	K102078	110878	PROV APP	19
		GRESHAM	GREEN APPLE SUBD	K102478	110878	PROV APP	15
		MULT CO	SANDY CREST	K102478	110878	PROV APP	15
		EUGENE	SHASTA PK 2ND	K102078	110878	PROV APP	19
		GLENEDEN S D	EMBER FOREST	K102578	110878	PROV APP	14
		N T C S A	MATSON PROP	K102078	110878	PROV APP	19
		EUGENE	CASA GRANDE	K102378	110878	PROV APP	16
		ROSEBURG	KEASEY - VALLEY VW	K102378	110878	PROV APP	16
		TAMARA QUAYS	PIXIE LAND STP CONNECTION	V101378	111378	CMMT LTR	30
	36	MCMINNVILLE	RIVERSIDE DRIVE NE	J110278	111378	PROV APP	09
	03	MOLALLA	FAURIE AVE	K103178	111378	PROV APP	13
		TROUTDALE	PORTLAND-TROUTDALE AIRPORT	J100678	111378	PROV APP	38
		EUGENE	DANEBO ST SEWER	K103078	111378	PROV APP	14
18	27	INDEPENDENCE	SEWER REHAB	V071778	111478	PROV APP	120
	18	MALIN	TRACT 1181	K110278	111578	PROV APP	13
	17	CAVE JUNCTION	ROBINWOOD ESTATES	K110278	111678	PROV APP	14
	05	ST HELENS	MATZEN ST. BACHELOR	K110278	111678	PROV APP	14
	34	USA	TIEDEMAN EXT	K111578	111678	PROV APP	01
	04	WARRENTON	ADD NO. 1 SOUTHSHORE EST	K110978	111678	PROV APP	07
	34	USA	COPELAND EXTENSION	K110178	111678	PROV APP	15
		USA	CASTLEWOOD-JENKINS-CHYHL REM	K102678	111678	PROV APP	21
		USA	KELLY GREEN TER	K102378	111678	PROV APP	24
		USA	ELOISE PARK	K102378	111678	PROV APP	24
		REDMOND	NORTH CANYON ESTATES	K103078	111678	PROV APP	17
		BCVSA	ALPINE WAY	J103078	111678	PROV APP	17
		BCVSA	GRIMES SUBD	J102678	111678	PROV APP	21
		USA	TORREYVIEW III	K102678	111678	PROV APP	21
		USA	MEMORY LANE	K102778	111678	PROV APP	20
		USA	WALKER ROAD EXT	K102678	111678	PROV APP	21
		OREGON	WATER WONDERLAND - DESCHUTES	V101178	111778	CMMT LTR	37
		THE DALLES	STINSON PROJECT	K101878	111978	PROV APP	31
		NTCSA	KRUTSINGER PROJ	K111578	112278	PROV APP	07
	34	USA	TEK-WALKER RD EXT	K110378	112278	PROV APP	19
		LAKE OSWEGO	PUMP STA REVISIONS-ROBINSON	J103078	112278	PROV APP	23
		SALEM	PRINGLE RD-GLADMAR ST AREA	J103178	112278	PROV APP	23
	24	HUBBARD	WINCHESTER SUBDIV	K110678	112378	PROV APP	17
	03	WEST LINN	PIKES PLACE SUBDIV	K110778	112478	PROV APP	17
	22	ALBANY	MENNONITE NURSE HME	K110778	112478	PROV APP	17
	18	KLAMATH FALLS	LYNNEWOOD IMPROVE	K110778	112478	PROV APP	17
	24	HUBBARD	WINCHESTER SUBDIV	K110678	112478	PROV APP	18
	26	GRESHAM	BINFORD FARMS	K110978	112878	PROV APP	19
	03	WEST LINN	SWIFT SHORES	J110278	112878	PROV APP	26
	15	ASHLAND	DEER RIDGE TERRACE SUBD	J110278	112878	PROV APP	26
	20	EUGENE	KIDDER SUBDIV	K110778	112878	PROV APP	21

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality - SWC Section (Reporting Unit) — November 1978 (Month & Year)

PLAN ACTIONS COMPLETED - 122, cont'd

Engineer	County	Name of Source/Project/Site & Type of Same		Rec'd	Date of Action	Action	Time to Complete Action
		Municipal Sources - (Continued)					
	02	CORVALLIS	MARYSVILLE ESTATES	K110978	112878	PROV APP	19
	26	MILWAUKIE	TORINO 1 PHASE IV	K110978	112878	PROV APP	19
	05	ST HELENS	TAMARAK HEIGHTS	K110978	112878	PROV APP	19
		MILO ACADEMY	MOB HOME SITES	K112778	112978	PROV APP	02
	03	GLADSTONE CSD	WILDTREE SUBDIV	K111378	112978	PROV APP	16
	15	MEDFORD	PROGRESS SUBD	J110278	112978	PROV APP	27
	29	NTCSA	BARRET REVISED	K111378	112978	PROV APP	16
	06	NORTH BEND	DISTRICT 102-77	K110878	112978	PROV APP	21
	06	NORTH BEND	DISTRICT 103-77	K110878	112978	PROV APP	21
	10	GREEN S D	GREEN AVE EXTENSION	K112178	112978	PROV APP	08
	34	USA	DAMASCUS L I D	K110978	113078	PROV APP	21
	34	USA	DALE SUBDIV	K110978	113078	PROV APP	21
	34	USA	CO CLUB CONDOS	K111378	113078	PROV APP	17
	34	USA	SW 178TH EXTENSION	K111778	113078	PROV APP	13
	14	HOOD RIVER	FOSTER - HENDERSON SWR	K112178	113078	PROV APP	09
	20	SPRINGFIELD	SOUTH 47TH ST SP381	K112178	113078	PROV APP	09
	20	SPRINGFIELD	A L MOURER PROJ	K112178	113078	PROV APP	09

PLAN ACTIONS COMPLETED - 122, cont'd

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
INDUSTRIAL WASTE SOURCES (15)			
Baker	Stanciu Dairy - Richland Manure Handling	10-13-78	Approved
Baker	Purcell Dairy - Richland Manure Handling	10-13-78	Approved
Morrow	Portland General Electric Boardman, Mobile Equip. Fueling & Washdown	10-20-78	Approved
Marion	Deer Creek Estates Filter Back Wash Recycle	10-25-78	Approved
Lane	Weyerhaeuser - Springfield PCB Storage Shed	10-31-78	Approved
Linn	Teledyne Wah Chang Albany Liquid Chromatograph	11-1-78	Asked to Withdraw
Linn	Teledyne Wah Chang Albany Survelience Shack	11-1-78	Asked to Withdraw
Jackson	Wild River Orchards - Medford Frost Protection Sprinklers	11-1-78	To Air Quality
Tillamook	Crown Zellerbach - Tillamook Bulk Petroleum Products Storage Bldg.	11-9-78	Approved
Columbia	Lorenn Ellis Farm - Mist Manure Handling	11-13-78	Approved
Multnomah	Winter Products - Portland Cyanide Pretreatment	11-13-78	Approved
Grant	Barbara Carol Mine - Grant Co. Mine Waste Disposal	11-14-78	Approved
Grant	Morning Mine - Grant Co. Mine Waste Disposal	11-14-78	Approved

MONTHLY ACTIVITY REPORT

Water Quality (Reporting Unit) — November 1978 (Month and Year)

PLAN ACTIONS COMPLETED - 122, cont'd

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
INDUSTRIAL WASTE SOURCES CONTINUED			
Washington	Tektronix - Beaverton Atomic Absorption Spectrophotometer	11-14-78	Approved
Clackamas	Serban Lake Farms - Sandy Settling Ponds	11-22-78	Approved

MONTHLY ACTIVITY REPORT

~~Water Quality~~ (Reporting Unit) — November 1978 (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.							
	*	**	*	**	*	**	*	**	*	**	*	**	*	**
Municipal														
New	1	0	3	3	0	3	1	3	2	2				
Existing	0	0	0	0	0	0	0	0	0	0				
Renewals	10	0	29	2	0	1	11	7	54	2				
Modifications	3	0	6	0	2	0	4	0	6	1				
Total	14	0	38	5	2	4	16	10	62	5	244	83	246	86
Industrial														
New	2	2	10	7	1	5	6	11	12	2				
Existing	0	0	0	0	3	0	7	0	0	0				
Renewals	13	4 1/	31	11	2/ 9	3	38	13	58	11				
Modifications	0	0	2	3	1	0	4	3	5	0				
Total	15	6	43	21	14	8	55	27	75	13	396	126	408	127
Agricultural (Hatcheries, Dairies, etc.)														
New	0	0	2	7	0	3	2	6	2	1				
Existing	0	0	0	0	0	0	0	0	0	0				
Renewals	0	0	0	0	0	0	0	1	2	0				
Modifications	0	0	0	0	0	0	0	0	0	0				
Total	0	0	2	7	0	3	2	7	4	1	60	20	62	21
GRAND TOTALS	29	6	83	33	16	15	73	44	141	19	700	229	716	234

* NPDES Permits
** State Permits

1/ Includes 1 State Permit transfered from NPDES

2/ Includes 1 NPDES Permit transfered to State
2 NPDES Permits not to be renewed
1 NPDES Permit Canceled

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality (Reporting Unit) — November 1978 (Month and Year)

PERMIT ACTIONS COMPLETED (31)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
Lane	Agripac, Inc. Fruit Processing	11-7-78	No NPDES Renewal Necessary
Baker	Oregon Portland Cement Huntington Plant	11-7-78	No NPDES Renewal Necessary
Linn	Freres Veneer Co. Green Veneer	11-15-78	NPDES Permit Issued
Coos	Union Oil Co. Oil Terminal	11-15-78	NPDES Permit Renewed
Douglas	International Paper Gardiner - Add. #1	11-15-78	NPDES Modification Issued
Deschutes	City of Bend Interim Sewage Disposal	11-16-78	State Permit Issued
Linn	Oregon Metallurgical Corp. Chemical	11-16-78	NPDES Permit Renewed
Malheur	Amalgamated Sugar Co. Nyssa Operation	11-16-78	NPDES Permit Renewed
Lane	City of Florence Sewage Disposal - Add #3	11-20-78	NPDES Modification Issued
Benton	City of Monroe Sewage Disposal - Add #1	11-20-78	NPDES Modification Issued
Washington	Stimson Lumber Co. Forest Fiber Products	11-20-78	NPDES Permit Renewed
Linn	Champion Building Products Lebanon Mill	11-20-78	NPDES Permit Renewed
Hood River	J. Arlie Bryant Asphalt Paving	11-22-78	State Permit Renewed
Curry	Independent Fishermen's Coop Fish Processing	11-22-78	State Permit Issued

MONTHLY ACTIVITY REPORT

Water Quality (Reporting Unit) — November 1978 (Month and Year)

PERMIT ACTIONS COMPLETED - 31, cont'd

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
Jackson	Oregon State Parks Joseph Stewart Park	11-22-78	State Permit Issued
Douglas	Oregon State Dept. of Transportation Cow Creek Rest Area	11-22-78	State Permit Issued
Polk	Mountain Fir Lumber Co. Lumber Mill	11-28-78	NPDES Permit Renewed
Curry	Ore. Dept. Fish & Wildlife Elk River Fish Hatchery	11-28-78	NPDES Permit Renewed
Lincoln	Yaquina Bay Fish Co. Fish & Crab Processing	11-28-78	NPDES Permit Renewed
Tillamook	Coast Wide Ready Mix Gravel Plant	11-30-78	State Permit Renewed
Douglas	Hub Lumber Co. Wood Products	11-27-78	Discharge Eliminated Permit Canceled
Jackson	M.C. Lininger & Sons Concrete Plant	11-30-78	State Permit Issued
Lane	Eugene Sand & Gravel Aggregate	11-30-78	State Permit Renewed
Baker	Lorin Stanciu Dairy Animal Waste	11-30-78	State Permit Issued
Lane	Continental Chrome Chrome Plating	11-30-78	State Permit Issued
Baker	Cecil Rogers Placer Mine	11-30-78	State Permit Issued
Malheur	Marvin Rempel Animal Waste	11-30-78	State Permit Issued

MONTHLY ACTIVITY REPORT

Water Quality (Reporting Unit) — November 1978 (Month and Year)

PERMIT ACTIONS COMPLETED - 31, cont'd

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
Baker	Purcell Dairy Dairy Products	11-30-78	State Permit Issued
Jefferson	City of Madras Sewage Disposal	11-30-78	State Permit Renewed
Clackamas	Construction Aggregates dba River Island Sand & Gravel	11-30-78	NPDES Application transfered to State
Lane	City of Ashland Water Reservoir	9-26-78	State Permit Issued

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Solid Waste (Reporting Unit) — November 1978 (Month and Year)

PLAN ACTIONS COMPLETED (4)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
Clackamas	Rossman's Existing Landfill Revised Leachate Control and Operational Plan	11/3/78	Conditional Approval
Douglas	Roseburg lumber-Coquille Existing Industrial Landfill Operational Plan	11/17/78	Conditional Approval
Crook	Crook County Landfill Existing Sanitary Landfill Operational Plan Amendment	11/20/78	Approved
Malheur	McDermitt Landfill Existing Modified Landfill Development & Operational Plan	11/27/78	Approved

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Solid Waste Division (Reporting Unit) — November 1978 (Month and Year)

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.			
General Refuse							
New	1	2	1	2	1		
Existing					18* (14)		
Renewals	4	13		12	9		
Modifications	1	4	3	7	1		
Total	6	19	4	21	29	168	172
Demolition							
New							
Existing	1	1			1 *		
Renewals							
Modifications		2		1	1		
Total	1	3	0	1	2	22	22
Industrial							
New		6		8			
Existing				1			
Renewals	1	7	2	9	6		
Modifications		1		2	1		
Total	1	14	2	20	7	97	97
Sludge Disposal							
New	1	1			1 *		
Existing							
Renewals			1	2	1		
Modifications							
Total	1	1	1	2	2	10	10
Hazardous Waste							
New							
Authorizations	18	80	20	80	0		
Renewals							
Modifications							
Total	18	80	20	80	0	1	1
GRAND TOTALS	27	117	27	124	40	298	302

* Sixteen (16) sites operating under temporary permits until regular permits are issued.

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Solid Waste (Reporting Unit) — November 1978 (Month and Year)

PERMIT ACTIONS COMPLETED (7)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
General Refuse Facilities (4)			
Douglas	Elkton Transfer Station New drop box site	11/8/78	Permit issued.
Curry	Port Orford Disposal Site Existing Landfill	11/9/78	Permit amended.
Marion	Brown's Island Landfill Expansion of existing site	11/16/78	Permit amended.
Crook	Crook County Landfill Existing site	11/20/78	Permit amended.
Demolition Waste Facilities- none			
Industrial Waste Facilities (2)			
Jackson	Jackson County Sports Park Existing disposal site	11/8/78	Permit renewed.
Lake	Lakeview Lumber Products Existing Landfill	11/22/78	Letter authorization renewed.
Sludge Disposal Facilities (1)			
Lane	Florence Sludge Site Existing site	11/8/78	Permit renewed.

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Solid Waste (Reporting Unit) — November 1978 (Month and Year)

HAZARDOUS WASTE DISPOSAL REQUESTS

CHEM-NUCLEAR SYSTEMS, GILLIAM CO.

Date	Waste Description: Type	Source	Quantity: Present	Quantity: Future
Disposal Requests Granted (20)				
Oregon (10)				
1	Fire damaged herbicides	County	2 drums	None
6	Flammable paint wastes consisting of alkyd wood fillers and lacquer thinner.	Plywood mill	24 drums	1 drum/week
8	Contaminated HCl	Chemical co.	1 drum	None
13	Unwanted 2,4,5T herbicide	Pipeline co.	1 drum	None
13	Soda ash and KCN	Lumber mill	50 lbs.	None
15	Unwanted pesticides	Chemical co.	1650 lbs.	None
15	PCB capacitors & spill cleanup debris	Silicon alloy producer	Several drums	None
15	Oats contaminated with strychnine	Federal agency	1900 lbs.	None
24	Obsolete auto paint products	Chemical co.	900 gals.	Periodic
27	Freight damaged pesticide products	Warehouse	413 gals.	Periodic
Washington (7)				
1	Old polyester resin and polyurethane foam products	Chemical co.	40 drums	Periodic
3	Polyester resin gunk	Electrical service shop	1 drum	None

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Solid Waste (Reporting Unit) — November 1978 (Month and Year)

HAZARDOUS WASTE DISPOSAL REQUESTS

CHEM-NUCLEAR SYSTEMS, GILLIAM CO.

Date	Waste Description: Type	Source	Quantity: Present	Quantity: Future
14	PCB capacitors	Electric utility	3 drums	None
15	PCB capacitors	Nickel producer	265 cu.ft.	Periodic
20	PCB capacitors	Electric utility	2 drums	None
21	PCB capacitors	Chemical company	1 unit	None
28	Hexachloroethane & obsolete chemical Tris	Chemical company	3 drums	Periodic
Hawaii (1)				
16	PCB capacitors & cleanup debris	Federal agency	626 cu.ft.	700 cu.ft./yr.
Alaska (1)				
20	Obsolete DDT powder	State agency	5 lbs.	None
British Columbia (1)				
28	Unwanted benzene hexachloride insecticide	Sawmill	1 drum	None

DEPARTMENT OF ENVIRONMENTAL QUALITY

Monthly Activity Report

December, 1978
Month

TABLE OF CONTENTS

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality, Water Quality
Solid Waste Divisions
(Reporting Unit)

December, 1978
(Month and Year)

SUMMARY OF PLAN ACTIONS

	Plans Received		Plans Approved		Plans Disapproved		Plans
	Month	Fis.Yr.	Month	Fis.Yr.	Month	Fis.Yr.	Pending
Air							
Direct Sources	12	104	18	107		2	34
Total	12	104	18	107		2	34
Water							
Municipal	81	725	74	680			44
Industrial	8	67	10	61			23
Total	89	792	84	741			67
Solid Waste							
General Refuse	2	11	2	12		2	2
Demolition	1	3					2
Industrial	2	10	2	16			1
Sludge		2		2			1
Total	5	26	4	30		2	6
Hazardous Wastes							
GRAND TOTAL	106	922	106	878		4	107

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — December 1978 (Month and Year)

PLAN ACTIONS COMPLETED - 18

County	Name of Source/Project /Site and Type of Same	Date Received	Action
Direct Stationary Sources			
Columbia (NC 1135)	Boise Cascade Paper New lime kiln #4	9/26/78	Approved
Multnomah (NC 1151)	Reynolds Metal Company Seals on alumina transfer	12/19/78	Approved
Multnomah (NC 1240)	Reynolds Metals Company Baghouse on cast house furnace.	12/19/78	Approved
Columbia (NC 1253)	Mutlnomah Plywood Hogged fuel boiler	11/17/78	Approved
Multnomah (NC 1257)	Martin Marietta Aluminum Ship to rail alumina terminal	11/27/78	Approved
Lane (NC 1259)	Mid-Valley Mfg. Company Cyclone to clean-up sawdust.	11/16/78	Approved (Tax Credit only)
Union (NC 1274)	Hoff-Ronde Valley Lbr. Co. Hogged fuel boiler	11/17/78	Approved
Clackamas (NC 1275)	Oregon Portland Cement Co. #4 pier flap seal, kiln fan	12/13/78	Approved
Lane (NC 1276)	Weyerhaeuser Company Replace air system with conveyor	12/12/78	Approved
Hood River (NC 1277)	Bickford Orchards, Inc. One orchard fan	11/17/78	Approved
Jackson (NC 1278)	Wild River Orchards, Inc. Over tree sprinkler system	11/29/78	Approved
Lane (NC 1280)	Cress Ply Company Replace air system with conveyor	12/13/78	Approved (tax credit only)
Jackson (NC 1281)	Boise Cascade Corp. Closed loop cyclones	12/13/78	Approved

PLAN ACTIONS COMPLETED - 18, cont'd

County	Name of Source/Project /Site and Type of Same	Date Received	Action
Direct Stationary Sources (cont.)			
Clackamas (NC 1282)	Oregon Portland Cement Co. Hot tank clinker elev. mod.	12/15/78	Approved
Multnomah (NC 1283)	Trumbull Asphalt Tank venting system	12/28/78	Approved
Douglas (NC 1287)	Roseburg Lumber Co., Dillard Burley scrubber on boiler #1	12/13/78	Approved
Hood River (NC 1290)	Thomsen Orchards One orchard fan	11/27/78	Approved
Crook (NC 1293)	Clear Pine Moulding, Inc. Cyclone	12/19/78	Approved

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — December 1978 (Month and Year)

SUMMARY OF AIR PERMIT ACTIONS

	Permit Actions Received		Permit Actions Completed		Permit Actions Pending	Sources Under Permits	Sources Reqr'g Permits
	Month	FY	Month	FY			
Direct Sources							
New	5	27	3	23	24		
Existing	2	21	0	34	15		
Renewals	17	60	5	53	82		
Modifications	8	54	9	64	9		
Total	32	162	17	174	130	1,886	1,925
Indirect Sources							
New	0	11	0	15	10*		
Existing							
Renewals							
Modifications	0	4	2	4	0		
Total	0	15	2	19	10	103	
GRAND TOTALS	32	188	19	193	140	1,986	

Number of Pending Permits	Comments
22	To be drafted by Northwest Region Office
10	To be drafted by Willamette Valley Region Office
25	To be drafted by Southwest Region Office
4	To be drafted by Central Region Office
1	To be drafted by Eastern Region Office
8	To be drafted by Program Operations
3	To be drafted by Program Planning & Development
73	
27	Permits awaiting next public notice
30	Permits awaiting end of 30-day public notice period
57	

*Tektronix Walker Rd., Phase IV, withdrawn

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — December 1978 (Month and Year)

PERMIT ACTIONS COMPLETED - 18

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Direct Stationary Sources			
Clackamas	Potters Industries 03-2672 (New)	11/29/78	Permit Issued
Columbia	*Multnomah Plywood 05-2076 (Modification)	11/17/78	Addendum Issued
Columbia	*Owens Corning Feberglas 05-2085 (Modification)	11/22/78	Addendum Issued
Douglas	*Roseburg Lumber Co. 10-0078 (Modification)	11/17/78	Addendum Issued
Linn	Crown Zellerbach 22/5032 (Renewal)	11/21/78	Permit Issued
Marion	Boise Cascade 24-4171 (Renewal)	11/29/78	Permit Issued
Morrow	*Kinzua Corp. 25-0020	11/22/78	Addendum Issued
Multnomah	*SIS Properties 26-1241 (Modification)	11/27/78	Addendum Issued
Multnomah	Freightliner Corp. 26-2197 (New)	11/29/78	Permit Issued
Yamhill	Publishers Paper 36-6142 (Renewal)	11/29/78	Permit Issued
Yamhill	Champion International 36-8008 (Renewal)	11/17/78	Permit Issued
Linn	Halsey Pulp Co. 22-35-01 (Renewal)	8/21/78	Permit Issued
Benton	Philomath Shake Mill 02-7076 (Modification)	12/1/78	Permit Issued
Benton	Peak Lumber Sales 02-7080 (Modification)	12/1/78	Permit Issued

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — December 1978 (Month and Year)

PERMIT ACTIONS COMPLETED - 18, cont'd

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Direct Stationary Sources (cont.)			
Columbia	*Portland General Electric 05-2555 (Modification)	12/4/78	Permit Issued
Multnomah	*Container Corp. of America 26-2287 (Modification)	12/8/78	Permit Issued
Union	Hoff-Ronde Valley Lumber 31-0013 (New)	11/17/78	Addendum Issued

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — December 1978 (Month and Year)

PERMIT ACTIONS COMPLETED - 18, cont'd

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Indirect Sources			
Multnomah	Horatio's Restaurant 172 Spaces File No. 26-8029	12/21/78	Final Permit Issued

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

WATER QUALITY DIVISION (Reporting Unit) — December 1978 (Month and Year)

PLAN ACTIONS COMPLETED - 84

Engineer	County	Name of Source/Project/Site & Type of Same Municipal Sources - 74	Rec'd	Date of Action	Action	Time to Complete Action
	14 HOOD RIVER	FOSTER - HENDERSON PROJ	K112178	112978	PROV APP	08
	36 NEWBERG	RINKES SUBD	J112178	113078	PROV APP	09
	36 MCMINNVILLE	BEND-O-RIVER 2ND VILLAGE	J112178	113078	PROV APP	09
	24 SALEM	THE WOODS	J110678	120478	PROV APP	28
	24 SALEM	OVERHEAD DOOR PROPERTY	J110978	120478	PROV APP	25
	21 GLENEDEN SD	PACIFIC ST	J111778	120478	PROV APP	24
	24 SALEM	DOWNTOWN SEWER GROUTING	J112178	120478	PROV APP	13
	15 ASHLAND	ALLEY N OF MANZANITA	J112878	120478	PROV APP	06
	DOUGLAS CO	GREEN INTERCEPTORS	V092778	120578	PROV APP	68
	26 MULT CO	SUMMER PLACE	J112178	120578	PROV APP	15
	24 STAYTON	STAYTON INDUSTRIAL PARK I	J112478	120578	PROV APP	11
	26 PORTLAND	SW 11TH AVE	J112478	120578	PROV APP	11
	24 SALEM	SUNBURST SUBD-REVISED	J112878	120578	PROV APP	07
	03 WILSONVILLE	PARKWAY AVE	J112478	120778	PROV APP	13
	09 BEND	CONT 21	V110678	121178	PROV APP	35
	09 BEND	CONT 20	V110678	121178	PROV APP	35
	09 BEND	CONT 19	V110678	121178	PROV APP	35
	20 VENETA	PUMP STATION OVERFLOW PIPE	V112178	121178	APPROVED	20
	09 BEND	CONT 18	V112778	121178	PROV APP	14
	15 CENTRAL POINT	PINE AND GLENWAY PROJ	K120178	121178	PROV APP	10
	10 DOUGLAS CO	WINSTON-GREEN STP CHANGE 1	V120778	121178	APPROVED	04
	29 NTCSA	NEAH KAH NIE MOUNT TERRACES	J110378	121278	PROV APP	39
	16 MADRAS	BONE ADDITION	K110678	121278	PROV APP	36
	22 SWEET HOME	PROP EAST 47TH AVE EXT	K112178	121278	PROV APP	21
	10 GREEN S D	KERMANSHAH SUBDIV	K112178	121278	PROV APP	21
07	20 SPRINGFIELD	E STREET EXT S-153	K112478	121278	PROV APP	18
07	20 SPRINGFIELD	7TH STREET S-154	K112878	121278	PROV APP	14
	15 BCVSA	NORTH OF GARFIELD ST	J112878	121278	PROV APP	14
61	20 FLORENCE	SURF VILLAGE 2ND	K113078	121278	PROV APP	12
65	08 PORT ORFORD	SEA CLIFF SUBD	J120678	121278	PROV APP	06
63	06 NORTH BEND	INLAND VILLAGE SUBD	J120778	121278	PROV APP	05
63	06 NORTH BEND	PUBLIC SQUARE SHOPPING CTR	J120778	121278	PROV APP	05
82	27 SALEM	HIDDEN VALLEY ESTATES-2	J120878	121278	PROV APP	04
	20 FLORENCE	12TH STREET SEWER	K112178	121378	PROV APP	22
	01 BAKER	13TH STREET - SOUTH	K112178	121378	PROV APP	22
	01 BAKER	BROADWAY ST - PEAR - WELL	K112178	121378	PROV APP	22
	01 BAKER	SUNRIDGE LANE 4TH - 5TH	K112178	121378	PROV APP	22
	01 BAKER	FAILING AVE 4TH - 5TH	K112178	121378	PROV APP	22
	15 BCVSA	SAGE RD INDUSTRIAL	K112278	121378	PROV APP	21
	03 CANBY	CANBY PARK EAST	K112278	121378	PROV APP	16

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

WATER QUALITY DIVISION (Reporting Unit) — December 1978 (Month and Year)

PLAN ACTIONS COMPLETED - 84, cont'd

Engineer	County	Name of Source/Project/Site & Type of Same	Rec'd	Date of Action	Action	Time to Complete Action
		Municipal Sources - Continued				
	21	DEPOE BAY GLEN BROWN DEVELOPMENT	K112878	121378	PROV APP	15
		SHORE LINE SD 1ST ADD SOUTHSHORE EST	K110678	121478	PROV APP	38
	03	CCSD #1 LOVES ADDITION	K112478	121478	PROV APP	20
06	20	SPRINGFIELD N 42ND ST	J121278	121478	PROV APP	02
	34	USA SW 92ND AVE EXTENSION	K121378	121478	PROV APP	01
	09	BEND CONT 22	V110678	121778	PROV APP	41
24	03	LAKE OSWEGO KERR ROAD SUBDIV	K1203078	122078	PROV APP	17
	20	SPRINGFIELD PRESCOTT LANE 383 S	K120478	122078	PROV APP	16
04	31	UNION MEADOWBROOK SUBDIV	K120578	122078	PROV APP	15
81	03	SANDY TERRI'S ADDITION	K120878	122078	PROV APP	12
93	34	USA KNOLL BUS CNTR PH VI	K112778	122178	PROV APP	24
	03	MOLALLA FAURIE AVE	K112878	122178	PROV APP	23
55	34	USA VETA PLACE	K112978	122178	PROV APP	22
	02	PHILOMATH SOUTHWOOD PARK I	K113078	122178	PROV APP	21
62	27	SALEM HILL & VALE	J120178	122178	PROV APP	20
73	30	STANFIELD SSES ADD MH CONST	K120178	122178	PROV APP	20
02	34	USA BURNS RIDGE III	K120178	122178	PROV APP	20
	15	BCVSA SOUTH STAGE ROAD	K120478	122178	PROV APP	17
	26	PORTLAND SE RAYMOND ST	K120878	122178	PROV APP	13
	26	PORTLAND SE 91ST-OAK ST	K120878	122178	PROV APP	13
	21	NEWPORT OSU MARINE SCIENCE CENTER	J121178	122178	PROV APP	10
	21	NEWPORT SE 4TH ST	J121178	122178	PROV APP	10
46	06	COOS BAY ELK CREST SUBD-I	J121178	122178	PROV APP	10
	15	ASHLAND SUSAN LANE	K121178	122178	PROV APP	10
	26	PORTLAND SW KANAN ST	K121178	122178	PROV APP	10
	31	LAGRANDE MAPLE ST	J121278	122178	PROV APP	09
	31	LAGRANDE HIGHWAY AVE	J121278	122178	PROV APP	09
27	24	SALEM 4182 SUNNYVIEW RD	J121278	122178	PROV APP	09
24	26	GRESHAM SE 282ND	J121478	122178	PROV APP	07
	18	KLAMATH FALL LYNNEWOOD BLOCK 10	J121478	122178	PROV APP	07
77	03	LAKE OSWEGO RIVER RUN	J121578	122178	PROV APP	06
68	06	EASTSIDE BLOCK 47	J120678	122278	PROV APP	16
96	05	ST HELENS TAMARACK HEIGHTS	K120878	122278	PROV APP	14
	04	ASTORIA JOB CORPSCONNECTION	J120878	122278	PROV APP	14
21	09	REDMOND KAY - PINYERD'S	K121878	122278	PROV APP	04
73	30	STANFIELD INDUSTRIAL PARK DEVELOPMENT	J121878	122278	PROV APP	04
14	02	CORVALLIS LYONS REST	J121878	122278	PROV APP	04
	24	KEIZER S. D. FERNBROOK SUBD	J112478	122778	PROV APP	23
	15	BCVSA WESTSIDE TRUNK DISTRICT	J121578	122778	PROV APP	12
	09	BEND CONTRACT NO 14	K111678	122878	PROV APP	25
17	04	CANNON BEACH BREAKERS POINT CONDOS	K112978	122878	PROV APP	29
40	06	LAKESIDE REV SPECS AND PLANS	K121178	122878	PROV APP	17
	13	ONTARIO DAVIS SUBDIVISION	K121178	122878	PROV APP	17
	26	PORTLAND NE ARGYLE SEWER	K121578	122878	PROV APP	13
23	09	BEND SUNRISE VILLAGE PHASE 1	K101978	122978	PROV APP	71
	22	SWEET HOME SEWER EXTENSION 47TH AVE	K112178	122978	PROV APP	38
76	20	EUGENE PLAINVIEW SUBDIV	K120678	122978	PROV APP	23
76	20	EUGENE JANCY ESTATES	K120878	122978	PROV APP	21
	13	ONTARIO 4TH AVE - KANRICH DEV	K121178	122978	PROV APP	18
	19	PAISLEY CHEWAUCAN HEIGHTS	K121578	122978	PROV APP	14
	20	FLORENCE SHORE PINES	K121878	122978	PROV APP	11
	26	PORTLAND SE 116TH	J122778	122978	PROV APP	02

PLAN ACTIONS COMPLETED - 84, cont'd

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
INDUSTRIAL WASTE SOURCES (10)			
Linn	Oregon Metallurgical - Albany Hypochlorite Generating Plant	11-27-78	Approved
Yamhill	Joe Fagundes - Willamina Animal Waste Storage and Irrigation Equipment	12-7-78	Approved
Washington	Forest Fiber Products Forest Grove - Upgrade Waste Treatment	12-5-78	Approved
Umatilla	Ready Mix Sand & Gravel Milton Freewater Wash Water Treatment	12-11-78	Approved
Tillamook	S & E Martella Dairy - Tillamook Animal Waste	12-15-78	Approved
Tillamook	Joseph Donaldson Dairy - Tillamook Animal Waste	12-15-78	Approved
Tillamook	Carl Hurliman - Tillamook Animal Waste	12-15-78	Approved
Tillamook	Carl Hurliman- Cloverdale Animal Waste	12-15-78	Approved
Tillamook	Rivers End Dairy - Nehalem Animal Waste	12-15-78	Approved
Tillamook	W. Lane Woods Dairy - Tillamook Animal Waste - Holding Tank	12-29-78	Approved

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality (Reporting Unit) — December 1978 (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.							
	*	**	*	**	*	**	*	**	*	**	*	**	*	**
Municipal														
New	0	0	3	3	0	0	1	3	2	2				
Existing	0	1	0	1	0	0	0	0	0	1				
Renewals	4	0	33	2	7	0	18	7	51	2				
Modifications	3	0	9	6	1	0	5	0	8	4				
Total	7	1	45	6	8	0	24	10	61	5	244	83	246	86
Industrial														
New	1	0	11	7	5	3	11	14	8	1				
Existing	0	0	0	0	0	0	7	0	3	0				
Renewals	4	2	35	13	7	3	45	16	52	8				
Modifications	0	0	2	3	1	0	5	3	4	0				
Total	5	2	48	23	10	6	65	33	67	9	401	129	409	130
Agricultural (Hatcheries, Dairies, etc.)														
New	0	0	2	7	2	0	4	6	0	1				
Existing	0	0	0	0	0	0	0	0	0	0				
Renewals	0	0	0	0	0	0	0	1	2	0				
Modifications	0	0	0	0	0	0	0	0	0	0				
Total	0	0	2	7	2	0	4	7	2	1	62	20	62	21
GRAND TOTALS	12	3	95	36	23	6	96	50	130	16	707	232	717	236

* NPDES Permits
** State Permits

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality (Reporting Unit) — December 1978 (Month and Year)

PERMIT ACTIONS COMPLETED - (29)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
Multnomah	Hayden Island Sewage Disposal	12-11-78	NPDES Permit Renewed
Clackamas	D & R Development (Mt. Hood Golf Club)	12-11-78	NPDES Permit Renewed
Lincoln	Northwest Furbreeders Coop Fish Processing	12-11-78	NPDES Permit Issued
Clatsop	Crown Zellerbach Clatskanie Salmon Hatchery	12-11-78	NPDES Permit Issued
Lane	Eugene Water & Electric Board Leaburg	12-11-78	NPDES Permit Renewed
Lane	Eugene Water & Electric Board Waterville	12-11-78	NPDES Permit Renewed
Linn	Willamette Industries Lebanon/Fairview - Dredging	12-11-78	NPDES Permit Renewed
Hood River	City of Cascade Locks Sewage Disposal	12-11-78	NPDES Permit Renewed
Jackson	Kogap Mfg. Co. Veneer Plant	12-11-78	NPDES Permit Renewed
Washington	U.S.A. - Sherwood Sewage Disposal	12-11-78	NPDES Permit Renewed
Josephine	Clarence F. Pruess Jr. Placer Mine	12-26-78	State Permit Renewed
Douglas	William Smith Placer Mine	12-26-78	State Permit Renewed
Multnomah	Hanna Industries Galvanizing	12-26-79	State Permit Issued

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality (Reporting Unit) — December 1978 (Month and Year)

PERMIT ACTIONS COMPLETED - 29, cont'd

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
Clackamas	Construction Aggregates dba River Island Sand & Gravel	12-29-78	State Permit Renewed
Jackson	City of Ashland Water Filtration Plant	12-29-78	NPDES Permit Renewed
Tillamook	Crown Zellerbach Garibaldi - Fish Release/Recapture	12-29-78	NPDES Permit Issued
Marion	Deer Creek Mobile Home Assoc. Water Filtration Plant	12-29-78	NPDES Permit Issued
Polk	Willamette Industries Dallas - Plywood & Lumber Mill	12-29-78	NPDES Permit Renewed
Multnomah	Portland Willamette Electroplating	12-29-78	NPDES Permit Renewed
Multnomah	Steinfeld's Products Co. Portland Plant	12-29-78	NPDES Permit Issued
Grant	E.J. Perasso Barbara Carol Mine	12-29-78	State Permit Issued
Grant	E.J. Perasso Morning Mist Mine	12-29-78	State Permit Issued
Linn	City of Brownsville Sewage Disposal	12-29-78	NPDES Permit Renewed
Hood River	Diamond Fruit Growers Cannery - Hood River	12-29-78	NPDES Permit Issued
Lincoln	Newport Seafood Co. Fish Processing	12-29-78	NPDES Permit Issued
Clackamas	City of Wilsonville Sewage Disposal	12-29-78	NPDES Permit Renewed

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality (Reporting Unit) — December 1978 (Month and Year)

PERMIT ACTIONS COMPLETED - 29, cont'd

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
Yamhill	City of Yamhill Sewage Disposal	12-29-78	NPDES Permit Renewed
Marion	City of Gervais Sewage Disposal - Add. #1	12-29-78	NPDES Modification Issued
Wasco	City of The Dalles Wicks W.T.P. - Add. #2	12-29-78	NPDES Modification Issued

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Solid Waste Division (Reporting Unit) — December 1978 (Month and Year)

PLAN ACTIONS COMPLETED (4)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
Baker	Huntington Existing Modified Landfill Operational Plan	12/12/78	Approved
Klamath	Chemult Existing Modified Landfill Operational Plan	12/19/78	Approved
Douglas	Roseburg Lumber-Dixonville New Industrial Waste Site Operational Plan	12/22/78	Letter Authorization issued.
Klamath	Weyerhaeuser-Bly New Industrial Waste Site Operational Plan	12/27/78	Approved

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Solid Waste Division (Reporting Unit) — December 1978 (Month and Year)

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.			
General Refuse							
New		2		2	1		
Existing			1	1	15 *	(13)	
Renewals	2	15		12	7		
Modifications	3	7	2	9	3		
Total	5	24	3	24	26	166	169
Demolition							
New							
Existing		1			1 *		
Renewals							
Modifications		2		1	1		
Total	0	3	0	1	2	21	21
Industrial							
New	1	7	1	9	1 *		
Existing				1			
Renewals		7	5	14	3		
Modifications		1		2			
Total	1	15	6	26	4	98	98
Sludge Disposal							
New		1	1	1	1 *		
Existing							
Renewals				2	1		
Modifications					1		
Total		1	1	3	3	11	11
Hazardous Waste							
New							
Authorizations	16	96	13	93	3		
Renewals							
Modifications							
Total	16	96	13	93	3	1	1
GRAND TOTALS	22	139	23	147	38	297	300

* Sixteen (16) sites operating under temporary permits until regular permits are issued.

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Solid Waste Division (Reporting Unit) — December 1978 (Month and Year)

PERMIT ACTIONS COMPLETED (10)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
General Refuse Facilities (3)			
Coos	Bandon Disposal Site Existing landfill	12/1/78	Permit amended.
Hood River	Hood River Landfill Existing site	12/5/78	Permit amended.
Malheur	McDermitt Landfill Existing site	12/20/78	Permit issued.
Demolition Waste Facilities - none			
Industrial Waste Facilities - (6)			
Linn	Eugene Chemical Works Existing rendering waste site	11/28/78*	Permit renewed.
Douglas	Douglas County Construction Existing wood waste site	11/28/78*	Letter authorization renewed.
Benton	I. P. Miller Lumber Co.	12/1/78	Permit renewed
Jackson	Medford Corporation Existing wood waste site.	12/14/78	Letter authorization renewed.
Marion	Young & Morgan Lumber Co. Existing wood waste site	12/20/78	Permit renewed
Douglas	Roseburg Lumber, Dixonville New site for pond dredgings	12/22/78	Letter authorization issued.
Sludge Disposal Facilities (1)			
Jackson	Roto-Rooter Transfer Site New sludge storage facility	12/7/78	Permit issued.

* Not reported last month

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Solid Waste Division (Reporting Unit) — December 1978 (Month and Year)

HAZARDOUS WASTE DISPOSAL REQUESTS

CHEM-NUCLEAR SYSTEMS, GILLIAM CO.

Date	Waste Description: Type	Source	Quantity: Present	Quantity: Future
Disposal Requests Granted (13)				
Oregon (6)				
1	PCB waste consisting of capacitors and cleanup debris.	Electrical shop	5 drums	Periodic
4	Strychnine treated oats and endrin treated seeds.	U.S. Forest Service	2430 lbs.	None
6	Wax emulsion	Oil company	7000 gals.	None
19	Pesticide wastes	Transportation company	2 drums & four 5 gal. pails	Periodic
26	Oil waste	Federal agency	1 drum	None
27	Unwanted benzene solvent	Utility company	1 drum	None
Washington (6)				
4	PCB capacitors	PUD	2 drums	Periodic
8	PCB contaminated articles	Federal agency	3 drums	Periodic
7	PCB capacitors, transformers, and cleanup debris.	Utility company	750 PCB units plus 50 drums	750 units plus 50 drums/year
13	PCB capacitors	Utility company	20 units	Periodic
20	Contaminated ammonium sulfate fertilizer	Federal agency	1000 lbs.	None

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Solid Waste Division (Reporting Unit) — December 1978 (Month and Year)

HAZARDOUS WASTE DISPOSAL REQUESTS

CHEM-NUCLEAR SYSTEMS, GILLIAM CO.

Date	Waste Description: Type	Source	Quantity: Present	Quantity: Future
22	Various unwanted laboratory chemicals	Paper company	1000 gals.	200 drums/year
British Columbia (1)				
19	PCB waste, pesticide wastes, and various unwanted laboratory chemicals	Federal agency	54 drums plus seven 5-gal. pails	Periodic

TOTALS	LAST	PRESENT
Settlement Action	16	16
Preliminary Issues	17	16
Discovery	2	3
To be Scheduled	5	2
To be Rescheduled	0	1
Set for Hearing	1	0
Briefing	1	1
Decision Due	6	4
Decision Out	2	3
Appeal to Commission	4	1
Appeal to Court	1	1
Transcript	1	1
Finished	0	3
	56	52

KEY

ACD	Air Contaminant Discharge Permit
AQ	Air Quality
AQ-SNCR-76-178	A violation involving air quality occurring in the Salem/North Coast Region in the year 1976; the 178th enforcement action in that region for the year.
Cor	Cordes
CR	Central Region
Dec Date	The date of either a proposed decision of a hearing officer or a decision by the Commission.
$	Civil Penalty Amount
ER	Eastern Region
Fld Brn	Field burning incident
Hrngs	The Hearings Section
Hrng Rfrrl	The date when the enforcement and compliance unit requests the hearings unit to schedule a hearing.
Hrng Rqst	The date the agency receives a request for hearing.
LQ	Land Quality
McS	McSwain
MWV	The Mid-Willamette Valley Region
NP	Noise Pollution
NPDES	National Pollutant Discharge Elimination System wastewater discharge permit
P	At the beginning of a case number means litigation over a permit or its conditions.
PR	Portland Region
PNCR	Portland/North Coast Region
Prtys	All parties involved
Rem Order	Remedial Action Order
Resp Code	The source of the next expected activity on the case.
SNCR	Salem/North Coast Region (now MWV)
SSD	Subsurface Sewage Disposal
SWR	Southwest Region
T	At the beginning of a case number means litigation over a tax credit matter.
Trancr	Transcript being made.
Underlined	Different status or new case since last contested case log.

December 1978

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	DEQ or Atty	Hrng Offcr	Hrng Date	Resp Code	Dec Date	Case Type & No.	Case Status
Davis et al	5/75	575	Atty	McS	5/76	Resp	6/78	12 SSD Permits	Appeal to Court
Paulson	5/76	5/75	Atty	McS		Resp		1 SSD Permit	Settlement Action
Trent	5/75	5/75	Atty	McS		Resp		1 SSD Permit	Settlement Action
Faydrex, Inc.	5/75	5/75	Atty	McS	11/77	Transc		64 SSD Permits	Transcript Prepared
Johns et al	5/75	5/75	Atty	McS		All		3 SSD Permits	Preliminary Issues
Laharty	1/76	1/66	Atty	McS	9/76	Resp	1/77	Rem Order SSD	Appeal to Comm
PGE (Harborton)	2/76	2/76	Atty	McS		Hrngs		ACD Permit Denial	Preliminary Issues
Ellsworth	10/76	10/76	Atty	McS		Dept		$10,000 WQ-PR-76-196	Preliminary Issues
Ellsworth	10/76	10/76	Atty	McS		Prtys		WQ-PR-ENF-76-48	Settlement Action
Silbernagel	10/76	10/77	Atty	Cor		Resp		AQ-MWR-76-202 $400	Discovery
Jensen	11/76	11/76	Atty	Cor	12/77	Prtys	6/78	$1500 Fld Brn AQ-SNCR-76-232	Settlement Action
Mignot	11/76	11/76	DEQ	McS	2/77	Dept	2/77	$400 SW-SWR-288-76	Appeal to Comm
Perry	12/76	12/76	DEQ	Cor	1/78	Hrngs		Rem Order SS-SWR-253-76	Decision Due
Jones	4/77	7/77	DEQ	Cor	6/9/78	Hrngs		SSD Permit SS-SWR-77-57	Decision Due
Sundown et al	5/77	6/77	Atty	McS		Prtys		$11,000 Total WQ Viol SNCR	Settlement Action
Wright	5/77	5/77	Atty	McS		Resp		$250 SS-MWR-77-99	Descision Out
Henderson	6/77	7/77	Atty	Cor	1/77	Resp		Rem Order SS-CR-77-136	Decision Out
~~Lowe~~	~~7/77~~	~~7/77~~	~~DEQ~~	~~Cor~~		~~Resp~~		~~$1500 GW-PR-77-103~~	~~Finished~~
Magness	7/77	7/77	DEQ	Cor	11/77	Hrngs		$1150 Total SS-SWR-77-142	Decision Due
Southern Pacific Trans	7/77	7/77	Atty	Cor		Prtys		$500 NP-SNCR-77-154	Preliminary Issues
Suniga	7/77	7/77	Atty	Lmb	10/77	Hrngs		$500 AQ-SNCR-77-143	Appeal to Comm
Sun Studs	8/77	9/77	DEQ	McS		Resp		$300 WQ-SWR-77-152	Settlement Action
Taylor, D.	8/77	10/77	DEQ	McS	4/78	Dept		$250 SS-PR-77-188	Settlement Action
Brookshire	9/77	9/77	Atty	McS	4/19/78	Hrngs		$1000 AQ-SNCR-76-178 Fld Brn	Decision Out
Grants Pass Irrig	9/77	9/77	Atty	McS		Prtys		$10,000 WQ-GWR-77-195	Discovery
Pohll	9/77	12/77	Atty	Cor	3/30/78	Hrngs		SSD Permit App	Decision Due
Califf	10/77	10/77	DEQ	Cor	4/26/78	Prtys		Rem Order SS-PR-77-225	Settlement Action
McClincy	10/77	12/77	Atty	McS		Resp		SSD Permit Denial	Preliminary Issues
Zorich	10/77	10/77	Atty	Cor		Prtys		$100 NP-SNCR-173	Settlement Action
Powell	11/77	11/77	Atty	Cor		Hrngs		$10,000 Fld Brn AQ-MWR-77-241	Preliminary Issues
Wah Chang	12/77	12/77	Atty	McS		Dept		ACD Permit Conditions	Preliminary Issues
Barrett & Sons, Inc.	12/77		DEQ			Dept		$500 WQ-PR-77-307	Preliminary Issues
Carl F. Jensen	12/77	1/78	Atty	McS		Prtys		$18,600 AQ-MWR-77-321 Fld Brn	Settlement Action
Carl F. Jensen/ Elmer Klopfenstien	12/77	1/78	Atty	McS		Prtys		$1200 AQ-SNCR-77-320 Fld Brn	Settlement Action
Steckley	12/77	12/77	DEQ	McS	6/9/78	Resp		$200 AQ-MWR-77-298 Fld Brn	Appeal to Comm
Wah Chang	1/78	2/78	Atty	Cor		Dept		$5500 WQ-MWR-77-334	Preliminary Issues
Gray	2/78	3/78	DEQ			Dept		$250 SS-PR-78-12	Settlement Action
Haskins	3/78	3/78	Atty			Dept		$5000 AQ-PR-77-315	Preliminary Issues
Hawkins Timber	3/78	3/78	Atty			Dept		$5000 AQ-PR-77-314	Preliminary Issues
Knight	3/78		DEQ			Dept		$500 SS-SWR-78-33	Settlement Action
Wah Chang	4/78	4/78	Atty	McS		Prtys		NPDES Permit	Preliminary Issues
Wah Chang	11/78	12/78	Atty	McS		Resp		P-WQ-WVR-78-07	Preliminary Issues
Stimpson	5/78		Atty	McS		Dept		Tax Credit Cert. T-AQ-PR-78-01	To be Scheduled
Vogt	6/787	6/78	DEQ	Cor	11/8/78	Dept		SSD Permit	Briefings
Hogue	7/78		Atty			Dept		P-SS-SWR-78	Preliminary Issues
B & M	8/78	8/78	DEQ	Cor	11/1/78	Hrngs		SSD Lincense	Decision Due
St. Helens	7/78		Atty	McS		Dept		P-WQ-NWR-78-03	Settlement Action
Champion	8/78	8/78	DEQ			Resp		P-WQ-CR-78-04	Settlement Action
Welch	10/78	10/78	Atty			Prtys		P-SS-CR-78-134	Settlement Action
~~Vasra~~	~~10/78~~	~~10/78~~	~~DEQ~~			~~Resp~~		~~$100 SS-SWR-78-116~~	~~Finished~~
Carter	10/78		DEQ		12/21/78	Resp		$50 AQ-WVR-78-140	To be Rescheduled
~~Heist~~	~~10/78~~		~~DEQ~~			~~DEQ~~		~~P-SS-WVR-78-05~~	~~To be Scheduled~~
Louisiana-Pacific	9/78	10/78	DEQ			DEQ		$1500 AQ-SWR-78-97	Preliminary Issues
Louisiana-Pacific	9/78	10/78	DEQ			DEQ		$2000 AQ-SWR-78-122	Preliminary Issues
Hood River	11/78		Atty	McS		Prtys		$1650 WQ-CR-78-142	To be Scheduled
Reeve	10/78		Atty			Dept		P-SS-CR-78-132 & 133	Discovery
~~Johnson~~	~~11/78~~		~~DEQ~~			~~Prtys~~		~~P-SS-CR-78-114~~	~~Finished~~

ROBERT W. STRAUB
GOVERNOR

Environmental Quality Commission

POST OFFICE BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. C, January 26, 1979, EQC Meeting

TAX CREDIT APPLICATIONS

Director's Recommendation

It is recommended that the Commission take action on the attached five requests as follows:

1. Issue Pollution Control Facility Certificates to the following applications: T-1035, T-1036, T-1037 and T-1039.

2. Deny Rough and Ready Lumber Company's request for Preliminary Certification for Tax relief (see attached review report).

Bill

WILLIAM H. YOUNG

MJDowns:cs
229-6485
1/15/78

Attachments

Proposed January 1979 Totals:

Air Quality	$ 279,319
Water Quality	70,985
Solid Waste	113,294
	463,598

Calendar Year Totals to Date
(Excluding January 1979 Totals)

Air Quality	$ -0-
Water Quality	-0-
Solid Waste	-0-

Total Certificates Awarded (monetary values)
Since Beginnign of Program (excluding January 1979 Totals)

Air Quality	$118,687,719
Water Quality	97,680,606
Solid Waste	46,485,157
	$262,853,482

Appl. T-1033

Date January 3, 1979

State of Oregon

DEPARTMENT OF ENVIRONMENTAL QUALITY

TAX CREDIT APPLICATION REVIEW REPORT

---

1. Applicant

Willamette Industries, Inc.
419 S. 29th. Street
Springfield, Oregon 97477

The applicant owns and operates a plywood mill at Springfield, Oregon.

Application was made for tax credit for solid waste pollution control facility.

2. Description of Claimed Facility

The facility claimed in this application consists of 72,300 square feet of asphalt paving over the plant scaling and sorting yard.

Request for Preliminary Certification for Tax Credit was made August 2, 1978 and approved August 15, 1978. Construction was initiated on the claimed facility in August 1978, completed September 1978, and the facility was placed into operation in September 1978.

Facility Cost: $113,294.61 (Accountant's certification was provided.)

3. Evaluation of Application

Prior to the paving of the Willamette Industries plant log yard over 8,000 cubic yards per year of log yard residue (dirt, rock, bark, and scrap) was landfilled. The log yard was dusty and muddy, and considerable amounts of rock had to be used to provide all weather trafficability. The paving eliminated the mud problem, dust emissions and landfill disposal of solid waste. The clean recoverable portion of the waste (bark and wood scraps) is now picked up off the yard and processed into hog fuel. The following is a cost saving analysis for the claimed facility as prepared by Willamette Industries, Inc.

A. Annual Cost Savings

1.	Annual Rock Replacement	$9,000
2.	Annual Cleanup Cost	8,500
3.	Annual Equipment Maintenance	8,500
	Total	$ 26,000

B. Annual Cost of Paving

1. Interest Expense 10 years at 10% (average)		$ 6,160.00
2. Pavement Maintenance 20¢ per sq. yd.		1,610.00
3. Property Tax		2,100.00
4. Depreciation 10 years straight line		11,200.00
	Total	$21,070.00
Pre-tax Savings (cost savings - cost of paving)		4,930.00
Corporation Income Taxes at 50%		2,465.00
NET AFTER TAX SAVINGS		$ 2,465.00

Value of the recovered bark is approximately $16,000.00 annually (value of hog fuel, $2.00 per cu. yd.)

The claimed facility eliminated generation of 8,000 cubic yards per year of solid waste, mud problems, dust emissions, and substantially reduced the need for new landfill sites. Considering that the value of the recovered bark is greater than the annual operational savings, it appears that the substantial purpose for the construction of the claimed facility was pollution control and utilization of solid wastes.

4. Summation

A. Facility was constructed after receiving approval to construct and preliminary certification issued pursuant to ORS 468.175.

B. Facility was under construction on or after January 1, 1973 as required by ORS 468.165 (1) (c).

C. Facility is designed for and is being operated to a substantial extent for the purpose of preventing, controlling or reducing solid waste.

D. The facility is necessary to satisfy the intents and purposes of ORS Chapter 459 and the rules adopted under that chapter.

5. Director's Recommendation

It is recommended that a Pollution Control Facility Certificate bearing the cost of $113,294.61 with 100 percent allocated to pollution control be issued for the facility claimed in Tax Credit Application Number T-1035.

EAS:mt
229-5913
January 3, 1979

Appl T-1036
Date 12/13/78

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Timber Products Co.
P. O. Box 1669
Medford, OR 97501

The applicant owns and operates a particleboard plant and a plywood plant in Medford.

Application was made for tax credit for an air pollution control facility.

2. Description of Claimed Facility

The facility described in this application is a baghouse to reduce emissions from two cyclones. The baghouse is manufactured by Aero-Vac.

Request for Preliminary Certification for Tax Credit was made on April 8, 1977 and approved on April 8, 1977.

Construction was initiated on the claimed facility on June 30, 1977, completed on November 30, 1977, and the facility was placed into operation on November 30, 1977.

Facility Cost: $49,701.72 (Accountant's Certification was provided).

3. Evaluation of Application

These bags reduce emissions from two cyclones which formerly emitted over 20 pounds per hour to the atmosphere. The collected material is returned to the cyclones.

4. Summation

A. Facility was constructed after receiving approval to construct and preliminary certification issued pursuant to ORS 468.175.

B. Facility was constructed on or after January 1, 1967, as required by ORS 468.165(1)(a).

C. Facility is designed for and is being operated to a substantial extent for the purpose of preventing, controlling or reducing air pollution.

D. The facility was required by the Department of Environmental Quality and is necessary to satisfy the intents and purposes of ORS Chapter 468 and the rules adopted under that chapter.

E. The primary purpose of the baghouse is air pollution control. Therefore 80% or more should be allocated to pollution control.

5. Director's Recommendation

Based upon the Summation it is recommended that a Pollution Control Facility Certificate bearing the cost of $49,701.72 with 80% or more allocated to pollution control be issued for the facility claimed in Tax Credit Application No. T-1036.

FASkirvin:jo
(503)229-6414
December 12, 1978

Appl T-1037
Date 12/12/78

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Timber Products Co.
P. O. Box 1669
Medford, OR 97501

The applicant owns and operates a plywood plant at Grants Pass.

Application was made for tax credit for an air pollution control facility.

2. Description of Claimed Facility

The facility described in this application is a veneer dryer control system. Three Burley scrubbers control three veneer dryers.

Request for Preliminary Certification for Tax Credit was made on 12/5/77, and approved on 12/13/77.

Construction was initiated on the claimed facility on 6/15/78, completed on 7/20/78, and the facility was placed into operation on 7/20/78.

Facility Cost: $229,618.78 (Accountant's Certification was provided). Certification is claimed under the 1967 Act with 100% allocated to pollution control.

3. Evaluation of Application

Three Burley scrubbers reduce emissions from the three veneer dryers at the plant. The veneer dryer emissions now comply with the Department's regulations.

4. Summation

A. Facility was constructed after receiving approval to construct and preliminary certification issued pursuant to ORS 468.175.

B. Facility was constructed on or after January 1, 1967, as required by ORS 468.165(1)(a).

C. Facility is designed for and is being operated to a substantial extent for the purpose of preventing, controlling or reducing air pollution.

D. The facility was required by the Department of Environmental Quality and is necessary to satisfy the intents and purposes of ORS Chapter 468 and the rules adopted under that chapter.

E. There is no economic benefit to the company. The primary purpose of this equipment is air pollution control. The percent allocable to pollution control is 80% or more.

5. Director's Recommendation

Based upon the Summation recommend that a Pollution Control Facility Certificate bearing the cost of $229,618.78 with 80% or more allocated to pollution control be issued for the facility claimed in Tax Credit Application No. T-1037.

FASkirvin:jo
(503) 229-6414
December 12, 1978

Appl. T 1039

Date December 19, 1978

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Boise Cascade Papers
Paper Group
Kaster Road
St. Helens, Oregon 97051

The applicant owns and operates a pulp mill, bleach plant and paper mill at St. Helens, Oregon.

Application was made for tax credit for water pollution control facility.

2. Description of Claimed Facility

The facility described in this application is a caustic soda storage and metering system and consists of:

A. Insulated caustic storage tank with electric heaters, 12,000 Gal.

B. Pump, air operated, positive displacement (caustic).

C. Compressed air system.

D. Instrumentation-recorder/controlers (air) for pH and level control.

E. Tank truck unloading system (air).

F. Pipe, valves, fittings and ancillary construction.

The function of the facility is to insure that pH of St. Helens sewage treatment is inside the range of 6.0 to 9.0 as specified in NPDES Permit No. 2788J.

Request for Preliminary Certification for Tax Credit was made August 9, 1977 and approved December 12, 1977. Construction was initiated on the claimed facility in December 1977, completed and placed into operation in March 1978.

Facility Cost: $70,985.93. (Certified Public Accountant's statement was provided.)

3. Evaluation of Application

The claimed facility was required by the Department. The treatment plant is owned and operated by the City of St. Helens with the applicant contributing 97% of the loading (industrial waste). The pH of sewage treatment

plant effluent was generally below 6.0. The installation of the claimed facility allows adjustment of effluent pH by addition of caustic soda, in accordance with permit limits (6.0 - 9.0).

4. Summation

A. Facility was constructed after receiving approval to construct and Preliminary Certification issued pursuant to ORS 468.175.

B. Facility was constructed on or after January 1, 1967, as required by ORS 468.165(1)(a).

C. Facility is designed for and is being operated to a substantial extent for the purpose of preventing, controlling or reducing water pollution.

D. The facility was required by the Department of Environmental Quality and is necessary to satisfy the intents and purposes of ORS Chapter 468 and the rules adopted under that chapter.

E. Applicant claims 100% of costs allocable to pollution control.

5. Director's Recommendation

It is recommended that a Pollution Control Facility Certificate be issued for the facility claimed in Application T1039, such Certificate to bear the actual cost of $70,985.93 with 80% or more allocable to pollution control.

Charles K. Ashbaker:nrj
229-5309
December 19, 1978

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Preliminary Certification for Tax Relief Review Report

1. Applicant

Rough and Ready Lumber Company
Cave Junction, OR 97523

The applicant owns and operates a lumber mill at Cave Junction, Oregon.

Application was made for preliminary certification for a solid waste pollution control facility.

2. Description of Claimed Facility

The facility described in this application is a waste wood (sawdust) fired boiler and dry kilns.

It is estimated the facility will be placed in operation February 1979.

The estimated cost of the facility is:

a.	Boiler	$550.000
b.	Kilns	$300.000

3. Evaluation of Application

On July 28, 1978, the Rough and Ready Company applied for Preliminary Certification for Tax Credit for the above facilities. On November 30, 1978 the Department approved the application for the boiler only. On December 15, 1978 the company appeared before the Commission appealing the denial of the kilns. At the request of the Commission the matter was postponed. Subsequently, the Department received a letter from the company (December 18, 1978), demanding a hearing before the Commission. The company verbally agreed that today's discussion will serve their purposes. Finally, in a January 5, 1979 letter to Chairman Richards, the company argues that the dry kiln system is comparable to the recently approved Publisher's Paper generator facility at Newberg.

The Pollution control Tax Credit Law provides credit for solid waste facilities if:

> 468.165(1)(c)(A) "The substantial purpose of the facility is to utilize material that would otherwise be solid waste as defined---"
>
> 468.155(2) "Facility does not include---any solid waste facility or portion or portions thereof, whose substantial purpose is not for the direct utilization of materials as described in 468.165(1)(c)(A)."

The claimed boiler will utilize solid waste to generate steam and is clearly eligible. The steam will be used for drying of green lumber in the kilns.

The substantial purpose of dry kilns as such is not utilization of solid waste, but simply the drying of lumber. Therefore, they fail to meet the requirements of the above statues. The Publishers Paper generator system also fails this requirement, but is eligible under the following section:

> 468.155(1)(d) "---'solid waste facility' shall include subsequent additions made to an already certified facility----which will increase the production or recovery of useful materials or energy over the amount being produced or recovered by the original facility, whether or not the materials or energy produced or recovered are similar to those of the original facility."

The generator meets this test since it converts energy from the boiler to a more useful form (electricity). It is argued by the company that the dry kilns also convert energy. In fact the kilns do not convert, energy to a more useful form as a generator does. It is the Departments position that the kilns are primarily an energy consumer and the end point in the energy production/consumption cycle. The Department believes it was not legislative intent to grant tax credits for such facilities. Approval would set a precedent which could open the door to tax credits too widely.

4. Summation

The Department has determined that the installation of dry kilns does not comply with the applicable provisions of ORS Chapter 454, 459, 467, or 468 and the applicable rules or standards pursuant thereto.

5. Director's Recommendation

It is recommended that the Commission deny the applicant's request for Preliminary Certification for dry kilns.

MS:mt
229-5913
January 8, 1978
Attachment (1) Company's letter

LAW OFFICES OF
DUFFY, GEORGESON, KEKEL & BENNER
1404 STANDARD PLAZA
PORTLAND, OREGON 97204
TELEPHONE 226-1371

CHARLES P. DUFFY
DONALD J. GEORGESON
DAVID A. KEKEL
RAY R. BENNER
PATRICK H. JENSEN
PHILIP N. JONES
RICHARD W. MILLER
WALDEN STOUT
OF COUNSEL

December 18, 1978

Mr. William Young - Director
Department of Environmental Quality
P. O. Box 1760
Portland, OR 97207

Re: RPC -- Rough & Ready Lumber Co.

Dear Mr. Young:

This office represents Rough & Ready Lumber Co.

Pursuant to ORS 468.175(5), we hereby demand a hearing before the Environmental Quality Commission. The grounds for the hearing is the denial by the DEQ of preliminary certification of the company's proposed dry kilns for a pollution control facility tax credit.

Please send further correspondence to this office.

Very truly yours,

Richard W. Miller

RWM:bt

cc: Mr. Lewis N. Krauss
Rough & Ready Lumber Co.
P. O. Box 519
Cave Junction, OR 97523

ROBERT W. STRAUB
GOVERNOR

Environmental Quality Commission

POST OFFICE BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Addendum 1, Agenda Item No. C, January 26, 1979, EQC Meeting

TAX CREDIT APPLICATIONS

Director's Recommendation

It is recommended that a Pollution Control Facility Certificate be issued to Application No. T-1023 (Apollo Metal Finishing, Inc.) per the attached review report.

WILLIAM H. YOUNG

MJDowns:cs
229-6485
1/22/78
Attachment

Appl T-1023
Date 1/22/79

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Apollo Metal Finishing, Inc.
7525 S.E. Johnson Creek
Portland, Oregon 97206

The applicant owns and operates an electroplating job shop serving commercial and public customers on leased property.

Application was made for tax credit for a water pollution control facility.

2. Description of Claimed Facility

The claimed facility consists of two cation and four anion ion exchange columns, pH recorder/controller, filters, rinse tanks, pumps and piping.

The function of the facility is to insure compliance with effluent limitations as listed in Condition 1f Schedule A of Permit No. 2727 (heavy metals, cyanide, pH and flow).

Request for Preliminary Certification for Tax Credit was the intent of the applicant. Approval was inferred by the staff, and later confirmed in writing (see attached review report). Construction was initiated on the claimed facility in March 1978, completed in June 1978, and placed into operation in July 1978.

Facility Cost: $11,089.49 (Certified Public Accountant's statement was provided).

3. Evaluation

The applicant installed the claimed facility after negotiations with staff to resolve effluent quality conditions.

Staff has inspected the equipment as installed and determines the facility is operating to substantially reduce pollution and that compliance with permit has been achieved for all practical purposes.

4. Summation

A. Facility was constructed after requesting approval to construct and Preliminary Certification pursuant to ORS 468.175.

B. Facility was constructed on or after January 1, 1967, as required by ORS 468.165(1)(a).

C. Facility is designed for and is being operated to a substantial extent for the purpose of preventing, controlling or reducing water pollution.

D. The facility was required by the Department of Environmental Quality and is necessary to satisfy the intents and purposes of ORS Chapter 468 and the rules adopted under that chapter.

E. Applicant claims 100% of costs allocable to pollution control.

5. Director's Recommendation

It is recommended that a Pollution Control Facility Certificate be issued for the facility claimed in Application T-1023, such Certificate to bear the actual cost of $11,089.49 with 80% or more allocable to pollution control.

WDLesher:cs
229-5318
11/22/79
Attachment (1)

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

REQUEST FOR PRELIMINARY CERTIFICATION FOR TAX CREDIT
REVIEW REPORT

---

1. Applicant

Apollo Metal Finishing, Inc.
7525 S. E. Johnson Creek Blvd.
Portland, Oregon 97206

The applicant owns and operates an electroplating metal finishing works at 7525 S. E. Johnson Creek Blvd. in Portland, Oregon.

Application was made for preliminary certification for water pollution control facility.

2. Description of Claimed Facility

The facility described in this application includes two ion exchange units and necessary plumbing to affect proper flow of wastewaters.

It is estimated the facility was placed in operation on July 7, 1978. The estimated cost of the facility is $11,089.49.

3. Evaluation of Application

The application was made in accordance with the permittee's NPDES permit. The treatment works are required by Schedule C of their NPDES permit issued to the applicant by the Department. The treatment works are sound.

4. Summation

Erection, construction or installation of the facility was commenced before a written request for Preliminary Certification was filed with the Department pursuant to ORS 468.175(1). However, since there have been many discussions concerning the need for the facility, including a negotiated Compliance Schedule, the request and approval is implied.

5. Director's Recommendation

Having studied the letter from Ray Underwood regarding Preliminary Certification based on unwritten requests, it is the Director's intent to issue preliminary certification. Therefore, no Commission action is necessary at this time.

SCC:ahe
10/19/78
229-5297
Attachment: (1)
6/14/78 Department of Justice Letter

ROBERT W. STRAUB
GOVERNOR

Environmental Quality Commission

POST OFFICE BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. D, January 26, 1979, EQC Meeting

Request For Authorization To Conduct A Public Hearing On The Question Of Amending Administrative Rules Governing Subsurface & Alternative Sewage Disposal

Background & Evaluation

Administrative rules governing subsurface and alternative sewage disposal, are provided for by statute, ORS 454.625. The present rules, Chapter 340, Sections 71, 72, 74 and 75 were adopted by the Commission and became effective September 25, 1975. There have been two major sets of amendments since that date, the latest set adopted by the Commission became effective March 1, 1978.

Some of the rules adopted September 25, 1975 have proved to be cumbersome and extremely difficult to administer. These rules are in some instances too restrictive and need to be modified. The rules in need of modification are:

1. 340-71-010(7) Definition of "bedroom";

2. 340-71-016 Connection to existing systems; and

3. 340-71-018 Abandonment of systems.

Proposed amendments are set forth on Attachment "A".

Statement of Need for Rule Making

1. Legal authority for rules governing subsurface and alternative sewage disposal is ORS 454.625.

2. Some rules adopted September 25, 1975 have proved to be cumbersome and difficult to administer. Some rules are too restrictive and in need of modification. The proposed amendments would clarify and simplify the existing rules, make them more easily understood and less restrictive.

3. Document relied upon is the report "Discussion of Issue, Sizing of Subsurface Disposal Systems and Initial Draft of Possible Amendments to Rules Governing Subsurface and Alternative Sewage Systems" January 1979.

Summation

1. ORS 454.625 provides that the Commission, after public hearing, may adopt rules it considers necessary for the purpose of carrying out ORS 454.605 to 454.745.

2. Three rules pertaining to subsurface sewage disposal adopted September 25, 1975 have proved to be cumbersome, too restrictive and in need of modification.

Director's Recommendation

Based upon the summation, it is recommended that the Commission authorize public hearings, before a hearing officer, to take testimony on the question of amending Administrative Rules 340-71-010(7), 340-71-016 and 340-71-018 and other related rules that may be impacted by amendments to these three rules.

Bill

WILLIAM H. YOUNG

T. Jack Osborne:nrj/ak
229-6218
December 29, 1978
Attachment: A

ATTACHMENT "A"

DEPARTMENT OF ENVIRONMENTAL QUALITY

Discussion of Issue

Sizing of Subsurface Disposal Systems

and

Initial Draft of Possible Amendments

to

Rules Governing Subsurface

And Alternative Sewage Systems

January 1979

ISSUE - Sizing of subsurface disposal systems.

DISCUSSION - Present rules require system sizing to be determined by the number of bedrooms within a dwelling and the soil and topographic conditions on the parcel or lot.

The sizing of subsurface disposal systems (capacity of septic tank and square footage of drainfield required) has an effect far beyond the immediate considerations of sizing to fit the specific number of bedrooms within a dwelling.

The size of an installed system and whether it has capacity for expansion determines whether:

(a) Additional bedrooms may be added to a dwelling.

(b) An additional (second) living unit may be added and connected to the system.

(c) A smaller dwelling (mobile home) may be disconnected from a system and a larger (more bedrooms) dwelling substituted.

(d) Abandoned subsurface systems may at sometime in the future again be utilized for disposal.

PROBLEMS -(1) Definition of Bedroom

Single bedrooms within a dwelling is one of the major determinants of subsurface disposal system sizing. It is important that a bedroom be defined accurately and clearly. The definition should provide criteria adequate to determine whether a room labeled on building plans as some other room is in fact a bedroom. Unless an accurate determination is made on this question (number of bedrooms) the system may be undersized. The reverse

of this situation is also true. Rooms that cannot reasonably be utilized for bedrooms should not be counted as bedrooms in order to avoid oversizing the system.

The present definition is too all-encompassing and difficult to interpret accurately. It provides no criteria to serve as a guide for determining whether a given room is indeed a bedroom. The general public has trouble relating number of bedrooms to sewage flow and subsequently to system sizing.

Alternatives

(a) Leave bedroom definition unchanged.

(b) Amend the bedroom definition OAR 340-71-010(7) to provide clarity as set forth in this attachment.

(c) Adopt another method of determining system size to replace "bedroom." One possible method might be to use number of plumbing fixture units (wash basins, toilets, etc.) within a dwelling. The State plumbing code contains fixture unit information that might be adaptable for this purpose. Note Attachment "B".

(d) A third method of overcoming the "bedroom" definition problem would be to go to minimum disposal system sizes for a given number of bedrooms. One system size, according to soil group, would be applicable across-the-board for up to four bedrooms.

Discussion of Alternatives

Alternative (a) is unacceptable. The present bedroom

definition and system sizing based on that definition have caused and will continue to cause problems. Many of these problems can be resolved by going to one of the other alternatives. Alternative (b) has been developed to go with Alternative (d) which at this point is a concept in the development stage. This concept will be fully developed prior to public hearings so that all three alternatives can be put before the public.

Alternative (c) could have the advantage of possibly eliminating "bedroom" as a major determinant in system sizing. It is likely that the general public would more easily relate to sizing by plumbing fixture units than by number of bedrooms.

Each of the two alternatives, (b) and (d) combined as one, and (c) have advantages and disadvantages. Each must be fully developed and put before the public in public hearings before staff is ready to recommend one to the Commission for adoption.

PROBLEMS - (2) Method of Determining Amount of Sewage Flows From Dwellings

Present rules require that sewage flow from dwelling be based upon 150 gallons per day per bedroom, assuming two persons per bedroom, regardless of the number of bedrooms. It is felt that this is a valid assumption for the first two bedrooms but is likely excessive for the third and succeeding bedrooms. Thus systems for three or greater number of bedrooms may be oversized.

Alternatives

(a) Leave rule unchanged and continue to design systems on basis of 150 gallons per bedroom ragardless of number of bedrooms.

(b) Amend rules to provide for 150 gallons per day sewage flow for first two bedrooms and 75 gallons for each bedroom after that.

(c) Adopt a different method of sewage flow determination possibly by number of plumbing fixture units.

Discussion of Alternatives

Alternative (a) should not be considered as a viable alternative.

Alternative (b) (Amend the bedroom definition to conform to those rooms accepted by the Department of Commerce as bedrooms), goes hand-in-hand with Alternative (d) which would provide for minimum size disposal systems for a given number of bedrooms.

Alternative (c) would adopt another method of determining system sizing by using plumbing fixture units rather than bedrooms.

Both Alternatives (b) & (c) deserve consideration and each concept should be developed for public review before one or the other is recommended for adoption.

PROBLEMS - (3) Connection to Existing Systems

Present rules regulating connections to existing systems 340-71-016(1) thru (8) are too restrictive, cumbersome and difficult to administer. These rules do not allow any flexibility in adding bedrooms, adding a second unit, (except in 340-71-016(8)) etc. without upgrading the system if the system is undersized according to the number of bedrooms proposed to be added.

Alternatives

(a) Leave rules as presently structured.

(b) Restructure the rules to be more realistic, to add flexibility, and make them less cumbersome and less difficult to administer. The proposed amendments to 340-71-016(1) thru (8) and the addition of 340-71-016(9) is intended to accomplish this. (see attached)

PROBLEMS - (4) Abandonment of Systems

The rules pertaining to abandonment of systems (340-71-018) and conditions under which a system may be used initially or re-used are too restrictive and possibly in conflict with ORS 454.675. Under present rules a system unused for 1 year is considered abandoned. There is no way to police such a rule. In this context this rule has been misinterpreted by field personnel who often seem to feel that "abandoned" systems cannot be re-used, which is not the case. This rule is generally considered unworkable as written.

Alternatives

(a) Leave rules as presently structured.

(b) Restructure rules to be less restrictive and so as not to conflict with existing statutes. Proposed amendments to 340-71-018 are intended to accomplish this. (see attached)

TJO:jnr/em
1/3/79

Initial draft of possible amendments to OAR 340-71-010 to 71-045 rules pertaining to subsurface and alternative sewage disposal:

Amend 340-71-010

(7) "Bedroom" means any [portion of a dwelling which is so designed to furnish the minimum isolation necessary for use as a sleeping area and includes, but is not limited to: a den, study, sewing room, sleeping loft, or enclosed porch] room within a dwelling which is so designated on building construction plans or on mobile home floor plans and which is accepted as such by the State of Oregon Department of Commerce building codes representative having jurisdiction or the local authorized building official.

New definition:

"Building drain" means that part of the lower horizontal piping of a building drainage system which receives discharge from soil, waste and other drainage pipes within or adjoining the building or structure and coveys the same to the building sewer.

Connection or re-connection to an approved, existing, or pre-existing system. Certificate of Adequacy.

340-71-016(1) No person shall directly connect or re-connect the sewage or waste water plumbing from any mobile home, recreation vehicle, or building to an approved, existing, or pre-existing subsurface, [or] alternative, or experimental sewage disposal system without first having obtained a permit from the [Department,] Director or his authorized representative. [provided; however, that] Issuance of a permit will be based upon a Certificate of Adequacy issued after appropriate record review or inspection. [t]This requirement shall not pertain to the connection of any mobile home or recreation vehicle to an existing subsurface or alternative sewage disposal system serving a mobile home park or recreation park operated by a public entity or under a valid license or Certificate of Sanitation issued by the State Health Division or Department of Commerce.

(2) No person shall use such a system until a Certificate of Satisfactory Completion is issued by the [Department] Director or his authorized representative for the completed connection.

(3) In addition to the information required of all permit applicants, an applicant for a permit to connect or re-connect to an approved, existing, or pre-existing subsurface, alternative or experimental sewage disposal system [shall] may be required to [also] provide the [Department] Director or his authorized representative the following information:

(a) The type and size of the establishment which the approved, existing, or pre-existing subsurface, alternative or experimental sewage disposal system last served and the most recent date of such use;

(b) The size of the existing septic tank;

(c) The type and size of the establishment which the approved, existing, or pre-existing subsurface, alternative or experimental sewage disposal system is proposed to serve; and

(d) A signed statement that the approved, existing, or pre-existing subsurface, alternative or experimental sewage disposal system has never failed by discharging sewage upon the ground surface or into public surface waters, by clogging or backing up, or in any other manner.

(e) Any other information which the Director or his authorized representative may request.

Rescind 340-71-016(4) in its entirety and substitute the following:

(4) (a) For "approved" subsurface, alternative or experimental sewage disposal systems a Certificate of Adequacy shall issue if the intended use is the same as the previous use and sewage flow allowed under the original construction permit is not increased.

Any alterations or expansion of an approved system to accomodate an increase in sewage flow must be in compliance with the rules of this Division. Upon inspection or record review if the system is found to be failing or there is evidence that it has failed in the past without being repaired, repairs shall be required prior to the issuance of a Certificate of Adequacy.

(b) For "existing systems" a Certificate of Adequacy for connection to an existing system or for alteration, repairs or additions to a structure served by an existing system or for an increased sewage flow from a structure served by an existing system shall issue under one of the following conditions:

(A) The application is for connection of a mobile home or frame home with the same number or less of bedrooms than the previous dwelling, or alterations or additions to a structure which extend beyond the limits of the foundation and which do not exceed more than fifty (50) percent of the value of the structure and in which there is no increase in bedrooms. The existing system upon inspection or record review is found not to be in violation of OAR 340-71-020(1)(a), the applicant provides a signed statement that the system is functioning satisfactorily and has never failed by discharging sewage upon the surface of the ground or into surface public waters or if the system has failed it has been completely repaired.

Note: Alterations or additions to an existing structure which do not extend beyond the limits of the existing foundation and do not exceed more than fifty (50) percent of the value of the structure and in which there is no increase in number of bedrooms are exempt from this rule and do not require a Certificate of Adequacy.

(B) The application is for connection of a mobile home or frame home having one additional bedroom over the previous use, or for the addition of one bedroom to an existing structure, or alterations or additions to an existing

structure, which exceeds fifty (50) percent of the value of the structure as specified by the State of Oregon uniform building code and the applicant can demonstrate that the system meets current rules pertaining to setback requirements, septic tank and disposal field size, (excluding characteristics of soil and absence of groundwater). Provided further, that upon inspection the system is found not to be in violation of OAR 340-71-020(1)(a), the applicant provides a signed statement that the system is functioning satisfactorily and has never failed by discharging sewage upon the surface of the ground or into surface public waters or if the system has failed it has been completely repaired.

(C) The application is for connection of a mobile home having more than one bedroom over the previous use, or to add more than one bedroom to an existing residence where the system is sized for the existing use, or to increase the daily sewage flow for any structure or facility other than a single family residence and the applicant can demonstrate that the system would be in full compliance with these rules for the projected daily sewage flow including soil characteristics and absence of ground water.

(c) For "pre-existing systems" a Certificate of Adequacy for connection of any facility shall issue only if it can be demonstrated that the system would be in compliance with all current rules, or upon inspection it is found that the septic tank has a liquid capacity of at least five hundred (500) gallons and the applicant provides a signed statement that the system is functioning satisfactorily and has never failed by discharging sewage upon the surface of the ground or into surface public waters or if it has ever failed it was completely repaired and in the opinion of the Director or his authorized representative OAR 340-71-020(1)(a) would not be violated, and the projected sewage flow is not more than the flow the previous establishment had.

(5) Rescind 340-71-016(5) in its entirety and substitute the following:

(5) An installed subsurface or alternative system which does not fall within one of the categories of approved, existing or pre-existing systems as set forth in subsection (4) of this section shall be considered inoperative and required to be abandoned in accordance with OAR 340-71-018(4).

(6) Rescind 340-71-016(6) in its entirety and re-number the following paragraphs.

(7) Rescind 340-71-016(7) in its entirety and substitute the following:

(7) For the purpose of administering these rules the following definitions apply:

(a) "Approved system" means any subsurface, alternative or experimental sewage disposal system constructed under a Department construction permit after January 1, 1974 and for which a Certificate of Satisfactory Completion was issued.

(b) "Existing system" means any subsurface or alternative sewage disposal system constructed prior to January 1, 1974 which is currently in use or a system that is not currently in use but for which a construction permit of record is available.

(c) "Pre-existing system" means a system constructed prior to January 1, 1974 which is not in use and for which no construction permit of record is available.

(8) Personal hardship connections to approved, existing or pre-existing systems. Upon receiving proof that a hardship exists within a family in that a family member is suffering either physical or mental impairment, infirmity, or is otherwise disabled, (a hardship permit issued under local planning ordinances shall be accepted as proof) [and after determination that all the provisions of subsection (4) of this section have been satisfied] the Director or his authorized representative may allow a mobile home to connect to an approved, existing or pre-existing system serving another residence in order to provide housing for the family member suffering hardship. Connection of a two (2) bedroom

mobile home shall be authorized without modification to the approved, existing or pre-existing system which is not failing by discharging sewage upon the surface of the ground or into surface public waters. Connnection of mobile homes with more than two (2) bedrooms shall be permitted only if additional drainfield area suitable under these rules is available for the increased flows. Connection shall be for a specified period, renewable on [an annaul] not longer than a two (2) year basis, but not to exceed cessation of the hardship. The Director or his authorized representative shall impose conditions in the connection permit necessary to assure protection of public health and public waters.

(9) Temporary connection of mobile home to an approved, existing or pre-existing system. Upon receiving proof of need (a permit issued under local planning ordinances shall be accepted as proof of need) and after determination that the approved, existing or pre-existing system has never failed by discharging sewage on the surface or into surface public waters, or if it has failed it was completely repaired and it has operated continuously since the repair without another failure and that subsection 340-71-020(1)(a) would not be violated the Director or his authorized representative may allow a mobile home to connect to an approved, existing or pre-existing system serving another residence for a period not to exceed two years. The Director or his authorized representative shall impose conditions in the connection permit necessary to assure protection of public health and public waters. A permit shall not issue if a full replacement area, meeting all applicable rules, is not available. If the system malfunctions during temporary connection it shall be immediately repaired and the mobile home:

(a) Shall be removed if no additional repair area, meeting repair rules, is available, or

(b) Shall remain through duration of temporary connection approval if an additional repair area is available.

Abandonment of systems

340-71-018(1) Rescind in its entirety and renumber the succeeding paragraphs.

[(2)](1) Each and every owner of the real property upon which is situated a subsurface or alternative sewage disposal system shall abandon the system in the following circumstances:

(a) When A sewerage system becomes available, and the building [sewer] drain has been connected thereto; or
(b) When the source of sewage has been eliminated;
(c) When the system has been operated in violation of 340-71-012, [and it has been determined by the Department to be unrepairable] unless and until a repair permit and Certificate of Satisfactory Completion are subsequently issued therefor;
(d) When the system has been constructed, installed, altered, repaired, or extended without a required permit authorizing same, [and permit could not be issued in conformance with the substantive rules in the Division] unless and until a permit is subsequently issued therefor; or
(e) When the system has been operated or used without a required Certificate of Satisfactory Completion authorizing same, [and a Certificate of Satisfactory Completion could not be issued in conformance with the substantive rules in this Division] unless and until a Certificate of Satisfactory Completion is subsequently issued therefor.

[(3)](2) Any building sewer which has not been connected to a subsurface or alternative sewage disposal system or sewerage system approved by the Department shall be abandoned and capped.

[(4)](3) Each and every owner of the real property upon which is situated a subsurface sewage disposal system which is required to be abandoned, or which has been abandoned, unless otherwise authorized by the Department, shall have all the sludge from the septic tank, seepage pit, or cesspool removed by a person holding a sewage disposal service license, [and] shall fill same with clean bank-run gravel or other material approved by the Director or his authorized representative, and shall permanently cap the building sewer.

[(5)](4) No permit or authorization for connection to a sewerage system shall issue, nor shall any permit for construction or installation of a replacement septic tank, seepage pit, or cesspool issue, until the owner or controller of the property has made binding commitments to comply with the conditions regarding abandonment of the existing septic tank, seepage pit, or cesspool required by subsection [(4)](3) of this section.

Bracketed [ ] material deleted
Underlined ____ material is new

TJO:nrj/em
1/4/79

* Attachment "B"

TABLE 10-1

Equivalent Fixture Units

(Includes Combined Hot and Cold Water Demand)

Fixture	Number of Fixture Units: Private Use	Public Use
Bar sink	1	2
Bathtub (with or without shower over)	2	4
Dental unit or cuspidor	—	1
Drinking fountain (each head)	—	1
Hose bibb or sill cock (standard type)	3	5
House trailer (each)	6	6
Laundry tub or clotheswasher (each pair of faucets)	2	4
Lavatory	1	2
Lavatory (dental)	1	1
Lawn sprinklers (standard type, each head)	1	1
Shower (each head)	2	4
Sink (bar)	1	2
Sink or dishwasher	2	4
Sink (flushing rim, clinic)	—	10
Sink (washup, each set of faucets)	—	2
Sink (washup, circular spray)	—	4
Urinal (pedestal or similar type)	—	10
Urinal (stall)	—	5
Urinal (wall)	—	5
Urinal (flush tank)	—	3
Water closet (flush tank)	3	5
*Water closet (flushometer valve)	6	10
Water supply outlets for items not listed above shall be computed at their maximum demand, but in no case less than:		
⅜ inch	1	2
½ inch	2	4
¾ inch	3	6
1 inch	6	10

*See subsection (i) of Section 1009 for method of sizing flushometer valve installations using Table 10-2

TABLE 11-2

Capacity of Septic Tanks*

Single family dwellings—number of bedrooms	Multiple dwelling units or apartments—one bedroom each	Other Uses: Maximum Fixture Units Served Per Table 4-1	Minimum septic tank capacity in gallons
1 or 2		15	750
3		20	1000
4	2 units	25	1200
5 or 6	3	33	1500
	4	45	2000
	5	55	2250
	6	60	2500
	7	70	2750
	8	80	3000
	9	90	3250
	10	100	3500

Extra bedroom, 150 gallons each.
Extra dwelling units over 10, 250 gallons each
Extra fixture units over 100, 25 gallons per fixture unit

*NOTE:
Septic tank sizes in this table include sludge storage capacity and the connection of domestic food waste disposal units without further volume increase.

ROBERT W. STRAUB
GOVERNOR

Environmental Quality Commission

POST OFFICE BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. E, January 26, 1979 EQC Meeting

Authorization to Conduct a Public Hearing on the Question of Amending the Administrative Rules for the Management of Hazardous Waste (OAR Chapter 340, Division 63).

Background

On April 30, 1976, the Commission adopted rules for the management of hazardous waste. These were based on statutes adopted by the Legislature during 1971-1975 and were designed primarily to define which pesticide wastes were hazardous and to codify the requirements for their disposal.

On October 21, 1976, Congress adopted the Resource Conservation and Recovery Act (RCRA), Subtitle C of which, provides for a comprehensive Federal program to protect the public health and environment from improper disposal of hazardous waste. The basic idea is that such protection can be achieved by carefully monitoring the transportation of hazardous waste and assuring that such waste is treated or disposed in accordance with certain minimum standards. Although the program is being developed by the Federal government, a State may assume responsibility for or continue to manage its own hazardous waste by operating a program "equivalent to" and "consistent with" the Federal program. In this context, "equivalence" refers to the specific regulations of a State's program and "consistency" is a measure of how those regulations are enforced (i.e. policy) vis-à-vis the Federal and other State programs.

On December 18, 1978, the Environmental Protection Agency proposed the bulk of its program in the Federal Register. The final regulations are scheduled to be promulgated by January 1, 1980 and include an option for a two year "interim authorization" period for a State to achieve full equivalence with the Federal program.

In anticipation of the Department's continued acceptance of hazardous waste management responsibility, the 1977 Legislature augmented the Oregon hazardous waste statutes (ORS Chapter 459) by adding a manifest system for tracking hazardous waste shipments, authority to license hazardous waste storage, and more detailed standards for hazardous waste generators. In essence, it provided the Department with authority to implement a hazardous waste mangement program that could be very nearly equivalent to any program derived from RCRA.

The proposed rules (Attachment 1) were written to implement the 1977 legislation.

Statement of Need for Rule Making

(a) The legal authority for promulgating these rules is found in ORS Chapter 459. Note, however, that Commission authority does not extend to Part D: Transportation. This Part will be adopted by the Public Utility Commissioner pursuant to an April 12, 1977 Memorandum of Understanding (Attachment 3) and is included herein for completeness only.

(b) The need for these rules is to establish a comprehensive hazardous waste management program to assure that such wastes are properly handled so as to prevent endangering the public health or the environment.

(c) Drafts of the proposed Federal hazardous waste management program were used as background material for preparing these rules.

Evaluation

Due to their high potential for public health and environmental damage, hazardous wastes require special control procedures. Management of these wastes means awareness and control over them from the time of generation through their transportation, storage, treatment, and disposal. This "cradle-to-grave" control is often called the "pathway" approach to managing hazardous wastes.

The regulation and control of the pathways which hazardous wastes follow provide a more effective solution to their management than the present program which seeks only to regulate disposal. Its benefits are twofold: (1) It provides for the adequate disposal of all hazardous wastes and not just those which happen to reach a proper treatment or disposal site; and, (2) It fosters consideration of alternative methods and schemes to reduce the amount of waste as well as its inherent hazard.

The primary objective of these rules is to assure that hazardous wastes are properly handled to prevent undue harm to the public health and the environment. They constitute a comprehensive hazardous waste management program which includes reporting by waste generators, the regulation of waste storage and disposal, and the regulation of hazardous waste transportation.

It is also believed that the proposed rules essentially meet the Federal criteria for equivalency. They are not, however, a carbon copy of any of the Federal drafts, as we have taken pains to tailor the rules to what is a generally successful existing program. To the extent that the finally promulgated Federal program may require changes, these rules might be considered interim.

Summation

The proposed rules are designed to replace the existing hazardous waste rules (Attachment 2) which are aimed primarily at disposal, with a comprehensive program that also considers waste generation, storage, and transportation. Such "cradle-to-grave" control will provide for the adequate disposal of all hazardous wastes and not just those which happen to reach a proper treatment or disposal site.

Note that Part D of these rules is to be implemented by the Public Utility Commissioner and is included herein for completeness only.

Director's Recommendation

Based upon the Summation, it is recommended that the Commission authorize public hearings, before a hearings officer, to take testimony on the question of amending the administrative rules for the management of hazardous waste.

Bill
WILLIAM H. YOUNG

Fred Bromfeld:mt
January 9, 1979
Attachments (3) Proposed Rules
Present Rules
Memo w/PUC

ATTACHMENT 1: PROPOSED RULES 1/9/79

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CHAPTER 340: DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION 63: HAZARDOUS WASTE MANAGEMENT

Table of Contents

(PART A: GENERAL PROVISIONS)

63-006 SCOPE AND PURPOSE. The Department finds that increasing quantities of hazardous waste are being generated in the State which, without adequate safeguards, can create conditions that threaten the public health and safety and the environment. It is therefore in the public interest to establish a comprehensive management program to provide for the safe handling and disposal of such waste.

This program proposes to control hazardous waste from the time of generation through transportation, storage, treatment, and disposal. Waste reduction at the point of generation, reuse, energy and material recovery, and treatment are promoted as preferable alternatives to land disposal. To this end, it is Department policy that there be a minimum number of hazardous waste disposal sites.

These rules are adopted pursuant to Oregon Revised Statutes Chapter 459 and shall become effective 90 days after adoption.

63-011 DEFINITIONS. As used in these rules unless otherwise required by context:

(1) "Aquatic TLm" or "aquatic median tolerance limit" and "Aquatic LC_{50}" means that concentration of a substance which is expected in a specified time to kill 50 percent of an aquatic test population, including but not limited to important fish or their food supply. Aquatic TLm and aquatic LC_{50} are expressed in milligrams of the substance per liter of water.

(2) "Authorized container disposal site" means a solid waste disposal site that is authorized by permit to accept decontaminated hazardous waste containers for disposal.

(3) "Container" means any package, can, bottle, bag, barrel, drum, tank or any other enclosure which contains the waste. If the container has a detachable liner or several separate inner containers, only those containers contaminated by the hazardous material shall be considered for the purposes of these rules.

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

(5) "Dermal LD_{50}" or "median dermal lethal dose" means a measure of dermal penetration toxicity of a substance for which a calculated dermal dose is expected in a specified time to kill 50 percent of a population of experimental laboratory animals, including but not limited to mice, rats, or rabbits. Dermal LD_{50} is expressed in milligrams of the substance per kilogram of body weight.

(6) "Dispose" or "disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land or water so that such hazardous waste or any hazardous constituent thereof may enter the environment or be emitted into the air or discharged into any waters of the State as defined in ORS 468.700. NOTE: The foregoing is not be be interpreted to authorize any violation of ORS Chapter 459 and these rules.

(7) "Domestic use" or "household use" means use in or around homes, backyards and offices; but excludes commercial pest control operations.

(8) "Empty container" means a container whose contents have been removed except for the residual material retained on the interior surfaces.

(9) "Generator" means the person, who by virtue of ownership, management or control, is responsible for causing or allowing to be caused the creation of a hazardous waste.

(10) "Hazardous waste" means discarded, useless or unwanted materials or residues in solid, liquid, or gaseous state and their empty containers which are classified as hazardous pursuant to ORS 459.410 and these rules. NOTE: A "hazardous material" is a substance that meets this same definition except that it is not a waste.

(11) "Hazardous waste collection site" means the geographical site upon which hazardous wastes are stored in accordance with a license issued pursuant to ORS Chapter 459 and OAR Chapter 340, Divisions 62 and 63.

(12) "Hazardous waste disposal site" means a geographical site in which or upon which hazardous wastes are disposed in accordance with a license issued pursuant to ORS Chapter 459 and OAR Chapter 340, Divisions 62 and 63.

(13) "Hazardous waste management facility" means a hazardous waste collection, treatment, or disposal site; or the sanitary landfill that has been licensed to dispose of a specified hazardous waste pursuant to ORS 459.510(3) and OAR Chapter 340, Divisions 62 and 63.

(14) "Hazardous waste treatment site" means a facility or operation, other than a hazardous waste disposal site, at which hazardous waste is treated in compliance with these rules and other applicable local, State, and Federal regulations.

(15) "Hydrocarbon" means any compound composed solely of hydrogen and carbon.

(16) "Inhalation LC_{50}" or "median inhalation lethal concentration" means a measure of inhalation toxicity of a substance for which a calculated inhalation concentration is expected in a specified time to kill 50 percent of a population of experimental laboratory animals, including but not limited to mice, rats, or rabbits. Inhalation LC_{50} is expressed in milligrams per liter of air for a gas or vapor and in milligrams per cubic meter for a dust or mist.

(17) "Jet rinsing" means a specific treatment for empty pesticide containers using the following procedure:
(a) A nozzle is inserted into the container such that all interior surfaces of the container can be washed.
(b) The container is flushed using water or an appropriate diluent for at least 30 seconds.
(c) The rinse shall be added to a spray or mix tank for use. If the rinse cannot be so used, it shall be considered a hazardous waste subject to these rules.

(18) "Manifest" means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of storage, treatment, or disposal. Required information is to be entered on all copies that are with the waste at the time of entry.

(19) "Oral LD_{50}" or "median oral lethal dose" means a measure of oral toxicity of a substance for which a calculated oral dose is expected in a specified time to kill 50 percent of a population of experimental laboratory animals, including but not limited to mice, rats, or rabbits. Oral LD_{50} is expressed in milligrams of the substance per kilogram of body weight.

(20) "Person" means the United States, the State or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate, or any other legal entity.

(21) "Pesticide" means any substance or combination of substances intended for the purpose of defoliating plants or for the preventing, destroying, repelling, or mitigating of insects, fungi, weeds, rodents, or predatory animals; including but not limited to defoliants, desiccants, fungicides, herbicides, insecticides, and nematocides as defined by ORS 634.006.

(22) "Phenol" means any mono- or polyhydric derivative of an aromatic hydrocarbon.

(23) "Plant site" means the geographical area where hazardous waste generation occurs. Two or more pieces of property which are geographically contiguous and are divided only by a right-of-way are considered a single site.

(24) "Polychlorinated biphenyl" or "PCB" means the class of chlorinated biphenyl, terphenyl, higher polyphenyl, or mixtures of these compounds, produced by replacing two or more hydrogen atoms on the biphenyl, terphenyl, or higher polyphenyl molecule with chlorine atoms. PCB does not include chlorinated biphenyls, terphenyls, higher polyphenyls, or mixtures of these compounds, that have functional groups other than chlorine unless that functional group is determined to make the compound dangerous to the public health.

(25) "Store" or "storage" means the containment of hazardous waste for a temporary specified period of time, in such a manner as not to constitute disposal of such hazardous waste.

(26) "Transporter" means any motor carrier engaged in the transportation of hazardous waste.

(27) "Treatment" means any method, technique, activity, or process, including but not limited to neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume.

(28) "Triple rinsing" means a specific treatment for empty pesticide containers using the following procedure:
- (a) A volume of water or appropriate diluent is placed in the container in an amount equal to at least 10 percent of the container volume.
- (b) The container closure is replaced and the container is upended to rinse all interior surfaces.
- (c) The container is opened and the rinse drained into a spray or mix tank.
- (d) Second rinse: Repeats Steps (a) to (c) above. Third rinse: Repeats Steps (a) to (c) above, and allows an additional 30 seconds for drainage.
- (e) If the rinse cannot be added to a spray or mix tank for use, it shall be considered a hazardous waste subject to these rules.

63-100 AUTHORITY. Part B, Classified Hazardous Wastes, is adopted pursuant to ORS 459.410(6), 459.440(3) and 468.921.

63-105 APPLICABILITY.

(1) A waste is classified hazardous if a representative sample of the waste meets the criteria of or is listed in this Part.

(2) Any person having possession of a hazardous waste shall comply with Parts A to E of this Subdivision.

63-110 IGNITABLE WASTE.

(1) A waste is ignitable if it has any of the following properties:

(a) Any liquid that has a flash point less than 60°C (140°F) as determined by the Pensky-Martens Closed Tester (ASTM D93-73) or an equivalent method.

(b) Any flammable compressed gas as defined by 49 CFR 173.300(b). NOTE: Title 49, Transportation, Parts 100 to 199, is published annually for the U. S. Department of Transportation.

(c) Any oxidizer as defined by 49 CFR 173.151.

(d) Any Class C explosive as defined by 49 CFR 173.100.

(e) Any other waste, that under conditions incident to its management, is liable to cause fires through friction, absorption of moisture, spontaneous chemical change, or retained heat from manufacturing or processing; and when ignited burns so vigorously and persistently as to create a hazard during its management.

(2) Up to 25 pounds of ignitable waste per generator per month may be placed in a sanitary landfill if it is securely contained to minimize the possibility of waste release prior to burial. However, acceptance of such waste is at the discretion of the landfill permittee.

63-115 CORROSIVE WASTE.

(1) A waste is corrosive if as a liquid or sludge, or as a solid mixed with an equal volume of water, it has either of the following properties:

(a) A pH of 3 or less or of 12 or greater.

(b) Any corrosive as defined by 49 CFR 173.240.

(2) Up to 200 pounds of corrosive waste per generator per month may be placed in a sanitary landfill if it is securely contained to minimize the possiblity of waste release prior to burial. However, acceptance of such waste is at the discretion of the landfill permittee.

63-120 REACTIVE WASTE.

(1) A waste is reactive if it has either of the following properties:

(a) Any waste that is normally unstable and readily undergoes violent chemical change such as reacting violently or forming potentially explosive mixtures with water; or generating toxic fumes when mixed with water under mildly acidic or basic conditions.

(b) Any waste that is capable of detonation or explosive reaction with or without a strong initiating source or heat before initiation. This includes explosives as defined by 49 CFR 173.51 (Forbidden), 173.53 (Class A), or 173.88 (Class B).

(2) The Department may permit the disposal of small quantities of reactive waste in a sanitary landfill on a case-by-case basis, and by application of the landfill permittee.

(3) Waste explosives under the direct control of a local, State, or Federal agency are exempt from the provisions of these rules.

63-125 TOXIC WASTE. Several of the following wastes are listed primarily because they are so persistent and bioaccumulative as to pose a chronic threat to the environment.

(1) Pesticides and Pesticide Manufacturing Residues.

(a) Waste containing pesticide or pesticide manufacturing residue is toxic if it has any of the following properties:

(i) Oral toxicity: Material with a 14-day oral LD_{50} equal to or less than 500 mg/kg.

(ii) Inhalation toxicity: Material with a one-hour inhalation LC_{50} equal to or less than 2 mg/l as a gas or vapor or a one-hour inhalation LC_{50} equal to or less than 200 mg/m^3 as a dust or mist.

(iii) Dermal penetration toxicity: Material with a 14-day dermal LD_{50} equal to or less than 200 mg/kg.

(iv) Aquatic toxicity: Material with 96-hour aquatic TLm or 96-hour aquatic LC_{50} equal to or less than 250 mg/l.

(b) Up to 10 pounds of waste containing pesticide or pesticide manufacturing residue per generator per month may be placed in a sanitary landfill if it is securely contained to minimize the possibility of waste release prior to burial. However, acceptance of such waste is at the discretion of the landfill permittee.

(2) Halogenated Hydrocarbons and Phenols (excluding polymeric solids).

(a) Waste containing halogenated hydrocarbons (excluding polychlorinated biphenyls) or halogenated phenols is toxic if it contains 1% or greater of such substances.

(i) Waste containing polychlorinated biphenyls is toxic if it contains 100 ppm or greater of such substances.

(b) (i) Up to 200 pounds of waste containing halogenated hydrocarbons (excluding polychlorinated biphenyls) or halogenated phenols per generator per month may be placed in a sanitary landfill if it is securely contained to minimize the possibility of waste release prior to burial. However, acceptance of such waste is at the discretion of the landfill permittee.

(ii) Household items containing polychlorinated biphenyls may be disposed with other household refuse.

(3) Inorganics

(a) (i) Waste containing cyanide, arsenic, cadmium or mercury is toxic if it contains 100 ppm or greater of such substance or 200 ppm or greater of the sum of such substances.

(ii) Waste containing hexavalent chromium or lead is toxic if it contains 500 ppm or greater of such substance or 1000 ppm or greater of the sum of such substances.

(iii) The Department may exempt certain inert materials containing these substances (e.g.: leaded glass, foundry sands) on a case-by-case basis.

(b) Up to 10 pounds of waste containing cyanide, arsenic, cadmium or mercury or up to 200 pounds of waste containing hexavalent chromium or lead per generator per month may be placed in a sanitary landfill if it is securely contained to minimize the possibility of waste release prior to burial. However, acceptance of such waste is at the discretion of the landfill permittee.

(c) Mining wastes are exempt from the provisions of these rules.

(4) Carcinogens.

(a) Waste containing carcinogens as identified by OSHA in 29 CFR 1910.93c is toxic.

(b) Carcinogens shall not be placed in a sanitary landfill.

63-130 EMPTY CONTAINERS.

(1) Discarded, useless or unwanted containers and receptacles are hazardous if they were used in the transportation, storage, or use of a hazardous material or waste.

(2) Empty containers from hazardous materials that have been employed for domestic use may be disposed with other household refuse.

(3) Empty hazardous waste and hazardous material containers need not be disposed at a hazardous waste disposal site if they are handled as follows:

(a) Noncombustible containers, including but not limited to cans, pails or drums constructed of steel, plastic, or glass, shall be decontaminated, certified and disposed as follows:

(i) Decontamination consists of either (a) triple rinsing; (b) jet rinsing; (c) fumigant containers: removing the closure and placing in an upside down position for at least 5 days; or, (d) other procedures as may be approved by the Department.

(ii) Certifying consists of providing a signed and dated statement to the disposal site, reuse, or recycle facility operator that the non-combustible containers have been decontaminated. This may be done by means of the Pesticide Container Disposal Certificate, the Pesticide Container Disposal Record, or any similar written declaration. NOTE: The Department may waive this requirement for a specific landfill if it determines that the characteristics of the landfill are such that there will be no threat to the public health or the environment and that such action is necessary for the operation of a local pesticide container management program.

(iii) Disposal consists of taking the decontaminated containers to an authorized pesticide container disposal site or a reuse or recycle facility. Decontaminated Caution or Warning label pesticide or other decontaminated hazardous waste or hazardous material containers may also be taken to any sanitary landfill, however, acceptance of such containers is at the discretion of the landfill permittee. NOTE: In certain instances the Department may prohibit a specific disposal site or reuse or recycle facility from accepting hazardous containers if it determines that such action would endanger the public health or the environment.

(b) Combustible containers including paper bags and drums but not including plastic containers, need not be decontaminated nor certified. Combustible containers shall be disposed by taking them to an authorized pesticide container disposal site or by burning in an incinerator or solid fuel fired furnace which has been certified by the Department to comply with applicable air emission limits. Such containers may be open burned in less than 50 pound lots (excepting organometallics) if conducted in compliance with open burning rules (OAR Chapter 340, Division 23), the requirements of local fire districts, and in such a manner as to protect the public health and the environment. NOTE: OAR 340-23-040(7) prohibits the open burning of any waste materials which normally emit dense smoke, noxious odors, or which may tend to create a public nuisance.

(c) Persons engaged in agricultural operations may bury combustible or decontaminated noncombustible containers on the site of pesticide application provided that surface and groundwater are not endangered. NOTE: This generally means not in a drainageway and at least 500 feet from surface water or a drinking water well.

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63-200 AUTHORITY. Part C, Rules Applicable to Generators of Hazardous Waste, is adopted pursuant to ORS 459.445.

63-205 APPLICABILITY.

(1) These rules apply to any persons that generate hazardous waste with the following exceptions:

(a) Persons who generate less than 2000 lbs. of hazardous waste per year need not comply with Sections 63-210 and 63-235.

(b) Persons that ship less than 2000 lbs. of hazardous waste per load need not comply with Sections 63-230, 63-235, and 63-240.

(c) Generators who dispose of hazardous waste on their own plant site shall also comply with the applicable of Sections 63-400 to 63-435.

(d) Persons who generate domestic waste or waste consisting solely of empty containers are exempt from the rules of this part;

unless the Department, for reasons of public health and safety, require compliance in individual cases.

(2) Compliance with these rules shall not preclude the generator from compliance with other applicable local, State, or Federal regulations.

63-210 GENERATOR IDENTIFICATION. Any person generating hazardous waste shall identify himself and his activity to the Department and obtain an identification number from the Department. This number shall be used on the manifest, the quarterly waste generator's report, and any other correspondence to the Department.

63-215 WASTE MANAGEMENT.

(1) Hazardous waste shall be managed in a manner that will minimize the possibility of a dangerous uncontrolled reaction, the release of noxious gases or odors, fire, explosion or the discharge of such waste.

(2) A generator shall use the best practicable methods to reduce the amount of waste, and to reuse, recycle, recover, or treat it prior to disposal. Oils and solvents shall be landfilled only after assuring that they cannot be practicably recycled or reprocessed.

(3) A generator shall become familiar with the hazards associated with the waste and the procedure to be followed in the event of an emergency situation. All accidents or other occurrences which may result in the discharge of such waste to the environment shall be immediately reported to the Oregon Accident Response System (telephone: 1-800-452-0311).

(4) A generator shall take all necessary measures to assure that his hazardous waste will be managed in accordance with these rules. If at any time the generator has reason to believe that the waste is being improperly managed by the persons to which the waste has been consigned (such as failure of the designated hazardous waste management facility to return a copy of the manifest), the generator shall take all necessary steps, including notifying the Department, to correct such improper management.

(5) A generator shall take all practicable measures to assure that hazardous waste shipped off his plant site is transported by a person in compliance with OAR (PUC rules) and taken to a hazardous waste management facility operating in compliance with Sections 63-400 to 63-435 (excluding that waste which may go to a sanitary landfill as permitted, by Sections 63-100 to 63-130.)

(6) A generator who disposes of small quantities of hazardous waste in a sanitary landfill shall notify the transporter and the landfill permittee of such disposal.

(7) A generator may designate his waste for temporary storage at a hazardous waste collection site operated in compliance with Sections 63-400 to 63-435, but such site must not be designated as the final recipient of the waste. A generator permitting waste to be stored at such site shall share responsibility for assuring that the waste reaches a hazardous waste treatment or disposal facility within the time specified in Section 63-420(4).

(8) A generator shall not ship hazardous waste off his plant site without having received prior notice of acceptance from the designated hazardous waste treatment or disposal facility. In the event that a waste shipment is subsequently rejected by the facility operator, the generator shall accept return of the waste or make provision for its acceptance at another hazardous waste treatment or disposal facility. If the wastes of two or more generators have been commingled, each generator shall accept responsibility for a portion of the waste equal to his contribution to its total volume.

(9) A generator shall not store hazardous waste for longer than 6 months unless the Department determines that practicable transportation or an acceptable treatment or disposal facility is not available.

(10) Containers and tanks used to store hazardous waste must be adequately constructed to fully contain the waste. Such storage must be in a secure enclosure, to prevent unauthorized persons from gaining access to the waste, and adequately contained to minimize the possibility of spills or escape to the environment.

(11) Hazardous waste as a powder, dust, or fine solid shall be handled, stored, transported, treated, or disposed in closed or covered containers.

(12) Hazardous waste that may be expected to release hazardous gases, mists, or vapors in excess of the Threshold Limit Values imposed by occupational health regulations (OAR Chapter 333, Section 22-017(A)), air quality rules (OAR Chapter 340), or other applicable local, State or Federal regulations, shall not be deposited in open storage or disposal areas.

(13) Any action taken to evade the intent of these rules solely by diluting a hazardous waste so as to declassify it shall constitute a violation of these rules.

(14) Authorized representatives of the Department shall have access to the site of hazardous waste generation at all reasonable times for the purpose of inspecting the plant and its waste generation records, and for environmental monitoring.

63-220 PACKAGING WASTE FOR SHIPMENT. A generator shipping hazardous waste shall containerize such waste as follows:

(1) Hazardous waste identified by the Department of Transportation as a hazardous material with special packaging requirements shall be packaged to comply with 49 CFR 173, 178 or 179.

(2) Other hazardous waste, shall be packaged to comply with 49 CFR 173.24 (excluding (c)(1)) or other applicable State or Federal regulations.

63-225 IDENTIFYING CONTAINERS FOR SHIPMENT. A generator shipping hazardous waste shall mark or label the waste containers as follows:

(1) Containers of hazardous waste (excluding bulk cargo tanks) shall be marked or labeled with the generator's name or identification number, the waste name or manifest number, or by any other system that will assure rapid positive identification of its contents.

(2) Containers of hazardous waste identified by 49 CFR 172.101 as a hazardous material shall be marked and labeled in compliance with 49 CFR 172.300-172.450.

(3) Containers of hazardous waste not identified by 49 CFR 172.101 or classified therein as ORM (other regulated material) shall be marked or labeled Ignitable, Reactive, or Toxic, as appropriate.

63-230 COMPLIANCE WITH MANIFEST.

(1) A generator shall not ship hazardous waste off his plant site without also providing a properly completed manifest.

(2) A generator shall prepare sufficient copies of the manifest so that all persons who handle the waste will be able to comply with these rules. NOTE: There will be at least four copies: generator, transporter, management facility, and the copy returned to the generator by the management facility. Additional management facility and transporter copies will be needed if the waste is to be stored at a hazardous waste collection site.

(3) The manifest shall include the following information presented in a manner that is readily legible:

(a) Manifest number;

(b) Generator's name, address, emergency phone number, and identification number;

(c) Transporter's name, address, phone number, and identification number;

(d) Designated treatment or disposal facility name, address, phone number, and identification number;

(e) Collection site name, address, phone number and identification number, if temporary storage is desired;

(f) For each waste indicate:
(i) Description by proper shipping name or general chemical composition;
(ii) Quantity;
(iii) Number and type of containers;
(iv) Physical state (solid, liquid, or sludge);
(v) Appropriate classification(s) as marked or labeled on the container.

(g) Special handling or emergency instructions (if any).

(4) Both the generator and the transporter shall sign and date the manifest at the time of waste transfer. The generator shall retain one copy of the manifest and transfer the remaining copies with the waste.

(5) Upon generator request, the Department may approve the reuse of a manifest for multiple shipments of a given waste provided there is no change in the waste or shipping procedure.

63-235 REPORTING.

(1) Every generator shall submit a quarterly report of manifested hazardous waste shipments to the Department by the 20th of January, April, July and October. If there are no manifested hazardous waste shipments in a quarter, no report is required for that quarter.

(2) The report shall include the following information taken from the manifest:

(a) Quarter covered by the report;

(b) Generator's name, address, phone number, and identification number;

(c) For all waste shipments in the quarter indicate:
(i) Date of shipment;
(ii) Manifest number;
(iii) Waste description, quantity, number and type of containers, physical state, and classification;
(iv) Name and identification number of the transporter(s);
(v) Name and identification number of hazardous waste management facility(s) that handled the waste. If the waste has been sent to a collection site or the manifest indicating waste receipt has not yet been returned by the treatment or disposal facility, report the shipment at this time and again in the quarter when final disposal confirmation has been received.
(vi) Date treatment or disposal facility received the waste;
(vii) Any discrepancy between the generator's manifest and the copy returned by the hazardous waste treatment or disposal facility;

(d) A summary, to the best of the generator's knowledge, of all accidents or other occurrences during handling of the waste from the time of generation to its time of acceptance by a hazardous waste treatment or disposal facility.

63-240 RECORDKEEPING. Every generator shall retain for three years:

(1) The generator's manifest copy as well as the copy returned by the hazardous waste treatment or disposal facility.

(2) A copy of the quarterly hazardous waste shipment report submitted to the Department.

The rules of this Part have been adopted by the Public Utility Commissioner on (date) as OAR (PUC rules). They are included here for reference only and may be amended, repealed, or superseded as provided under the rules of the Commissioner.

( ) APPLICABILITY OF THE RULES; DEFINITIONS. (1) The following regulations governing the transportation of hazardous waste materials have been recommended by the Oregon Department of Environmental Quality to the Public Utility Commissioner pursuant to the provisions of ORS Chapters 459 and 767.

(2) These rules are supplemental to the requirements of the Oregon Department of Environmental Quality, Motor Carrier Safety and Hazardous Materials Regulations, and ORS Chapter 767.

(3) The term "transporter" as used herein shall be construed to mean any motor carrier engaged in the transportation of hazardous waste materials.

(4) The term "manifest" means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during transportation from the point of generation to the point of storage, treatment, or disposal.

( ) TRANSPORTER IDENTIFICATION. (1) Any motor carrier transporting hazardous waste shall on forms provided make application to and receive from the Public Utility Commissioner a hazardous waste transporter identification number.

(2) The transporter hazardous waste identification number shall be used on the manifest, the hazardous materials incident report, the transport vehicle, and all correspondence with the Public Utility Commissioner relating to hazardous waste transportation.

( ) IDENTIFICATION AND PLACARDING OF VEHICLES. (1) Any truck or truck-tractor transporting in excess of 2000 lbs. of hazardous waste shall have painted on each side thereof, or displayed by attached decals, placard or sign, the name or duly adopted business name of the certificate holder or permitee as listed on the certificate or permit.

(a) The display or name prescribed in this rule shall be in letters and figures, in sharp color contrast to the

background, and be as such size, shape, and color as to be readily legible during daylight hours from a distance of 50 feet while the vehicle is not in motion, and such display shall be kept and maintained in such manner as to remain so legible.

(2) In addition to displaying the name or duly adopted business name, such carrier shall also display the city or community in which the carrier maintains its principal office.

(3) Any vehicle transporting hazardous waste, which is identified by 49 CFR 172.101 as a hazardous material, shall be placarded in accordance with 49 CFR 172.500 through 172.558.

( ) WASTE MANAGEMENT. (1) A transporter shall not accept a shipment of hazardous waste in containers unless:

(a) Said containers of hazardous waste are marked or labeled with the generator's name or identification number, the waste name or manifest number, or by any other system that will assure rapid positive identification of its contents.

(b) Containers of hazardous waste identified by 49 CFR 172.101 as a hazardous material shall be marked and labeled in compliance with 49 CFR 172.300 through 172.450.

(c) Containers of hazardous waste not identified by 49 CFR 172.101 or classified therein as ORM (other regulated material) shall be marked or labeled Ignitable, Reactive, or Toxic, as appropriate.

(d) Lost or illegible marks, labels or generator information shall be replaced.

(2) A transporter shall not accept containers which are leaking or appear to be damaged. In the event that leakage develops during transportation and results in a spill, the transporter shall comply with Section( )(emergencies).

(3) A transporter shall become familiar with the hazards associated with the waste and the procedure to be followed in the event of an emergency situation.

(4) Hazardous waste as a powder, dust, or fine solid shall be transported in closed or covered containers.

(5) All containers of hazardous waste shall be reasonably secured against movement while in the transport vehicle. In addition, incompatible wastes shall be separated from each

other in order to prevent them from reacting in the event of accidental discharge.

(6) A bulk tanker shall not be left unattended during the loading or unloading of hazardous waste.

(7) Hazardous waste shall not be transported in the same vehicle with food or fiber intended for human or animal use.

(8) Containers and tanks provided by the transporter shall be adequately constructed to fully contain the hazardous waste being transported.

(9) Authorized representatives of the Public Utility Commissioner or the Department of Environmental Quality shall have access to the transportation vehicle or the site of in-transit storage at all reasonable times for the purpose of inspection, reviewing the transporter's records, or environmental monitoring.

( ) COMPLIANCE WITH MANIFEST. (1) A transporter shall not accept a shipment of hazardous waste in excess of 2,000 pounds unless accompanied by properly completed manifest.

(2) The transporter shall sign and date the manifest at the time of waste acceptance. One copy of the manifest shall be given to the waste consignor.

(3) At least three copies of the manifest shall accompany the waste while in transit. If the manifest is lost, the transporter shall make a new manifest.

(4) The transporter shall obtain the date and signature of a representative of the hazardous waste management facility on the manifest at the time of waste delivery.

(5) The transporter shall retain a copy of the manifest and give the remaining copies to the management facility representative.

( ) DELIVERY TO A MANAGEMENT FACILITY. (1) The transporter shall deliver the entire shipment of hazardous waste to the management facility designated on the manifest. The waste may be taken to a hazardous waste collection site only if designated on the manifest by the generator (excluding temporary storage incident to the transportation of the waste).

(2) Shipments that do not require a manifest may be removed from the transport vehicle only at a hazardous waste management facility, or a sanitary landfill if permitted under

Oregon Administrative Rules, Chapter 340, Section 63-100 through 63-130.

(3) The transporter shall inspect his vehicle after unloading to insure that it has been rinsed and cleaned, if necessary, and that all of the load has been delivered.

( ) RECORD KEEPING. (1) Every transporter shall maintain his copy of the manifest for three (3) years from the date of delivery of the hazardous waste to a management facility.

( ) EMERGENCIES. (1) In the event of an emergency such as a fire, breakage, or spill during loading, transport, or unloading of the hazardous waste, the transporter shall immediately notify:

(a) Oregon Accident Response System (Telephone: 1-800-452-0311)

(b) National Response Center (Telephone: 1-800-424-8802)

(c) Waste Generator (Telephone: see manifest or other shipping papers.)

(2) The transporter shall take such steps as may be directed by local, state, or federal emergency personnel to alleviate the conditions caused by the emergency.

(3) The transporter shall note the incident on the manifest including the location; amount of waste being transported, spilled, and recovered; and the disposition of the clean up and the unspilled waste.

(4) Within fifteen (15) days after the emergency, the transporter shall file a Hazardous Materials Incident Report (DOT form F5800.1) with the Public Utility Commissioner.

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(PART E: MANAGEMENT FACILITIES)

63-400 AUTHORITY. Part E, Rules Applicable to Hazardous Waste Management Facilities, is adopted pursuant to ORS Chapter 459.

63-405 APPLICABILITY.

(1) These rules apply to any person that owns or operates a hazardous waste management facility with the following exceptions:

(a) Generators who store or treat their own hazardous waste on their own plant site need comply only with Section 63-420.

(b) Generators who dispose of their own hazardous waste on their own plant site need comply only with Sections 63-410, 63-415 and 63-420.

(c) Persons disposing of their own domestic waste; engaged in the recycle or disposal of empty containers; or storing waste at the request of a local, State, or Federal official and in response to an emergency situation;

unless the Department for reasons of public health and safety requires compliance in individual cases.

(2) Compliance with these rules shall not preclude a facility owner or operator from compliance with other applicable local, State, or Federal regulations.

63-410 FACILITY IDENTIFICATION. Any person owning or operating a hazardous waste management facility shall identify himself to the Department and obtain an identification number from the Department. This number shall be used on the manifest and all reports and correspondence with the Department.

63-415 LICENSE REQUIRED. Any person owning or operating a hazardous waste collection or disposal site or engaged in a hazardous waste disposal operation under ORS 459.510(3) shall obtain a license pursuant to ORS Chapter 459 and OAR Chapter 340, Divisions 62 and 63.

63-420 WASTE MANAGEMENT.

(1) Hazardous waste shall be managed in a manner that will minimize the possibility of a dangerous uncontrolled reaction, the release of noxious gases or odors, fire, explosion or the discharge of such waste.

(2) Hazardous waste shall be treated to the greatest extent practicable prior to disposal to reduce its water content, solubility in water, and overall toxicity.

(3) A facility operator shall become familiar with the hazards associated with the waste and the procedure to be followed in the event of an emergency situation. All accidents or other occurrences which may result in the discharge of such waste to the environment shall be immediately reported to the Oregon Accident Response System (telephone: 1-800-452-0311).

(4) A facility operator shall not store hazardous waste for longer than 6 months unless the Department determines that an acceptable disposal method is not available.

(5) Containers and tanks used to store hazardous waste must be adequately constructed to fully contain the waste. Such storage must be in a secure enclosure to prevent unauthorized persons from gaining access to the waste, and adequately contained to minimize the possibility of spills or escape to the environment.

(6) Hazardous waste as a powder, dust, or fine solid shall be handled, stored, transported, treated, or disposed in closed or covered containers.

(7) Hazardous waste that may be expected to release hazardous gases, mists, or vapors in excess of the Threshold Limit Values imposed by occupational health regulations (OAR Chapter 333, Section 22-017(A)), air quality rules (OAR Chapter 340), or other applicable local, State or Federal regulations, shall not be deposited in open storage or disposal areas.

(8) Authorized representatives of the Department shall have access to the site of hazardous waste treatment, storage, or disposal at all reasonable times for the purpose of inspecting the facility and its activity records, and for environmental monitoring.

63-425 COMPLIANCE WITH MANIFEST.

(1) A hazardous waste facility operator shall not accept a shipment of hazardous waste in excess of 2000 lbs. unless accompanied by a manifest that has been properly completed by the generator in accordance with Sections 63-320 and by the transporter in accordance with OAR (PUC rules).

(a) Collection sites shall not accept hazardous waste for storage unless such storage is specifically designated by the generator on the manifest.

(b) Collection sites which consolidate unmanifested waste for shipment into loads that exceed 2000 lbs. shall complete a manifest, acting as the generator, in accordance with Section 63-230.

(2) A representative of the hazardous waste management facility shall sign and date the manifest at the time of waste acceptance, and, if warranted, comment on the condition of the containers, lost labels, or any other problems with the shipment.

(3) The facility operator shall give one copy of the manifest to the transporter, retain one copy, and transfer the remaining copies as follows:

(a) Collection site operators shall transfer the manifest with the waste for delivery to the generator's designated treatment or disposal facility.

(b) Treatment or disposal site operators shall mail a copy of the manifest to the waste generator within one week.

(4) Hazardous waste in quantities less than 2000 lbs. may be accepted at the facility operator's discretion and as modified by the facility license.

63-430 REPORTING.

(1) Every hazardous waste management facility operator shall submit a hazardous waste receipt report to the Department. This report shall include all receipts whether or not subject to the manifest. Hazardous waste treatment and collection site reports are due quarterly by the 20th of January, April, July, and October. Hazardous waste disposal site reports are due monthly by the 15th of each month.

(2) The report shall include the following information as taken from the manifest or other generator source:

(a) Period covered by the report;

(b) Hazardous waste management facility's name, address, phone number, and identification number;

(c) For all wastes received during the reporting period indicate:
(i) Date of waste acceptance;
(ii) Manifest number (if applicable);
(iii) Waste description, quantity, number and type of containers, physical state, and classification;
(iv) Name and identification number of the waste generator;

(v) Name and identification number of all transporters;
(vi) For treatment facilities: Process used to treat the waste.
For collection sites: Name and address of the hazardous waste treatment or disposal facility to which the waste was shipped and date of same.
For disposal sites: Dates of waste treatment and/or burial.
(vii) Any other information that may be required by the management facility license.

63-435 RECORDKEEPING. Every hazardous waste management facility shall retain for three years:

(1) A copy of the manifest.

(2) A copy of the periodic hazardous waste receipt report submitted to the Department.

ATTACHMENT 2: PRESENT RULES

DEPARTMENT OF ENVIRONMENTAL QUALITY

RULES PERTAINING TO MANAGEMENT
of
ENVIRONMENTALLY HAZARDOUS WASTES

OAR CHAPTER 340, DIVISION 6, SUBDIVISION 3

63-005 PURPOSE. The purpose of these rules is to establish requirements for environmentally hazardous waste management, from the point of waste generation to the point of ultimate disposition, to classify certain wastes as environmentally hazardous, and to declassify certain wastes as not being environmentally hazardous. These rules are adopted pursuant to Oregon Revised Statutes, Chapter 459.

63-010 DEFINITIONS. As used in these rules unless otherwise required by context:

(1) "Authorized container disposal site" means a solid waste disposal site operated under a valid permit from the Department and authorized in writing to accept empty pesticide containers for disposal.

(2) "Authorized container recycling or reuse facility" means a facility authorized in writing by the Department to recycle, reuse or treat empty pesticide containers and which operates in compliance with ORS Chapters 454, 459 and 468 and rules adopted pursuant thereto.

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

(4) "Container" means any package, can, bottle, bag, barrel, drum, tank or anything commonly known as a container. If the package or drum has a detachable liner or several separate inner containers, then the outer package or drum is not considered a container for the purposes of these rules.

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

(6) "Dermal LD_{50}" or "Dermal lethal dose fifty" means a measure of dermal penetration toxicity of a substance for which a calculated dermal dose is expected, over a 14-day period, to kill 50% of a population of experimental laboratory animals, including but not limited to mice, rats or rabbits. LD_{50} is expressed in milligrams of the substance per kilogram of body weight.

(7) "Dispose" or "Disposal" means the discarding, burial, treatment, recycling, or decontamination of environmentally hazardous wastes or their collection, maintenance or storage at an EHW disposal site.

(8) "Empty container" means a container from which the product contained has been removed except for the residual material retained on interior surfaces after emptying.

(9) "Environmentally hazardous wastes" or "EHW" means discarded, useless or unwanted materials or residues in solid, liquid or gaseous state and their empty containers which are classified as environmentally hazardous, but excluding those wastes declassified, by or pursuant to statutes or these rules.

(10) "EHW collection site" means a site, other than an EHW disposal site, for the collection and temporary storage of environmentally hazardous wastes, primarily received from persons other than the owner or operator of the site.

(11) "EHW disposal site" means a site licensed by the Commission in or upon which EHW are disposed of by, but not limited to, land burial, land spreading, soil incorporation and other direct, permanent land disposal methods, in accordance with the provisions of ORS 459.410 to 459.690.

(12) "EHW facility" means a facility or operation, other than an EHW disposal site or EHW collection site, at which EHW is treated, recovered, recycled, reused or temporarily stored in compliance with ORS Chapters 454, 459 and 468 and rules adopted pursuant thereto. for not more than 90 days

(13) "Home and garden use" means use in or around homes and residences by the occupants, but excludes all commercial agricultural operations and commercial pesticide application.

(14) "Inhalation LC_{50}" or "inhalation lethal concentration fifty" means a measure of inhalation toxicity of a chemical substance for which a calculated concentration when administered by the respiratory route is expected, during exposure of 1 hour, to kill 50% of a population of experimental laboratory animals, including but not limited to mice, rats or rabbits. LC_{50} is expressed in milligrams per liter of air as a dust or mist or in milligrams per cubic meter as a gas or vapor.

(15) "Jet rinse" or "jet rinsing" means a specific treatment or decontamination of empty pesticide containers using the following procedure:
(a) A nozzle is inserted into the container such that all interior surfaces of the container will be rinsed.
(b) The container is rinsed with the nozzle using water or an appropriate diluent for 30 seconds or more.
(c) Rinses shall be added to the spray or mix tank. If rinses cannot be added to the spray or mix tank, then disposal of the rinses shall be as otherwise required by these rules.

(16) "Maximum permissible concentration (MPC)" means the level of radioisotopes in waste which if continuously maintained would result in maximum permissible doses to occupationally exposed workers and as specified in Oregon Administrative Rules Chapter 333, Division 2, Subdivision 2, Section 22-150.

(17) "Median tolerance limit" or "TLm" or "LC_{50}" or "median lethal concentration" means that concentration of a substance which is expected, over a 96-hour exposure period, to kill 50 percent of an aquatic test population, including but not limited to important fish or their food supply. TLm and LC_{50} are expressed in milligrams of the substance per liter of water.

(18) "Oral LD_{50}" or "Oral lethal dose fifty" means a measure of oral toxicity of a substance for which a calculated oral dose is expected, over a 14-day period, to kill 50% of a population of experimental laboratory animals, including but not limited to mice, rats or rabbits. LD_{50} is expressed in milligrams of the substance per kilogram of body weight.

(19) "Pesticide" means any substance or combination of substances intended for the purpose of defoliating plants or for the preventing, destroying, repelling or mitigating of insects, fungi, weeds, rodents or predatory animals or other pests, including but not limited to defoliants, desiccants, fungicides, herbicides, insecticides, nematocides and rodenticides.

(20) "Person" means the United States and agencies thereof, any state, any individual, public or private corporation, political subdivision, governmental agency, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever.

(21) "Radioactive material" means any material which emits radiation spontaneously.

(22) "Radiation" means gamma rays and x-rays, alpha and beta particles, neutrons, protons, high-speed electrons and other nuclear particles.

(23) "Recovery" means processing of EHW to obtain useful material or energy.

(24) "Recycling" means any process by which EHW is transformed into new products in such a manner that the original waste may lose its identity.

(25) "Reuse" means return of EHW into the economic stream for use in the same kind of application as before without change in its identity.

(26) "Treat or decontaminate" means any activity of processing that changes the physical form or chemical composition of EHW so as to render it less hazardous or not environmentally hazardous.

(27) "Triple rinse" or "triple rinsing" means a specific treatment or decontamination of empty pesticide containers using the following procedure:

(a) Place volume of water or an appropriate diluent in the container in an amount equal to at least 10% of the container volume.
(b) Replace container closure.
(c) Rotate and up-end container to rinse all interior surfaces.
(d) Open container and drain rinse into spray or mix tank.
(e) Second rinse: repeat steps (a) through (d) of this subsection.
(f) Third rinse: repeat steps (a) through (d) of this subsection and allow an additional 30 seconds for drainage.
(g) If rinses cannot be added to spray or mix tank, and cannot be used or recovered, they shall be considered to be EHW.

63-015 GENERAL REQUIREMENTS FOR STORAGE AND DISPOSAL OF ENVIRONMENTALLY HAZARDOUS WASTES

(1) Any person generating EHW or operating an EHW facility shall:
(a) Use best available and feasible methods to reuse, recycle, recover or treat any or all compounds of the EHW.
(b) Not dilute or alter waste from its original state except if alteration is to recycle, recover, reuse or treat the EHW.

(c) Dispose of EHW that cannot be reused, recycled, recovered, treated, or decontaminated at an EHW disposal site, EHW collection site, EHW facility or authorized disposal facility outside the State.

(d) Store EHW in a secure enclosure, including but not limited to a building, room or fenced area, which shall be adequate to prevent unauthorized persons from gaining access to the waste and in such a manner that will minimize the possibility of spills and escape to the environment. A caution sign shall be posted and visible from any direction of access or view of EHW stored in such enclosure. Caution signs shall be in accordance with the Oregon Safety Code for Places of Employment, Chapter 28, Section 28-2-3. Wording of caution signs shall be as follows: Caution - Hazardous Waste Storage Area - Unauthorized Persons Keep Out.

(e) Label all containers used for onsite storage of EHW. Such label shall include but not necessarily be limited to the following:
  (A) Composition and physical state of the waste;
  (B) Special safety recommendations and precautions for handling the waste;
  (C) Statement or statements which call attention to the particular hazardous properties of the waste;
  (D) Amount of waste and name and address of the person producing the waste. This subsection shall not apply to storage in non-transportable containers.

(f) Maintain records, beginning July 1, 1976, indicating the quantities of EHW generated, their composition, physical state, methods of reuse, recovery, or treatment, ultimate disposition and name of the person or firm providing transportation for wastes transferred to amother location. This information shall be reported annually to the Department on or before September 30 for the previous year ending June 30.

(g) Not store EHW for longer than 90 days unless the Department determines that an acceptable disposal method is not available.

(h) Not place EHW in a collection vehicle or waste storage container belonging to another person for the purpose of storage, collection, transportation, disposal, recycling, recovery or reuse unless:
  (A) The waste is securely contained, and
  (B) The waste collector is furnished, at the time of removal, a written statement incorporating the information required by subsection(1)(e) of this section or a certificate as required by section 63-035, subsection(3)(c), for pesticide containers.

(2) Subsection(1)(f) of this section shall not be applicable to EHW transferred to EHW collection sites. Subsections(1)(e) and (1)(f) of this section shall not be applicable to empty pesticide containers, but see section 63-035, subsections(2) and (3).

(3) Transportation of EHW shall be in compliance with the rules of the Public Utility Commissioner of Oregon and other local, State or Federal agencies if applicable.

(4) EHW Collection Sites.
  (a) An EHW collection site may not be established, operated or changed unless the person owning or controlling the collection site obtains written authorization therefor from the Department.

(b) Written authorizations by the Department shall establish minimum requirements for the collection of EHW, limits as to types and quantities of wastes to be stored, minimum requirements for operation, maintenance, monitoring and reporting and supervision of collection sites and ensure compliance with pertinent local, State and Federal standards and other rules.
(c) EHW collection sites may charge fees for waste delivered to such sites.
(d) Any solid waste disposal facility authorized by permit from the Department may also operate as an EHW collection site, if authorized in accordance with subsections(4)(a) and (4)(b) of this section.

(5) EHW disposal sites, except as specifically provided herein, shall be operated in accordance with ORS Chapter 459.

(6) An EHW facility may be established or operated without an EHW disposal site license or EHW collection site authorization.

(7) All accidents or unintended occurrences which may result in the discharge of an EHW to the environment shall be immediately reported to the Department or to the Emergency Services Division of the Executive Department at its Salem office (378-4124).

(8) No person shall dispose of EHW except in accordance with these rules and other applicable requirements of ORS Chapter 459.

(9) EHW shall be stored and handled or prepared for collection or transportation in such a manner that incompatible wastes or materials are not mixed together, causing an uncontrolled dangerous chemical reaction.

(10) Any person generating, reusing, recycling, recovering, treating, storing or disposing of EHW, in addition to complying with these rules, shall also comply with the following statutes and rules adopted pursuant thereto, as such statutes and rules may relate to those activities:
(a) ORS Chapter 454, pertaining to sewage treatment and disposal systems;
(b) ORS Chapter 459, pertaining to solid waste management and environmentally hazardous wastes;
(c) ORS Chapter 468, pertaining to air and water pollution control; and
(d) ORS Chapter 654 and OAR Chapter 437, Sections 22-001 to 22-200, pertaining to occupational safety and health.

63-020 LIABILITY FOR IMPROPER DISPOSITION OF EHW.

(1) Any person having the care, custody or control of an EHW or a substance which would be an EHW except for the fact that it is not discarded, useless or unwanted, who causes or permits any disposition of such waste or substance in violation of law or otherwise than as reasonably intended for normal use or handling of such waste or substance, including but not limited to accidental spills thereof, shall be liable for the damages to person or property, public or private, caused by such disposition.

(2) It shall be the obligation of such person to collect, remove or treat such waste or substance immediately, subject to such direction as the Department may give.

(3) If such person fails to collect, remove or treat such waste or substance immediately when under an obligation to do so as provided by subsection (2) of this section, the Department is authorized to take such actions as are necessary to collect, remove or treat such waste or substance.

(4) Any person who fails to collect, remove or treat such waste or substance immediately, when under an obligation to do so as provided in subsection(2) of this section, shall be responsible for the necessary expenses incurred by the State in carrying out a clean-up project or activity under subsection (3) of this section.

63-025 ENFORCEMENT. Whenever it appears to the Department that any person is engaged or about to engage in any acts or practices which constitute a violation of ORS 459.410 to 459.690 or the rules and orders adopted thereunder or of the terms of a license, without prior administrative hearing, the Department may institute proceedings at law or in equity to enforce compliance therewith or to restrain further violations thereof.

63-030 VIOLATIONS. Violation of these rules, shall be punishable upon conviction as provided in ORS 459.992, Section (4).

63-035 PESTICIDE WASTES.

(1) Classified Wastes.
  (a) All wastes containing pesticides and pesticide manufacturing residues which meet the criteria under subsection(1)(b) of this section and empty pesticide containers are hereby classified as EHW, except as provided in subsection(2) of this section.
  (b) Pesticide wastes which meet one or more of the following criteria are classified as environmentally hazardous:
    (A) Oral toxicity. Material with an oral LD_{50} equal to or less than 500 milligrams per kilogram.
    (B) Inhalation toxicity. Material with an inhalation LC_{50} equal to or less than 2 milligrams per liter as a dust or mist or an inhalation LC_{50} equal to or less than 200 milligrams per cubic meter as a gas or vapor.
    (C) Dermal penetration toxicity. Material with a dermal LD_{50} equal to or less than 200 milligrams per kilogram.
    (D) Aquatic Toxicity. Material with 96-hour TLm or 96-hour LC_{50} equal to or less than 250 milligrams per liter.

(2) Declassified wastes. The following wastes are declassified as not being environmentally hazardous:
  (a) Empty noncombustible pesticide containers, including but not limited to cans, pails or drums constructed of steel, plastic or glass, bearing the signal word "Danger" on their labels, which have been decontaminated and certified in accordance with subsections(3)(a) and (3)(c) of this section and which have been transferred for disposal to an EHW collection site, authorized container disposal site or authorized container recycling or reuse facility.

(b) Empty combustible pesticide containers, including paper bags and drums, but not including plastic containers, bearing the signal word "Danger" on their labels, which have been burned in accordance with subsection (3)(b)(A) or (3)(b)(B) of this section or which have been transferred to an EHW collection site or authorized container disposal site in accordance with subsection (3)(b)(C) of this section.

(c) Empty pesticide containers bearing the signal words "Warning" or "Caution" on their labels which have been decontaminated in accordance with subsection (3)(a) of this section or which have been buried in accordance with subsection (3)(b)(A) or (3)(b)(B) of this section or which have been transferred to an EHW collection site or authorized container disposal site in accordance with subsection (3)(b)(C) of this section.

(d) Empty pesticide containers that have been employed for home and garden use. These wastes may be disposed with other household refuse pursuant to OAR 340, Division 6, Subdivision 1.

(e) Wastes equal to or less than the following quantities:

(A) 5 empty pesticide containers per agricultural operation per year which have been decontaminated in accordance with subsection(3)(a) of this section. These wastes may be disposed by burial in a safe location such that surface and ground water are protected.

(B) 5 pounds (2.3 kg) of unwanted, unusable or contaminated pesticides, per EHW facility per year. These wastes may be disposed in a landfill operated under a valid solid waste disposal permit from the Department, if transferred directly to the landfill, and if each such waste is specifically approved for such disposal by the Department.

(f) Wastes other than those in subsections (2)(a), (2)(b), (2)(c), (2)(d) and (2)(e) of this section which do not meet the criteria in section (1)(b) of this section.

(g) Any person intending to dispose of pesticide wastes or empty pesticide containers provided for in subsections (2)(a), (2)(b), (2)(c), (2)(e), or (2)(f) of this section in a landfill, shall notify the operator of the landfill of such intention, and said operator may refuse to accept such pesticides or empty pesticide containers. The landfill operator or the Department may restrict the amount of such pesticides or empty pesticide containers disposed at any landfill.

(3) Approved Disposal Procedures For Classified Wastes. In addition to the requirements for storage and disposal of EHW specified in section 63-015 of these rules, the following procedures and methods are approved for disposal of pesticide wastes classified as EHW:

(a) Noncombustible containers, including but not limited to cans, pails or drums constructed of steel, plastic or glass, shall be decontaminated by triple rinsing or jet rinsing of containers for liquid or solid pesticides or by other methods approved by the Department. Noncombustible fumigant pesticide containers shall be decontaminated by standing open to the atmosphere with closure removed in an upsidedown position for a period of five (5) or more days. Decontamination shall be performed immediately but not to exceed two (2) days after emptying of containers.

(b) Combustible containers, including paper bags and drums, but not including plastic containers, shall be disposed by:

(A) Burning of combustible containers in an incinerator or solid fuel fired furnace which has been certified by the Department to comply with applicable air emission limits or;

(B) Open burning of not more than 50 pounds in any day, except those used for organic forms of beryllium, selenium, mercury, lead, cadmium or arsenic. Open burning shall be conducted in compliance with open burning rules, OAR Chapter 340, Division 2, Subdivision 3, according to requirements of local fire departments and districts and in such a manner as to protect public health, susceptible crops, animals, surface water supplies and waters of the State or;

(C) Transfer to EHW collection site or authorized container disposal site.

(c) Any empty pesticide container or each lot of such containers transferred to an EHW collection site, authorized container disposal site or authorized container recycling or reuse facility shall be accompanied by a certificate. Such certificate shall:

(A) Certify that all noncombustible containers in such lot have been decontaminated by triple rinsing, jet rinsing or other methods approved by the Department;

(B) Indicate the number of noncombustible containers and the number of combustible containers in such lot;

(C) Indicate the name and address of the person, business or agency which used the pesticide and the signature of the person in charge of using the pesticide.

(d) Subsections(3)(a), (3)(b) and (3)(c) of this section shall not apply to pesticide containers for which direct reuse is intended.

(e) Subsections(3)(a) and (3)(c) of this section shall become effective July 1, 1976. Prior to July 1, 1976, containers may be disposed in authorized container disposal sites.

63-040 RADIOACTIVE WASTES.

(1) Classified Wastes. All wastes containing radioactive materials are hereby classified as environmentally hazardous wastes if such materials are licensed by the Oregon State Health Division as provided in Oregon Regulations OAR, Chapter 333, Division 2, Subdivision 2, and have a concentration when leaving the premises above maximum permissible concentration (MPC), except exempt quantities or concentrations of radioactive materials as specified in Part B, Sections B.3 and B.4 of Oregon Regulations for the Control of Radiation.

(2) Approved Disposal Procedures. Notwithstanding the requirements for storage and disposal of EHW specified in section 63-015 of these rules, no disposal site for any radioactive material, including that produced by a nuclear installation, shall be established, operated or licensed within the State. Such wastes requiring disposal shall be transferred to a legal disposal site outside the State.

ATTACHMENT 3

HW 9.3

ROBERT W. STRAUB
GOVERNOR

PUBLIC UTILITY COMMISSIONER OF OREGON

LABOR & INDUSTRIES BUILDING • SALEM 97310 • Telephone (503) 378-6611

April 14, 1977

William H. Young, Director
Department of Environmental Quality
1234 S. W. Morrison Street
Portland, OR 97205

Dear Bill:

Re: Memorandum of Understanding - Hazardous Materials

I have signed a Memorandum of Understanding prepared by you and have dated it April 12, 1977. I think this is in accord with the discussions by your staff and my staff and should enable us to share our responsibilities effectively.

Sincerely,

Charles Davis
Commissioner

cjc:N

Enclosure

ORS 756.040(1) The commissioners ... shall represent the customers of any public utility or local exchange or motor carrier, and ... he shall make use of the [illegible]

MEMORANDUM OF UNDERSTANDING

between

THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

and

THE PUBLIC UTILITY COMMISSION OF OREGON

In order to better control the transport and disposal of certain hazardous wastes, the above named parties enter into this memorandum of understanding.

THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY AGREES TO:

1. Design a manifest system to monitor the flow of certain listed wastes. DEQ will supply the necessary forms for said system. The procedures needed to implement and operate the system will be determined jointly with the PUC.
2. Supply to the PUC a list of the wastes and known generators that will be included in this system. Update the list periodically.
3. Help implement the system by notifying the generators and disposal site operators of its requirements.
4. Assure generator and disposal site compliance thru ORS 459.045 and ORS 459.410 - 459.690. A specific proposal will be made to the Environmental Quality Commission to adopt a rule requiring the listed generators to comply with the system.
5. Receive and analyze reports generated by the system; and to inform the PUC of any apparent transporter violation of procedures.

6. Assume enforcement responsibility for violations of solid waste or environmentally hazardous waste regulations.

THE PUBLIC UTILITIES COMMISSION AGREES TO:

1. Hold rule making proceedings to adopt a new rule requiring transporters of wastes listed by the DEQ to participate in the manifest system. This would apply to intra and inter-state shipments.
2. Help implement the system by notifying the transporters of its requirements.
3. Develop jointly with the DEQ procedures needed to implement and operate the system.
4. Enforce participation in the system by all transporters of such named wastes.

Charles Davis
Commissioner
Public Utilities Division

April 12, 1977

William H. Young
Director
Department of Environmental Quality

ROBERT W. STRAUB
GOVERNOR

Environmental Quality Commission

POST OFFICE BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. F, January 26, 1979, EQC Meeting

Authorization to Conduct a Public Hearing on the Question of Repealing OAR 340-62-060(2)

Background

OAR 340-62-060(2) was adopted by the Commission on September 22, 1978, (Agenda Item No. J) as part of a rules package governing the procedures for licensing hazardous waste management facilities. The rule states that:

> "The Department may exempt certain collection sites operating for less than 60 days from having to obtain a collection site license. However, prior to establishment, such sites shall obtain written authorization from the Department and shall comply with such rules as may be indicated therein."

The purpose of adopting this rule was to allow the setting-up of temporary collection sites in response to temporary disposal problems. A typical example of this was the voluntary effort by the Jackson County Extension Service to collect excess pesticides from farmers once a week for several weeks until they could amass a large enough quantity for economical shipment to Arlington (Ref. 1). We believe that this service would not have been provided if the Extension Service were forced to apply for a permanent hazardous waste collection site license. However, upon review of the rule, both the legislative Counsel Committee and the Department of Justice agree that it goes beyond our rulemaking authority (Ref. 2).

The Department has been trying to get such a site established in the area, but is having difficulty as it is not lucrative enough to attract a private operator and local governments are wary of dealing with hazardous materials.

Statement of Need for Rule Making

(a) The rule violates ORS 459.505 which states that, with the exception of the waste generator "no person shall store a hazardous waste anywhere in this State except at a licensed hazardous waste collection or disposal site".

(b) Department counsel recommends repeal of the rule as it is judged to be beyond the scope of DEQ statutory authority.

(c) No relevent reports or studies were used in preparing this repeal proposal.

Evaluation

The intent of the rule is beneficial in that it provides a reasonable temporary solution to a temporary problem. We propose to seek legislative authority to have it reinstated. At present, however, it is illegal and should be repealed.

Summation

OAR 340-62-060(2) exceeds the Department's statutory authority and should be repealed.

Director's Recommendation

Based upon the summation, it is recommended that the Commission authorize a public hearing, before a hearings officer, to take testimony on the question of repealing OAR 340-62-060(2).

Bill

WILLIAM H. YOUNG

Fred Bromfeld:mm
229-6210
December 22, 1978
Attachments: (2) Letter to Jack Peabody from Donald W. Berry
Letter to Legislative Counsel Committee from William H. Young

REFERENCE 1

SW - Jackson Co.
Hazardous Waste

EXTENSION SERVICE
Jackson County Office

Oregon State University

Mailing address:
1301 Maple Grove Drive
Medford, Oregon 97501 (503) 773-8215

July 13, 1978

Jack Peabody (223-1912)
Chem-Nuclear Inc.
200 Market Building, Suite 967
200 S. W. Market Street
Portland, OR 97201

Dear Mr. Peabody:

Enclosed is $97.60 in checks. Could you please give us credit for this amount so that we may dispose of some pesticides at your Arlington site. I am in hopes of being able to take these materials up there on July 21st if the necessary clearances can be obtained. Could you make the credit out to "Jackson County Weed Control-Extension Service."

We are hoping to have about 6 or 7 barrels and move them in a pickup. Attached is a list of materials that we have gathered. We will be talking with the local DEQ representative, Merlyn Hough, on Monday. He will look over the materials and our intended packaging and/or our transporting setup.

With regard to your four point questionnaire some of the questions would be answered on the attached. Also - 1) These chemicals were collected from various sources in Jackson County as a primary cleanup to comply with DEQ and EPA regulations. Sources were growers, private individuals and governmental agencies. 2) Wastes consist primarily of agricultural insecticides of various types and/or unrinsed empty containers of the same material -- total amount will be 5-6, 55 gal. drums plus 1, 30 gal. It will be shipped via private pickup with an enclosed canopy in back. We intend that all materials will be encased in plastic sacks inside of steel drums.

Since this is a one time cleanup offer we do not anticipate any quantity of additional materials arising from the same sources in the near future. Can you please do whatever paperwork is necessary for us so that we can complete this project. Many thanks for your cooperation to date.

Sincerely,

Don Berry

DWB:mv
Enclosure (229-6210)

Donald W. Berry
Area Extension Agent

cc: Fred Bromfeld, Dept. of Environmental Quality Solid Waste Div.
✓Merlyn Hough, DEQ, Medford Branch
Dick Finnel, Jackson County Public Works

REFERENCE 2

Bromfeld

ROBERT W. STRAUB
GOVERNOR

Department of Environmental Quality

522 S.W. 5th AVENUE, P.O. BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5383

November 30, 1978

Legislative Counsel Committee
5101 State Capitol
Salem, Oregon 97310

Attention: Thomas Clifford

Re: Administrative Rule
Review Number 1734

Dear Committee Members:

We are informed by Mr. Underwood from the Department of Justice that his office concurs with legislative counsel's view that OAR 340-62-060(2) goes beyond our rulemaking authority.

For the present we will not interpret the rule in a manner inconsistent with legislative authority. We will promptly bring this matter to the attention of the Commission and recommend that they repeal the rule.

Review will be undertaken to see if there is a satisfactory resolution of the problem the rule was designed to meet which is within the legislative intent. If not, we will seek legislative reflection on the matter.

We will be happy to answer any questions the Committee may have.

Sincerely,

William H. Young

William H. Young
Director

PWS:ts

cc: Joe Richards
Ray Underwood
Fred Bromfeld

RECEIVED
DEC 5 1978
SOLID WASTE SECTION

ROBERT W. STRAUB
GOVERNOR

Environmental Quality Commission

POST OFFICE BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. G. January 26, 1979, EQC Meeting

Request for Authorization to Conduct Public Hearing on Potential Amendments to Oregon's Water Quality Standards (OAR Chapter 340, Division 4)

Background and Evaluation

ORS 468.735 provides that the Commission by rule may establish standards of quality and purity for waters of the state. Present Water Quality Standards (contained in Subdivision 41 of OAR Chapter 340) were adopted by the Commission in December 1976.

The U. S. Environmental Protection Agency has disapproved and requested revision of some of the standards adopted in December 1976.

By letter to the Governor dated July 18, 1977, (Attachment I), EPA requested changes in 3 areas to permit their full approval of Oregon's Standards: (1) anti-degradation policy expansion and clarification, (2) clarification of procedures for granting variances to temperature and turbidity standards to accommodate essential instream construction (or elimination of such variances) and (3) relaxation of Total Dissolved Gas Standard to be consistent with adjacent states.

EPA also, by separate communications, urged the Department to consider more specific standards relative to Toxics and consider substitution of Fecal Coliform standards for the present coliform standards. EPA can promulgate federal standards for Oregon waters if state standards are not, in their judgement, sufficient for approval.

In June 1978, the Department circulated issue papers for public comment relative to alternative potential changes in standards for Temperature, Turbidity, Fecal Coliforms, Total Dissolved Gases, Antidegradation Policy and Toxic Substances. Numerous comments were received. The Department has summarized and evaluated the comments and prepared proposed standards revisions (see Attachment II). The next steps in the process include circulation of draft proposals, issuance of public hearing notice, the formal rule making hearing required under state law and final action by the Commission.

Summation & Statement of Need for Rule Making

1. ORS 468.735 provides that the Commission by rule may establish standards of quality and purity for waters of the state in accordance with the public policy set forth in ORS 468.710.

2. Oregon has adopted water quality standards, with the last adoption action being in December 1976. Such standards are contained in OAR Chapter 340, Division 4, Subdivision 1.

3. The U. S. Environmental Protection Agency, acting pursuant to the Federal Water Pollution Control Act, has disapproved and requested revision of some of Oregon's standards adopted in December 1976.

4. Following opportunity for public input on alternatives, proposed standards revisions have been drafted and are ready for circulation for further input and public hearing. Documents relied upon in preparing the proposals include the literature cited (pages 48, 49, 65, 66, and 93) and a list of respondents from both the private and public sectors (pages 91 and 92). (See Attachment II)

Director's Recommendation

Based upon the summation, it is recommended that the Commission authorize the Department to give notice and proceed to public hearing, before a hearings officer to take testimony on the question of amending Oregon's Water Quality Standards for Temperature, Turbidity, Fecal Coliform, Total Dissolved Gases, Antidegradation Policy and Toxic Substances.

Bill

WILLIAM H. YOUNG

Harold L. Sawyer/em
229-5324
January 10, 1979
Attachments I and II

ATTACHMENT I

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION X
1200 SIXTH AVENUE
SEATTLE, WASHINGTON 98101

REPLY TO ATTN OF: M/S 441

JUL 18 1977

Honorable Robert W. Straub
Governor of Oregon
Salem, Oregon 97310

Dear Governor Straub:

We have completed our review of the water quality standards revision contained in Volume I of the Oregon Statewide Water Quality Management Plan which was transmitted to us on February 2, 1977 by Mr. William H. Young.

With a few exceptions, I hereby approve the water quality standards which are incorporated into your Management Plan as being in conformance with the requirements of the Federal Water Pollution Control Act Amendments of 1972 and EPA Regulations. The exceptions are as follows:

1. The antidegradation policy included in your standards was not complete as required by EPA regulations. Approval of that element cannot be granted without further clarification.

2. The process and criteria for administering your policy on granting variances to water quality standards needs to be clarified and incorporated into your standards document. The variance determination procedures appear to be open ended which is not consistent with EPA guidelines.

3. Your total dissolved gas criterion needs to be reconciled with those of Idaho and Washington for waters common to Oregon and the other states.

We also need a letter from the appropriate State authority certifying that the revised water quality standards were duly adopted and are included within and are enforceable under State law.

It is my understanding that the Water Quality Management Plan requires a review of the antidegradation and variance policies by December 1977. Prior to that time we will work with the staff of the DEQ to achieve a mutual agreement on the above issues.

A letter containing a more detailed discussion of these deficiencies has been sent to the Department of Environmental Quality.

Oregon DEQ policy sets forth a program for review of one-third of the State's water quality basins in each of the next three fiscal years. Water quality standards will be a part of that review. This should insure continual improvement of the standards as new information becomes available.

My staff will be happy to work with the Department of Environmental Quality in providing technical input for criteria and policy review. We may also be able to recommend supplemental criteria for toxics and sedimentation. Certainly, in the future, toxic substances will have to receive increasing attention in standards and other parts of our regulatory activity.

Sincerely,

Donald P. Dubois
Regional Administrator

cc: William H. Young

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
PROPOSED WATER QUALITY STANDARDS REVISIONS
January 1979

Background

In June 1978, the Department published and distributed a package of materials entitled "Review of Water Quality Standards With Local Governments and Interested Citizens". The intent of the information package was to involve the public and to solicit comments and suggestions for improving and revising six selected water quality standards. The standards are part of Oregon's Statewide Water Quality Management Plan and incorporated into Division 41 of Oregon Administrative Rules Chapter 340.

As was previously discussed in the June 1978 package, revisions of several standards are necessary because some aspects of these standards are unacceptable to the Environmental Protection Agency (EPA). Specifically, EPA requested changes in 3 specific areas: (1) anti-degradation policy expansion and clarification, (2) clarification of procedures for granting variances to temperature and turbidity standards to accommodate essential instream construction (or elimination of such variances) and (3) relaxation of Total Dissolved Gas Standard to be consistent with adjacent states. EPA also urged by separate letter that other clarifications be considered.

The "Review of Water Quality Standards With Local Governments and Interested Citizens, June 1978" contained issue papers relative to Oregon's Water Quality Standards for the following:

1. Turbidity
2. Temperature
3. Fecal Coliforms
4. Total Dissolved Gases
5. Antidegradation Policy
6. Toxic Substances

A discussion of each standard and possible alternatives for revising them, including the probable consequences were presented as a starting point to generate comments and suggestions.

What Information is Contained In This Package of Materials?

The Department received comments from 33 agencies, interested groups, and individuals. This document was developed in response to those comments and describes the Department's consideration of the public's suggestions.

The material is organized by the respective water quality standard for which revisions are proposed. It includes the following items for each of the standards:

1. A copy of the issue statement and possible alternatives from the June 1978 review document.

2. A summary of written testimony.

3. The Department's evaluation and response to the comments and suggestions.

4. The Department's formulation of revised water quality standards and recommended actions.

In addition, a summary of general comments received and the Department's responses, as well as a bibliography of the written testimony are presented.

What Happens Next?

Needless to say, the Department was delayed in assembling this package. As a result, the schedule for public hearings and presentation of the final proposed revisions before the Environmental Quality Commision has been set back.

The Department urges you to review this document containing the draft revisions for the six water quality standards. Changes in each of the standards are proposed based upon the public's input. Comments on the contents of this package will be taken at a scheduled public hearing. Following the hearing, the Department will evaluate the comments and make necessary revisions prior to submitting the final revisions to the EQC for adoption.

ISSUE STATEMENT FROM JUNE 1978 REVIEW DOCUMENT

TURBIDITY STANDARD

What is the current turbidity standard?

The current turbidity standard in each of Oregon's 19 river basins is related to point source discharges and other activities of man. This standard generally reads as follows:

> No wastes shall be discharged and no activities shall be conducted which either alone or in combination with other wastes or activities will cause violation of the following standards in the waters of the _____ Basin:
>
> Turbidity (Jackson Turbidity Units, (JTU):
>
> No more than a 10 percent cumulative increase in natural stream turbidities shall be allowed except for certain specifically limited duration activities which may be specifically authorized by DEQ under such conditions as it may prescribe and which are necessary to accommodate essential dredging, construction, or other legitimate uses or activities where turbidities in excess of this standard are unavoidable.

What is the objection of EPA to the wording of this standard?

EPA objects to the variance clause, which is underscored, in the standard. Their interpretation is that the variance clause is open-ended and that DEQ can vary or remove the criteria for a waterway at its own discretion without changing the beneficial uses assigned to it.

How many years has the Department had the variance clause in this standard?

In 1966 the State Sanitary Authority, predecessor to the DEQ, was required by Federal Law to adopt water quality standards for interstate waters. The Sanitary Authority originally proposed a turbidity standard without the variance clause. During the period of public review and

the public hearing process for the adoption of the proposed water quality standards, the public recommended that a variance clause be included in the turbidity standard. Thus, as special water quality standards were proposed and adopted in 1966-1967 for interstate waters such as the Columbia, Klamath, Willamette, Grande Ronde, Walla Walla, and Snake Rivers and the estuarine and marine waters, the turbidity standard included the variance clause. This clause also has been a part of the turbidity standard since 1969 for the Rogue, Umpqua, Clackamas, Molalla, and Sandy River Basins, and since 1970 for the Tualatin, McKenzie, Santiam and Deschutes River Basins. In all of these cases, EPA had approved the standard including the variance language. The variance clause currently exists in each of the 19 designated river basins in Oregon.

Under what types of instream construction or legitimate activities does the Department grant a variance to this standard?

The Department considers that any instream permanent construction designed to benefit the public is a legitimate activity. Such construction includes bridge piers, fish ladders, dams, and installation of culverts. Maintenance dredging in the Columbia River and the estuaries is a necessary activity in order to accommodate navigation.

What procedures does the Department follow to insure that turbidity levels resulting from a proposed project will not adversely impact the other beneficial uses?

Before the Department grants a variance to the turbidity standard, the following steps are taken:

1. The applicant for the variance submits a description of the proposed project, including the construction method, time of year construction is to take place, and the estimated time to complete the construction.

2. The Department reviews the project proposal to determine if adequate precautions have been considered to keep the turbidity to a minimum.

3. The Department also contacts the local Fish and Game Department Biologist to determine if the proposed timing of the project will adversely impact fish spawning, fish migration, or sports fishing. If the proposed timing of the project is detrimental to the fishery or recreation, the Department requests the applicant to modify the construction schedule such that these beneficial uses are not impaired.

How well have the above procedures worked in the past?

They have worked very well. The applicants are generally very understanding when the Department requests that additional precautions be taken during construction or that the construction be delayed or shifted to minimize the impact on the fishery or other uses of water.

Is the variance clause a necessary part of the turbidity standard?

After having 10 years of experience in applying the variance clause to a variety of projects, the Department believes that the variance language provides an effective means for dealing with legitimate instream work which cannot avoid violating the turbidity standard.

What are the alternatives to the wording of the turbidity standard?

The following are possible alternatives to the turbidity standard variance clause and their probable consequences:

1. Leave the turbidity standard as is with the variance clause included:

   a. EPA would not approve such a standard.

b. From an administrative standpoint, the Department, the public and the private sector have not encountered any problems with the variance clause.

2. Clarify the variance clause as follows:

. . . . . except for specifically limited duration activities which may be specifically authorized by DEQ under such conditions as [it] DEQ and the Department of Fish and Wildlife may prescribe and which are necessary to accommodate essential dredging, construction, or other legitimate uses or activities where strict compliance with this standard is unavoidable.

a. Such a modification to the current variance clause may or may not be acceptable to EPA.

b. The additional language inserted, giving the Department of Fish and Wildlife an opportunity to prescribe conditions or precautions, is the standard procedure DEQ currently follows.

Summary of Written Testimony

The respondents to the turbidity standard generally support the concept of having a variance clause incorporated into this standard. A number of respondents offer suggestions for modifying the variance clause. The responses submitted to the Department are categorized below:

1. Two respondents suggest leaving the standard in its present form (31,33).

2. Ten respondents suggest rewording the existing standard as shown in alternative 2 of the issue statement. (4, 5, 6, 11, 13, 16, 21, 22, 24, 26). Two of these respondents further recommend that public participation or comment should be included in the standard (5, 13).

3. One respondent has no comments or suggested revisions to the proposed standard (28).

4. One respondent indicates that there are no problems working with the existing standard (19).

5. One respondent indicates that either the existing or reworded standard (alternative 2) is acceptable (30).

6. One respondent indicates that a proposed change in the standard would be impossible to meet under present irrigation practices (15). One respondent also indicates that the proposed turbidity standard of 10 J.T.U. (sic) is impossible for irrigation systems to meet (17).

7. One respondent indicates that his organization would be reluctant to either endorse or approve any changes in the variance clause of the standard (10).

8. One respondent indicates that it is impractical to apply the turbidity standard except for point source discharge (22).

9. One respondent suggests that the language in the standard providing for authorized variance by DEQ should be no more lenient than allowed by the appropriate federal permit (2).

10. One respondent suggests that if a reworded variance clause is to be incorporated into the turbidity standard, it should indicate that any request for temporary increases in stream turbidity be reviewed by both state and federal resource agencies (29).

11. Two respondents suggest additional language be added to the existing and proposed variance clauses as shown below. The suggested language is underscored.
    a. .... where strict compliance with this standard is unavoidable and where all practicable turbidity-preventative techniques have been applied (14).
    b. . . . . under such conditions as DEQ and the Department of Fish and Wildlife may prescribe after soliciting written comments from the federal resource agencies (32).

12. One respondent suggests revisions to tighten-up the variance clause as follows: (9)
    a. Indicate how 10% cumulative increase is defined and measured.
    b. Provide guidance on what "essential" or "legitimate" activities might be waived by DEQ.
    c. Require use of public notice procedures for waiver requests.
    d. Make the rule applicable to nonpoint sources explicitly; include or reference Best Management Practices.
    e. Specify monitoring requirements for users or workers in or near streams who could increase turbidity. Specify a higher level of monitoring required for waiver situations.

f. Reference "adequate precautions" used by DEQ to assure turbidity is kept to a minimum.

g. Fish and Wildlife comments should not be limited only to "timing" of waiver work.

h. Require documentation and record retention of comments from Fish and Wildlife and public regarding waivers.

Response to Written Testimony

The existing turbidity standard variance clause, which is common to each of Oregon's 19 designated river basins, pertains to short-term instream work such as dredging or construction or other point source activities. Other activities within a watershed that occur over a longer time span (months, one or more seasons or years) and have the potential for adding turbidity to receiving streams are covered under the section of "Policies and Guidelines Generally Applicable to All Basins", OAR 340-41-026. The long term activities include: (1) sand and gravel removal, (2) logging and forest management, (3) road building and maintenance, and (4) other nonpoint sources.

The current language applicable to these activities is as follows:

"(5). . . .Sand and gravel removal operations shall be conducted pursuant to a permit from the Division of State Lands and separated from the active flowing stream by a water-tight berm wherever physically practicable. Recirculation and reuse of process water shall be required wherever practicable. Discharges, when allowed, or seepage or leakage losses to public waters shall not cause a violation of water quality standards or adversely affect legitimate beneficial uses.

(6) Logging and forest management activities shall be conducted in accordance with the Oregon Forest Practices Act so as to minimize adverse effects on water quality.

(7) Road building and maintenance activities shall be conducted in a manner so as to keep waste materials out of public waters and minimize erosion of cut banks, fills, and road surfaces.

(8) In order to improve controls over nonpoint sources of pollution, federal, state and local resource management agencies will be encouraged and assisted to coordinate planning and implementation of programs to regulate or control runoff, erosion, turbidity, stream temperature, stream flow, and the withdrawal and use of irrigation water on a basin wide approach so as to protect the quality and beneficial uses of water and related resources. Such programs may include, but not be limited to, the following:

(a) Development of projects for storage and release of suitable quality waters to augment low stream flow.

(b) Urban runoff control to reduce erosion.

(c) Possible modification of irrigation practices to reduce or minimize adverse impacts from irrigation return flows.

(d) Stream bank erosion reduction projects."

Concern was expressed by irrigation districts that it would not be possible to meet the turbidity standard. Item 8 above recognizes the complexities of irrigation return flows and other nonpoint sources of pollution. Under Item 8(c), which reads: "such programs may include, but not be limited to, the following:

(c) Possible modification of irrigation practices to reduce or minimize adverse impacts from irrigation return flows."

In suggesting the possible modification of irrigation practices to reduce or minimize adverse impacts from irrigation return flows, the Department did not intend that any current practice be automatically changed over to some other type of practice. Instead, it was envisioned that studies would be designed in agricultural sections of Oregon to answer the following questions:

1. What is the volume of irrigation return flows to the receiving stream? How do these volumes vary throughout the irrigation season?

2. What are the chemical, physical, and biological constituents of irrigation return flows? What types and quantities of pesticides are associated with these return flows?

3. What is the impact of the return irrigation flows on the receiving stream's water quality. If measurable changes in water quality result, how do these changes impact other beneficial uses of the streamflow?

4. What are the alternatives to the current practice of irrigation? Will the alternatives help to conserve water and yet allow a given unit of land to produce the same or a higher yield of crop? What is the economic feasibility of implementing alternative irrigation practices? Will these alternative methods significantly reduce the impact of return flows on receiving stream quality, or will it create other types of undesirable water quality problems?

Hopefully, these and possible other questions will be answered in present and future 208 program studies being conducted within various agricultural regions of Oregon. As management practices are developed for specific regions of the state, these practices can be adopted in the appropriate basins during the basin plan update process.

Sections 401 and 404 of Public Law 92-500 pertain to instream activities which potentially affect water quality standards. These two sections require public participation and are discussed below.

Section 401 reads that any applicant for a federal license or permit to conduct any activity which may result in a discharge to navigable waters must provide a certificate from the involved state indicating that such discharge will comply with applicable water quality standards.

Before such license and/or permit is granted, the involved federal agency must make broad public notice of the application and invite public comment. All federal and state natural resource agencies, plus others, receive the public notice. The DEQ must also make additional public notice of its intention to certify the projects under federal permit. The state notice is generally distributed simultaneously in the same mailing pouch with the federal notice, to cut down the process time. Except for rare occasions of serious emergency, the state certification

must be in hand of the federal agency before the federal permit can be issued.

Section 404 provides that the Army Corps of Engineers may issue permits, after notice and opportunity for public hearing, for the discharge of dredged or fill material into the navigable waters at specified disposal sites. This section essentially requires a permit for any activity which disturbs a stream bed or bank. In addition to issuing permits for specific activities, the Corps of Engineers issues general permits for any category of activities involving discharges of dredged or fill material if they determine that the activities in such category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have minimal cumulative adverse effect on the environment.

Before either of the above permits is issued by the Army Corps of Engineers, the DEQ is requested to certify that there is reasonable assurance the proposed project will not violate applicable water quality standards. Through the public notice and/or public hearing process, both the public and state and federal resource agencies have an opportunity to comment on the proposed projects. If a proposed project is judged to adversely impact the environment, the reviewers can recommend that certain limitations be included in the permit.

Under terms of the federal water pollution control act and the federal fisheries and wildlife preservation act, the Environmental Protection Agency and the U. S. Fish and Wildlife Service respectively may veto projects even though the state certification has been issued.

For proposed federal projects or projects receiving partial federal funding and having a potential for impacting water quality, a process is available for reviewing such projects. In Oregon, the OMB A-95 review system provides an opportunity for state and federal resource agencies to make environmental impact reviews of such project proposals. These reviews include draft and final versions of Environmental Impact Statements and Environmental Assessments. The reviewers may challenge any portion of these reports, request additional evaluation or emphasis on any

section, or suggest changes according to other available information. Similarly, the public is given an opportunity to comment on these reports.

It appears that with the available federal and state permit requirements and rules and regulations available to control the potential adverse impact of turbidity resulting from short-term instream and shoreline activities, that modification of the existing standard should be adequate in minimizing such impacts. Under the current process, each of the state and federal resource agencies as well as the public are provided opportunity to review and comment on such projects. Over the years, the Department has sought the judgment of the Department of Fish and Wildlife field biologists because they generally have the most knowledge of localized stream sections where proposed projects occur. Most other state and federal resource agencies do not have field staff providing such broad coverage of the state's network of waterways.

The permit process which each involved federal agency maintains, also provides a documentation of each project proposed. This documentation includes a project description, public notice and review period, comments received, and limitations placed in the permit.

While most short duration instream activities which would cause turbidity are covered by various state and federal permits and approvals as discussed above, some are not. For example, if a city needs to place, replace or repair a water or sewer line crossing a small stream (work that can be done in a day or two with their own crews and equipment) other permits may not be required. This is the type of activity for which many variances are granted (with Fish and Wildlife concurrence). We do not believe that more extensive reviews, notice, etc. and the cost and time delays associated therewith are warranted for such one time events.

Summary

Nonpoint source activities are covered as follows under the section, "Policies and Guidelines Generally Applicable to All Basins", OAR 340-41-026. These are considered to be long-term activities and include: (1) sand and gravel removal, (2) logging and forest management, (3) road building and maintenance, and (4) other nonpoint sources. As management practices are

developed through the 208 program, these practices can be adopted for the appropriate basins during the basin management plan update.

The current turbidity standard is most easily applied to point source discharges or to activities which occur in or immediately adjacent to the stream. Most instream and shoreline activities having a potential impact on water quality require an appropriate permit from the Army Corps of Engineers. Before such permits are granted, public notice and/or public hearing regarding the proposed project provides the public as well as state and federal resource agencies an opportunity to submit comments. Also, the DEQ must certify that the proposed project will not violate applicable water quality standards.

For proposed projects being fully or partially funded by federal monies, the state and federal resource agencies and the public are afforded an opportunity to review and comment on the Environmental Impact Statements and Assessments. Short duration activities not requiring other state or federal permits are adequately controlled by DEQ and Fish and Wildlife through the variance process.

Recommended Action

In review of the above, the following revised turbidity standard should be considered for adoption. The existing language proposed to be deleted is enclosed in brackets and the new language proposed is underscored:

> Turbidity (Jackson Turbidity Units JTU):
> No more than 10 percent cumulative increase in natural stream turbidities shall be allowed except for certain specifically limited duration activities which may be specifically authorized by DEQ under such conditions as [it] DEQ and the Department of Fish and Wildlife may prescribe and which are necessary to accommodate essential dredging, construction, or other legitimate uses or activities where: (1) strict compliance with this standard is unavoidable and (2) all practicable turbidity preventative techniques have been applied.
>
> In no event, however, may a variance be granted which in all probability will adversely affect any other beneficial use disproportionately.

The above amended language is proposed to be incorporated into the following sections:

OAR 340-41-205(2)(c)
" " 245(2)(c)
" " 285(2)(c)(A)
" " 325(2)(c)
" " 365(2)(c)
" " 445(2)(c)
" " 485(2)(c)
" " 525(2)(c)
" " 565(2)(c)
" " 605(2)(c)
" " 645(2)(c)
" " 685(2)(b)
" " 725(2)(c)
" " 765(2)(c)
" " 805(2)(c)
" " 845(2)(c)
" " 885(2)(c)
" " 925(2)(c)
" " 965(2)(c)

ISSUE STATEMENT FROM JUNE 1978 REVIEW DOCUMENT

TEMPERATURE STANDARD

What is the current temperature standard?

The current temperature standard relates to point source discharges and other activities of man. It reads generally as follows for each of the 19 river basins in Oregon:

> No wastes shall be discharged and no activities shall be conducted which either alone or in combination with other wastes or activities will cause violation of the following standards in the waters of the _____ Basin:
>
> Temperature:
>
> No measurable increases shall be allowed when stream temperatures are ___° F. or greater; or more than 0.5°F. increase due to a single-source discharge when receiving water temperatures are ___° F. or less or more than 2° F. increase due to all sources combined when stream temperatures are ___° F. or less, <u>except for specifically limited duration activities which may be specifically authorized by DEQ under such conditions as it may prescribe and which are necessary to accommodate legitimate uses or activities where temperatures in excess of this standard are unavoidable</u>.

What is the primary objection of EPA to the wording of this standard?

EPA objects to the variance clause in the standard, which has been underscored. It is their interpretation that the variance clause is open-ended and that DEQ can vary or remove the criteria for a waterway at its own discretion without changing the beneficial uses assigned to it.

How many years has the Department had the variance clause in this standard?

This variance clause has been a part of the temperature standard since 1969 in the Rogue, Umpqua, Clackamas, Molalla, and Sandy River Basins and since 1970 in the Tualatin, McKenzie, Santiam and Deschutes River Basins. In all of these cases, EPA previously had approved the standard including the variance language. The variance clause currently exists in each of the 19 designated river basins in Oregon.

Under what types of short term discharges or activities would the Department use the variance clause?

With the variance clause, the Department could legitimately grant a variance to the temperature standard under emergency conditions if, for example, a discharger had no other alternative but to release heated waters to the receiving stream in order to make the necessary repairs to his system.

Over the past 5 years, approximately how many times has the Department granted a variance to this standard?

The Department probably has not been requested to grant a variance to this standard for more than two or three times over these years.

Is the variance clause a necessary portion of the temperature standard?

No.

What are the alternatives to the wording of the temperature standard?

The following are possible alternatives to the temperature standard variance clause and their probable consequences:

1. Leave the temperature standard as is with the variance clause included.

   a. This would probably be unacceptable to EPA.

   b. The variance clause currently serves little or no usefulness.

2. Delete the variance clause from each of the 19 basins' temperature standard.

   This would be acceptable to both EPA and DEQ.

Summary of Written Testimony

In general, the majority of respondents object to deleting the variance clause. Some propose modifying the variance to make it less open-ended. Summaries of the comments and suggestions are outlined as follows:

1. Five respondents object to deleting the variance clause and want it to remain as it currently reads (10, 15, 24, 26, and 31). Their reasons include the following:
   a. During the irrigation season, stream flows are made up of irrigation return flows which exceed the temperature standard. If the variance were removed the district's discharges would be in violation of the temperature standard (10 and 15).
   b. Although the Corps of Engineers does not consider waters released from impoundments to be discharges as the term is defined in Section 502 of PL-500, these waters affect stream temperatures (31).
   c. Removing the variance would result in the EQC having to act on each variance request and this would make the regulatory process more complex and costly. (24).

2. Five respondents comment that some form of variance is needed to accommodate "legitimate" activities and emergency discharges (8, 20, 21, 25, and 27). Refinement of the variance to require outside agency review prior to DEQ granting a variance is proposed (20, 21, 25, and 27).

3. Five respondents support the alternative to delete the variance and concur with EPA's interpretation that the existing variance is open-ended (4, 12, 13, 29 and 32). Four respondents merely reported that they have no objection to deleting the clause (11, 14, 19 and 30).

4. Other suggestions include the following:
   a. The variance clause should be deleted for point source discharges and those nonpoint sources where

it is possible to obtain background readings. A new standard should be developed for specific application to nonpoint source discharges (22).

b. A more realistic temperature standard is needed because irrigation return flows exceed 64°F (17).

c. Nonpoint source activities should be explicitly included in the rule. In addition, measurement techniques for temperature increases should be defined and known Best Management Practices for reducing discharge temperature should be prescribed (9).

Response to Written Testimony

The primary intent of the temperature standard is to keep water temperatures as low as possible and to maintain the normal seasonal variation to accommodate fish, and still allow for other beneficial uses of water.

The variance clause was originally included in the standard to allow for specific limited duration activities which could result in short term temperature increases. Examples of these types of activities include instream fill and removal operations and construction activities. Depending upon the background temperature of the stream and other conditions, a violation of the standard could occur because silt and color in water, resulting from these activities, absorb more heat from sunlight than clear water. In addition, the Department could legitimately grant a variance under emergency conditions if a discharger had no other alternative but to release heated waters to the receiving streams in order to make necessary repairs to his system during an upset condition. Since the Department has received so few variance requests and because EPA was concerned that the variance was too open-ended, it was proposed that the variance language be deleted.

Concern was expressed by irrigation districts that the temperature standard would be impossible to meet under present irrigation practices if the proposed change in the standard is made. One respondent feels that the numerical limits of the standard are unrealistic. Another requests that a new standard be developed for specific application to nonpoint source discharges.

As previously related, the existing temperature standard variance clause pertains to short-term instream work or other specific activities or discharges. The flood irrigation practice, which occurs in selected basins in Oregon, is a seasonal rather than a limited duration activity and the variance clause cannot be used to waive the standard. However, the Department recognizes the complexities of irrigation return flows and other nonpoint sources of pollution. Specific policy statements pertaining to those activities that occur over a longer time span and have the potential of warming receiving streams appear in OAR 340-41-026, "Policies and Guidelines Generally Applicable to All Basins".

The particular statement which relates to nonpoint sources of pollution reads as follows:

> (8) In order to improve controls over nonpoint sources of pollution, federal, state and local resource management agencies will be encouraged and assisted to coordinate planning and implementation of programs to regulate or control runoff, erosion, turbidity, stream temperature, stream flow, and the withdrawal and use of irrigation water on a basin wide approach so as to protect the quality and beneficial uses of water and related resources. Such programs may include, but not be limited to the following:
>
> (a) Development of projects for storage and release of suitable quality waters to augment low stream flow.
>
> (b) Urban runoff control to reduce erosion.
>
> (c) Possible modification of irrigation practices to reduce or minimize adverse impacts from irrigation return flows.
>
> (d) Stream bank erosion reduction projects.

Technically, temperature violations may occur from irrigation return flows. The system of use and reuse of flood irrigation waters among irrigation districts causes waters to warm as they are dispersed over land, collect sediment and are returned to irrigation ditches numerous times before being discharged to a receiving stream.

The Department acknowledges, however, that with respect to irrigation return flows and similar nonpoint source activities, it is difficult to obtain a background temperature reading upon which to base a temperature standard violation. Water temperatures tend to vary naturally with high stream temperatures generally resulting from solar heating of streams having low flows. Under such conditions, the existing temperature standard may appear to be unrealistic.

The 208 program studies are presently being conducted to answer the questions which were posed in the discussion on the turbidity standard. These studies are needed to adequately address the issues and concerns expressed by the respondents relative to nonpoint source discharges. As results of these studies are evaluated and as management practices are developed for specific regions of the state, changes and/or additions in the standard can be proposed.

One respondent requests that sewage treatment facilities be exempt from the standard. He feels that if the proposed standard is applied to domestic waste treatment plants, cooling towers may become a requirement.

Although treated sewage invariably has a slightly higher temperature than that of the receiving water, deletion of the temperature standard variance clause would not result in requirements for reducing the temperature of treated municipal effluent. All sources which discharge into receiving streams have NPDES permits which contain a specified mixing zone. The designated mixing zone is a segment of the stream in which the Department may suspend the applicability of certain water quality standards. The mixing zone is appropriately limited in size adjacent to or surrounding the point of waste entry and it is sized so that the admixture of effluent and receiving stream waters does not violate the standards outside the mixing zone.

Recirculation, pretreatment, or alternative disposal methods of heated effluents are required for those effluents, such as high temperature industrial cooling waters, where the heat content cannot dissipate in a reasonably sized mixing zone.

One issue which was not discussed in the proposal to delete the temperature standard variance is the effect of certain hydroelectric and flow regulation projects on water temperature. The Corps of Engineers relate in their testimony that the regulation of flows can affect water temperatures.

The "state of the art" is to construct dam projects with multilevel withdrawal capabilities. These types of projects allow the release of water from different elevations in the vertical water column rather than from a fixed point.

The recently constructed Lost Creek Lake project has multilevel capabilities. The Applegate project will also have this capability. Since stored water can be released from different depths of the reservoir, the Corps has more control over the temperature of waters withdrawn for flow augmentation.

For instance, Oregon Department of Fish and Wildlife may specifically request that a certain water temperature be released which is several degrees higher than the inflowing water to the reservoir. Although a technical violation of the temperature standard would result, the intentional release of a specific water temperature serves the beneficial use for which the standard is written.

The Department agrees that some form of variance should be considered for those agencies which regulate flows for augmentation purposes. Since these activities do not necessarily occur for short periods of time, the Department proposes to add language to allow temperature increases resulting from hydroelectric and flow regulating projects for the enhancement of fish life when requested by the Department of Fish and Wildlife.

Much of the testimony recommends that the variance be subject to conditions

of DEQ and the Department of Fish and Wildlife as in the proposed revised turbidity standard. Although this alternative was not suggested in the information package, the Department concurs that altering the variance in this manner would provide adequate protection to the fisheries resource and also a degree of flexibility for legitimate activities. EPA agrees that this would be a good approach, as well.

Recommended Action

Based upon the review and evaluation of comments from the respondents, the Department proposes to modify the variance language of the temperature standard. Since the numerical limits of this standard differ among the 19 river basins, these limits have been left blank to avoid confusion. The existing language proposed to be deleted is enclosed in brackets and the new language proposed is underscored:

No measurable increases shall be allowed when stream temperatures are °F. or greater; or more than 0.5°F. increase due to a single-source discharge when receiving water temperatures are °F. or less; or more than 2°F. increase due to all sources combined when stream temperatures are °F or less, except: [for]

1. For specifically limited duration activities which may be specifically authorized by DEQ under such conditions as [it] DEQ and the Department of Fish and Wildlife may prescribe and which are necessary to accommodate legitimate uses or activities where temperatures in excess of this standard are unavoidable and

2. From hydroelectric and flow regulating projects for the enhancement of fish life when requested by the Department of Fish and Wildlife.

In no event, however, may a variance be granted which in all probability will adversely affect any other beneficial use disproportionately.

The above amended language is proposed to be incorporated into the following sections:

OAR 340-41-205(2)(b)(A) and (B)
" " 245(2)(b)(A)
" " 285(2)(b)(A)
" " 325(2)(b)(A)
" " 365(2)(b)(A)
" " 445(2)(b)(A) and (B) and (C)(i) and (C)(ii) and (D)
" " 485(2)(b)(A) and (B)
" " 525(2)(b)(A) and (B)
" " 565(2)(b)(A) and (B)
" " 605(2)(b)
" " 645(2)(b)
" " 685(2)(o)
" " 725(2)(b)
" " 765(2)(b)(A) and (B)
" " 805(2)(b)
" " 845(2)(b)
" " 885(2)(b)
" " 925(2)(b)(B)
" " 965(2)(b)(A) and (B)

COLIFORM STANDARD

What is the current coliform standard?

Currently coliform standards exist for estuarine and marine waters and for interstate rivers and selected interstate rivers. The standard for these various types of water generally read as follows:

> No wastes shall be discharged and no activities shall be conducted which either alone or in combination with other wastes or activities will cause violation of the following standards in the waters of the _____Basin:
>
> Organisms of the coliform group where associated with fecal sources (MPN or equivalent MF using a representative number of samples):
>
> 1. Streams and Rivers
>
>   Average concentrations of coliform organisms shall not exceed 1,000 per 100 milliliters, with 20% of the samples not to exceed 2,400 per 100 ml.
>
> 2. Marine waters and estuarine shell fish growing waters: Median concentrations shall not exceed 70 per 100 ml.
>
> 3. Estuarine waters other than shell fish growing waters: Average concentrations shall not exceed 240 per 100 milliliters or exceed this value in more than 20% of the samples.

How many coliform standards does Oregon have for fresh water?

Oregon has two coliform standards as follows:

A. Waters having a standard with an average of 1,000 coliforms per 100 ml. include the following:

1. Goose Lake

2. Main stem Klamath River

3. Main stem Willamette River (River Miles 0 to 187) and Multnomah Channel

4. Columbia River downstream from Highway 5 Bridge between Portland and Vancouver (River Miles 0 to 106.5)

5. Main stem of Grande Ronde River

6. Main stem of Walla Walla River

7. Main stem of Snake River

8. Main stem of Rogue River from Salt Water intrusion to Dodge Park (River Mile 4 to 138.4) and Bear Creek

9. Main stem Umpqua River from Tidewater to South Umpqua River confluence, South Umpqua River from mouth to near Canyonville (River Mile 53), and Cow Creek from mouth to Glendale (River Mile 42)

8. Waters having a standard with an average of 240 coliforms per 100 ml. include the following:

1. Deschutes River Basin (except periods of high runoff)

2. All Willamette Basin Streams except the mainstem Willamette River and Multnomah Channel (see A.3)

3. Rogue River above Dodge Park (River Mile 138.4) and all unspecified tributaries (see A.8)

4. North Umpqua River and all unspecified tributaries (See A.9)

5. Sandy River Basin

6. Mainstem Columbia River upstream from Highway 5 Bridge to the eastern Oregon-Washington boundary

What bacterial standard does EPA want Oregon to adopt?

EPA recommends the following bacterial standards for Oregon's Waters:

1. For fresh waters and estuarine waters other than shell fish growing waters -- a log mean of 200 fecal coliform per 100 milliliters based on a minimum of 5 samples in a 30-day period with no more than 10 percent of the samples in the 30-day period exceeding 400 per 100 ml.

2. For marine and estuarine shell fish growing waters -- a fecal coliform median concentration of 14 MPN per 100 milliliters, with not more than 10 percent of the samples exceeding 43 organisms per 100 ml.

What are the limitations of the total coliform group as a bacterial standard?

The total coliform group has been used for many years as an indicator of pollution because these bacteria are always present in the normal intestinal tract of humans and other warm-blooded animals and are discharged in large numbers in feces. Unfortunately, some strains included in the total coliform group have a wide distribution in the environment but are not common in fecal material. To further complicate the problem, some coliforms surviving sewage chlorination may increase substantially within one or two days travel downstream, a phenomenon known as regrowth (Geldreich, 1967).

What are the advantages for using fecal coliform as a standard?

Fecal coliform is a sub-group of the total coliform bacteria. Thus, fecal coliforms are present in the intestinal tract of humans and other warm-blooded animals. Geldreich (1967) reported on other studies showing that fecal coliforms were usually absent, or present in comparatively small numbers, in undisturbed soils, with most results showing less than 2 fecal coliforms per gram. Fecal coliforms, however, increased markedly in contaminated soils such as feedlots, locations recently flooded with domestic sewage, and river banks along heavily polluted streams. He also reported on studies showing that terrestrial vegetation and insects yielded a relatively small percentage of fecal coliforms.

Under what conditions do fecal coliform regrowth occur?

According to Geldreich (1978), fecal coliform measurements in polluted waters relate more precisely to fecal contamination and are less susceptible to bias caused by the regrowth characteristic of nonfecal coliforms in receiving waters. The regrowth phenomenon for fecal coliforms requires excessive nutrient discharges generally associated with poor treatment practices used on some food processing and paper mill wastes. Data analyzed from numerous stream pollution investigations indicate that fecal coliforms will not persist in receiving waters with a BOD of less than 30 mg/l. When nutrients are available in polluted waters in concentrations sufficient to support fecal coliform persistence or regrowth, Salmonella, and possibly other bacterial pathogens that may be present, may also persist for extended periods.

How were these EPA recommended standards derived?

According to Geldreich (1978), in recreational lakes and streams where fecal coliform densities ranged from 1 - 200/100ml, 28% of the water samples and 19% of the bottom sediment samples contained Salmonella. When fecal coliform densities were 1000/100 ml, Salmonella occurrence was 96% and in poorer quality water with fecal densities that exceeded 2000/100 ml, Salmonella were detected in 98% of the samples.

For shell fish growing waters, EPA (1976) quoted Hunt and Springer (1973) for the derivation of the fecal coliform concentration as follows:

> A series of studies was initiated by the National Shellfish Sanitation Program and data relating the occurrence of total coliforms to numbers of fecal coliforms were compiled. Information was received from 15 states and 2 Canadian provinces and was arbitrarily divided into 4 geographical areas: northwest, southern states, mid-Atlantic, and northeast. A total of 3,695 coliform values and 3,574 fecal coliform values were included in the tabulations. The prime objective was to determine the correlation between the two indicator groups and secondarily, to determine whether or not coliform data could be used as a basis for evaluation of a potential fecal coliform standard.
>
> The data show that a 70 coliform MPN per 100 ml at the 50th percentile was equivalent to a fecal coliform MPN of 14 per 100 ml. The data, therefore, indicate that a median value for a fecal coliform standard is 14 and the 90th percentile should not exceed 43 for a 5 tube 3 dilution method.

What would be the impact of a change from the present total coliform standard to the EPA recommended fecal coliform standard?

Based on a comparison of monthly total coliform and fecal coliform data collected from 11 of Oregon's 19 river basins in 1976, adoption of a fecal coliform standard would not significantly improve this standard's compliance record (Ore. DEQ, June 1977). Adoption of a fecal coliform standard, however, would be a better indicator of fecal contamination.

What are the alternatives to the wording of the existing coliform standard?

The following are possible alternatives to the coliform standard and their probable consequences:

1. Leave the coliform standard as is.

   a. This would probably be unacceptable to EPA.

   b. The existing standard may cause confusion because it is impossible to differentiate between coliforms from fecal and non-fecal sources without conducting additional tests.

2. Adopt as recommended by EPA, both the standard for fresh waters and estaurine waters other than shellfish growing waters and the standard for marine and estaurine shellfish growing waters.

   a. Problems arising from sampling frequency may result from adoption of the EPA recommended standard for fresh waters and estaurine waters other than shellfish growing waters which reads: a log mean of 200 fecal coliform per 100 milliliters based on a minimum of 5 samples in a 30-day period with no more than 10 percent of the samples in the 30-day period exceeding 400 per 100 ml.

      As a practical matter, it is not possible to meet the minimum sampling frequency of 5 samples per month, except on special studies type surveys. Thus, an upper limit for a fecal coliform density is an essential part of the coliform standard because the DEQ and others often sample waterways on a once per month basis.

   b. EPA has also proposed to use a log mean value in the standard. The reason for this is because bacterial populations are often characterized by many more extremely high counts relative to the median than extremely low counts, forming a positively skewed

(asymmetric) distribution. For both practical and theoretical reasons, it is preferable to work with a normal or symmetrical distribution. The counts are therefore transformed into logarithms to obtain a calculated log mean value. However, if the original data have a log-normal distribution, the central tendency of such data can also be estimated by the geometric mean. The geometric mean of the original data is equal to the antilog of the arithmetric mean of the logarithms. It is of interest that the population geometric mean is equal to the population median (FWQA, 1971). Thus, in the case of bacterial data forming a skewed distribution, the median value from a large number of samples should be sufficient for estimating the central tendency of the fecal coliforms. This procedure would be similar to the one adopted by the National Shellfish Program and recommended by EPA for adoption.

3. Revise the EPA recommended fecal coliform standard wording for fresh waters and estuarine waters other than shellfish growing areas to be consistent with that proposed for marine and estuarine shellfish growing waters. In addition, add an upper limit for fecal coliform density for a single sample.

> "For fresh waters and estuarine waters other than fish growing waters:
>
> 1. Fecal coliform concentration should not exceed 800 per 100 milliliters at any time.
>
> 2. A fecal coliform median of 200 per 100 milliliters, with not more than 10 percent of the samples exceeding 400 organisms per 100 ml."

a. Under item 1 above, the fecal coliform density of 800 per 100 ml. was arbitrarily selected because it is twice the 400 organisms per 100 ml. in item 2. Also, review of fecal coliform data collected by DEQ in 1976, indicate that 800 organisms/100 ml. is generally the upper limit encountered (Ore. DEQ, June 1977).

b. Changing the wording of the EPA recommended standard from log mean value to a median value is technically sound and less cumbersome to derive.

Summary of Written Testimony

The respondents to the coliform standard generally support the concept of using fecal coliform rather than total coliform as an indicator of fecal contamination. The responses submitted to the Department are summarized and categorized below:

1. Five respondents suggest that the fecal coliform standards be adopted as proposed by EPA (4, 5, 9, 13, 29). Four of these respondents ask why DEQ cannot collect or require dischargers to collect at least 5 samples per month (4, 5, 13, 29).

2. Eight respondents suggest adoption of Alternative 3 as shown above (2, 8, 14, 21, 22, 25, 30, 33).

3. One respondent suggests setting one coliform standard, without specifying either fecal or total coliform, for all waters except those used for commercial rearing of seafood. He also suggests inclusion of the following in such a standard: (1)
   a. Set sampling frequency and intensity according to probable budget.
   b. Include the testing methods and their reliability.

4. One respondent expresses reservations concerning the shift from standards based on log mean values to median values as proposed in Alternative 3. He suggests additional review of low sampling statistical treatments and retention of the "log mean" approach if it proves to be most accurate (21).

5. One respondent concurs that the fecal coliform is a more meaningful indicator of fecal contamination than the total coliform count.

   However, he expressed concern regarding the assumption of risk assigned to certain numerical limits without any qualification. Unless the real risks are known for sure, precious little is gained from the switch over from the total coliform to the fecal coliform standard (7).

6. One respondent suggests the inclusion of nonpoint source activities (grazing) as regulated activities to control coliforms and prescribe best management practices such as fencing to minimize instream cattle (9).

7. One respondent supports the concept of establishing an upper limit for fecal coliform density in a single sample. However, he questions whether this upper limit should be set arbitrarily (22).

8. One respondent indicates that a standard which protects the production and human use of shellfish would be acceptable (19).

9. One respondent agrees that it is desirable to change the standard from total coliforms to fecal coliforms, but he has no opinion regarding sampling frequencies or statistics.

10. Two respondents are opposed to the establishment of an upper limit standard of 800 fecal coliforms per 100 ml. for a single sample. One indicates that such a standard is too open-ended and could easily be abused in enforcement or compliance (4). The other comments that raising the upper limit arbitrarily is not preferable and statistical analysis cannot make it so (5).

11. One respondent expresses the following concerns: (3)
    a. He favors a bacterial standard based on fecal coliforms instead of total coliform "when sufficient data has been collected and evaluated" as stated in DEQ's Assessment of Stream Quality in Oregon Based on Evaluation of Data Collected in The Stream Quality in Oregon Based on Evaluation of Data Collected in The 1976 Stream Sampling Program, June 1977.
    b. Relative to shellfish growing waters, he raises the question of whether the fecal coliform MPN of 14 per 100 ml. limitation provides the same, greater, or lesser degree of protection from human health hazards associated with the oyster growing beds in Tillamook Bay where most of the fecal bacteria during periods of high flows are of animal manure origin as

compared to oyster growing beds in Chesapeake Bay where he assumes that most of the fecal bacteria are of human origin. Based on this assumption, he believes that this standard would provide a much higher degree of protection in Tillamook Bay and, consequently, be too conservative in comparison. Rigid enforcement of this standard could cause major economic distress to the dairy and cheese industries in Tillamook County.

c. Relative to the proposed upper limit for a single sample: "Fecal coliform concentration should not exceed 800 per 100 ml. at any time". If this standard had been in force in 1976, violations would have occurred one or more times in more than half of the river basins surveyed in 1976. If not more than 10% of the samples taken in one year could exceed 400 organisms per 100 ml., violations would have occurred in additional river basins. If this were true for 1976 when precipitation amounts usually ranged from 20% to 50% below normal across the State, many more violations would be expected during years of normal and above normal precipitation since high fecal bacterial counts are directly related to precipitation runoff.

d. He suggests the following standards based on arithmetic manipulations to reduce the number of violations if EPA is exerting pressure to the point where fecal coliform standards must be adopted now, but subject to future revision:

	Fecal Coliform, MPN/100 ml.		
For Non-Shellfish Growing Waters	Median	90th Percentile	Maximum
During Swimming and Water Skiing Months, June-Sept.	200	600	1,200
During Other Months October-May	2,000	6,000	12,000

Response to Written Testimony

Some respondents are confused with the application of the fecal coliform standard. The proposed fecal coliform standard would be an instream standard

and not an effluent discharge limit. Since 1972, waste discharge permits issued to sewage treatment plants have had a fecal coliform limitation included. This limit requires the disinfection of treated sewage effluent to reduce fecal coliform bacteria to a monthly average of no more than 200 per 100 ml. or a weekly average of no more than 400 per 100 ml. Sewage treatment plant operators generally analyze more than 5 samples per month.

Some respondents comment that if DEQ could not sample the surface waters across the State at least five times per month, it should give up that particular program.

The fecal coliform standard recommended by EPA for fresh and estuarine waters other than shellfish growing waters is essentially for swimming and other water contact recreation. Most county health departments sample surface waters within their boundaries which are frequently used during the recreation season.

Standard Methods (1975) recommends that the maximum transport time for bacterial samples not exceed 6 hours and that the sample be processed within 2 hours upon receipt at the laboratory. It is not possible for the Department to physically cover many areas of the State and meet the recommended delivery of samples to the laboratory. Thus, the Department relies on waste water treatment plant operators and county health departments to analyze many bacteriological samples.

A respondent suggests the inclusion of the testing methods and reliability in the coliform standard. The testing methods for determining compliance with water quality standards appears under the section, Water Quality Standards Not To Be Exceeded for each of the 19 designated river basins. The language for testing methods is presented below:

> " (5) Testing Methods: The analytical testing methods for determining compliance with the water quality standards contained in this section shall be in accordance with the most recent edition of Standard Methods for the Examination of Water and Waste Water published jointly

by the American Public Health Association, American Water Works Association, and Water Pollution Control Federation, unless the Department has published an applicable superseding method, in which case testing shall be in accordance with the superseding method; provided, however, that testing in accordance with an alternative method shall comply with this section if the Department has published the method or has approved the method in writing."

The 14th edition of Standard Methods (1975) is the most current. Coliforms may be tested by either the multiple-tube fermentation procedure or the membrane filter procedure as outlined in this manual. Also, a table containing the reliability of the test results (95% confidence limits) is presented under each procedure. Test results are expressed in terms of MPN (Most Probable Number). The MPN is a statistical estimate of the most probable density of coliform bacteria in a sample. This means that a given MPN value is not a precise measurement. For example, if a three-tube multiple dilution method yields an MPN of 200 per 100 ml. of sample, the actual bacterial density of the water sample would range between 70 and 890 organisms based on the 95% percent confidence limit. Thus, if a single water sample is analyzed 100 times, 95 of these results will yield between 70 and 890 organisms. The remaining 5 values will be higher or lower than this range.

According to Standard Methods, the statistical reliability of the membrane filter procedure is greater than that of the multiple-tube procedure, but membrane counts are not really absolute numbers. For example, if a membrane filter count yields 200 organisms per 100 ml. of sample, the lower and upper 95 percent confidence limits would range from 35 to 470 organisms.

The Department does not believe it is necessary to include the test procedures and the reliability of the results in the coliform standard because of the following:

1. Both the multiple-tube fermentation and membrane filter procedures are acceptable tests.

2. Each MPN value listed in Standard Methods shows the appropriate 95% confidence limits.

A question was raised relative to the assumption of public health risks assigned to certain bacterial numerical limit without qualification (7). The respondent further states that unless the real risks are known for sure, precious little is gained from the switch over from the total coliform to the fecal coliform standard.

In reviewing the criteria for recreational waters, Geldreich (1970) stated that the idealistic aim in establishing microbiological standards for recreational water has been to develop the "magic number" of organisms that will denote no health risk to the people using the water. Conversely, this implies a health risk will exist if the number is exceeded. Unfortunately, only a limited number of epidemiological and bacteriological studies of bather health and bathing water quality have been performed. Chanlett (1973) reviewed some of these past studies and the subsequent selection of the fecal coliform numerical limit as follows:

> "The treasured bit of the American past, "the old swimming hole," presents an epidemiological and bacteriological paradox. So do the expanses of beaches along Chicago's Lake Michigan front, and the variety of river, sound, and ocean beaches in and about New York City. Coliform MPN values shoot up into several thousand per 100 ml; yet there are no devastating waterborne disease outbreaks among the swimmers. Even among closely observed summer camp groups on lake and river sites, there has been only one reported outbreak, that of bacillary dysentery in a camp on an Indiana lake. The lack of a correlation between high coliform counts and the presence of disease among swimmers raises three questions:
>
> 1. What is the origin of the coliforms observed?
> 2. How much ingestion of water is there during swimming?
> 3. Are swimmers healthy specimens with a good chance of having a high resistance to waterborne infections?
>
> This lack of a correlation prompted the U.S. Public Health Service to do epidemiological-environmental field studies at Chicago beaches in

1948, on Ohio River beaches at Dayton and Bellevue, Kentucky, in 1949, and on the Long Island Sound beaches at New Rochelle and Mamaroneck, New York, in 1950 in saline tidal waters. The epidemiological index was any illness, respiratory, ear, eye, skin, or gastrointestinal. The water quality index was the total coliform MPN.

The findings summarized by A. H. Stevenson showed:

1. Swimmers had a higher overall incidence of all illnesses than nonswimmers.
2. Those swimmers under 10 years of age had a 100 percent higher incidence of illness than those over 10.
3. Of the illnesses reported, 20 percent were gastrointestinal; 50 percent were eye, ear, nose, and throat ailments; and the balance were skin and others.
4. On the Chicago beaches after three successive days with coliform MPNs over 2,300/100 ml, there was for a time a significant increase in reported illness.
5. On the Ohio River, the gastrointestinal illness rate was substantially higher than in the other groups studied. When the median coliform density of the Ohio rose to 2,700/100 ml, a significant increase in disease was reported.

The National Technical Advisory Committee on Water Quality Criteria used these findings to set a bacteriological limit for primary-contact recreation waters, that is, for water uses during which ingestion occurs: swimming, skiing, surfing, and wading. The limit set is in terms of fecal coliforms. In a minimum of 5 samples in 30 days, the fecal coliforms shall not exceed a logarithmic mean of 200/100 ml, nor shall more than 10 percent of total samples in 30 days exceed 400/100 ml. How did these numbers evolve from the Public Health Service studies? "An epidemiologically detectable health effect" level was cited as 2,300 to 2,400 coliforms per 100 ml. Later, Ohio River water studies showed that 18 percent of total coliform were

fecal coliform. That moves the detectable health effect level for fecal coliforms to 400/100 ml. A factor of safety moves it to 200/100 ml. Furthermore, the Committee cites the findings of the Santee, California, project on sewage renovation. That data showed one plaque-forming unit per milliliter can be expected in treated sewage, with one virus particle per 10,000 fecal coliforms. Thus, "A bathing water with 400 fecal coliforms per 100 ml could be expected to have 0.02 virus particles per 100 ml (one virus particle per 5,000 ml)." The implication is that viruses will be at very low concentrations in natural waters with 200 fecal coliforms per 100 ml."

Geldreich et al. (1978) reviewed the EPA criteria for fecal coliform bacteria in "Quality Criteria For Water, 1976". They stated the following:

"The Red Book implies that the absence of fecal coliforms indicates that there is a concurrent absence of all microbial pathogens. This, of course, is not true for those pathogens that are not found in the intestinal tract and for those pathogens more resistant to disinfection than the indicator system."

"At the present time, it is not possible to correlate indicator densities with pathogen densities because methodologies for quantification of all pathogens are inefficient or nonexistent. However, correlations of fecal coliforms with Pseudomonas aeruginosa, Staphylococcus aureus, Mycobacterium balnei or Naegleria gruberi are not expected because these organisms are associated with skin, ear, eye, or nasal passage infections."

Berg et al (1967) indicated that the rate of virual inactivation in natural waters depends upon temperature, water quality, predators, and other factors that are not well understood. They quoted Clark et al (1956) that enteroviruses survive longer in clean water than in heavily polluted water, but in moderately polluted water, survival time is reduced even more. They also concluded that the rate of destruction of a microorganism varies with the type and strain of the microorganism, and with the physical or chemical agent responsible for the destruction. "If the coliform is a valid indicator

of safe water, it is probably because it is present in much greater numbers than bacterial pathogens, and not because it is more resistant to destruction. Many viruses are so much more resistant than bacteria to physical and chemical agents, the absence of coliforms in water does not necessarily preclude the presence of virus."

Foster et al (1971) quoted other studies that in natural freshwater swimming areas and in pools, the majority of health complaints stem from eye and ear ailments and less commonly from nose, throat, and skin complaints.

Geldreich (1970) recommended that fecal coliform bacterial should be used as a baseline indicator system for evaluating the microbiological suitability of recreational waters. He stated that the recommended limit (by the National Technical Advisory Committee) of 200 fecal coliforms/100 ml. for primary contact recreational water use is both realistic and consistent with research findings and field investigations. Foster et al (1971) noted that "while the fecal coliform technique may offer some advantages in particular uses of the coliform test, it is subject to the same general criticism as the total coliform test when applied to bathing water. That is, no relationship between the density of fecal coliforms in bathing water and the health of bathers has been established." The National Academy of Sciences and Engineering (1972) considered the microgiological requirements for bathing and swimming waters. After reviewing the literature, they made no specific recommendation concerning the presence or concentrations of microorganisms in bathing water because of the paucity of valid epidemological data. Their evaluation of the practical use of fecal coliform as an index of contamination is quoted below:

> "There may be some merit to the fecal coliform index as an adjunct in determining the acceptability of water intended for bathing and swimming, but caution should be exercised in using it. Current epidemiological data are not materially more refined or definitive than those that were available in 1935. The principal value of a fecal coliform index is as an indicator of possible fecal contamination from man or other warm-blooded animals . . . .

"In evaluating microgiological indicators of recreational water quality, it should be remembered that many of the diseases that seem to be casually related to swimming and bathing in polluted water are not enteric diseases or are not caused by enteric organisms. Hence, the presence of fecal coliform bacteria or of Salmonella sp. in recreational waters is less meaningful than in drinking water. Indicators other than coliform or fecal coliform have been suggested from time to time as being more appropriate for evaluating bathing water quality. This includes the staphylococci (Favero et al. 1964), streptococci and other enterococci (Litsky et al. 1953). Recently Pseudomonas aeruginosa, a common organism implicated in ear infection, has been isolated from natural swimming waters (Hoadley 1968) and may prove to be an indicator of health hazards in swimming water. Unfortunately, to date, none of the alternative microbiological indicators have been supported by epidemiological evidence.

When used to supplement other evaluative measurements, the fecal coliform index may be of value in determining the sanitary quality of recreational water intended for bathing and swimming. The index is a measure of the "sanitary cleanliness" of the water and may denote the possible presence of untreated or inadequately treated human wastes. But it is an index that should be used only in conjunction with other evaluative parameters of water quality such as sanitary surveys, other biological indices of pollution, and chemical analyses of water. To use the fecal coliform index as the sole measure of "sanitary cleanliness" it would be necessary to know the maximum "acceptable" concentration of organisms; but there is no agreed-upon value that divides "acceptability" from "unacceptability". Thus, as a measure of "sanitary cleanliness" an increasing value in the fecal coliform index denotes simply a decrease in the level of cleanliness of the water."

As one can see, controversy exists among experts over a bacterial indicator of bathing waters. Each of the authors has brought out many

good points which the public should bear in mind. These points are summarized below:

1. Fecal coliforms is probably the best indicator of fecal contamination from warm-blooded animals.

2. Low levels or even the absence of fecal coliforms in surface waters should not be considered to be completely free of other pathogens capable of causing gastrointestinal problems and eye, ear, nose, throat, and skin ailments.

3. If the fecal coliform index is used only as a measure of "sanitary cleanliness" as suggested, then the public is less apt to develop a false sense of security over this standard because of the uncertainty of risks involved.

4. Although many gaps in knowledge exist relative to bacterial water quality and health risks, the Department believes that adoption of such standards based upon the best available information provides at least a relative measure of water quality. When complete bacteriological and epidermiological studies of bather health and surface water quality becomes available in the future, the standards can be modified accordingly.

One respondent expresses reservations regarding the proposed shift from standards based on log mean values to median values. The concern expressed is that with low sample numbers, the "median value" approach could make compliance with fecal coliform standards unnecessarily restrictive. Thus, they suggest that additional review of low sampling statistical treatments and retention of the "log mean" approach if it proves to be most accurate (21).

A bacterial standard based upon the log mean value has advantages, especially if such data are plotted on logarithmic probability paper.

Velz (1951) noted three fundamental characteristics of the nature of variation in MPNs determined from test results using multiple portions in three decimal dilutions as follows:

"(1) The distribution is logarithmically normal, that is, series of MPNs plot as a straight line on log-probability paper.

(2) The estimate of the True Mean Density is located at the midpoint of the distribution at 50 percent.

(3) The slope of the distribution line depends upon the number of portions employed; small number of portions steep slope, wide variation; large number of portions flat slope, narrow variation."

In addition to the above, the confidence limits of the mean density can be easily located graphically, thus eliminating calculations.

Based upon these factors, the Department proposes to use the log mean value in the coliform standard for fresh waters and estuarine waters other than for shellfish growing waters. This means that DEQ's normal stream monitoring frequencies will not generate enough data to determine standards compliance. Special studies will be required to do that. Normal monitoring data would serve as an indicator of where special studies should be undertaken.

Recommended Action

Based upon the review and evaluation of comments from the respondents and the literature, the Department proposes to replace the existing coliform standard with the language as shown below as appropriate:

For fresh waters and estuarine waters other than shellfish growing waters --

1. A log mean of 200 fecal coliform per 100 milliliters based on a minimum of 5 samples in a 30-day period with no more

than 10 percent of the samples in the 30-day period exceeding 400 mer 100 ml.

For marine and estuarine shellfish growing waters --

2. A fecal coliform median concentration of 14 organisms per 100 milliliters, with not more than 10 percent of the samples exceeding 43 organisms per 100 ml.

The following indicate the appropriate substitution of paragraphs 1 and 2 above for existing language:

OAR 340-41-205 (2)(e)	(A)	Replace language after heading with No. 1
"	(B)	Replace language after heading with No. 2
"	(C)	Replace language after heading with No. 1
OAR 340-41-245 (2)(e)	(A)	Replace language after heading with No. 2
"	(B)	Replace language after heading with No. 1
OAR 340-41-285 (2)(e)	(A)	Replace language after heading with No. 1
"	(B)	Replace language after heading with No. 2
"	(C)	Replace language after heading with No. 1
"	(D)	Replace language after heading with No. 1
OAR 340-41-325 (2)(e)	(A)	Replace language after heading with No. 2
"	(B)	Replace language after heading with No. 1
OAR 340-41-365 (2)(e)	(A)	Replace language after heading with No. 1
"	(B)	Replace language after heading with No. 2
"	(C)	Replace language after heading with No. 1
"	(D)	Replace language after heading with No. 1
OAR 340-41-445 (2)(3)	(A)	Replace language after heading with No. 1
"	(B)	Replace language after heading with No. 1
"	(C)(i)	Replace language after heading with No. 1
"	(C)(ii)	Replace language after heading with No. 1
OAR 340-41-485 (2)(e)		Replace language after heading with No. 1
OAR 340-41-525 (2)(e)		Replace language after heading with No. 1
OAR 340-41-565 (2)(e)	(A)	Replace language after heading with No. 1
"	(B)	Replace language after heading with No. 1

OAR 340-41-605 (2)(e)	Replace language after heading with No. 1
OAR 340-41-645 (2)(e)	Replace language after heading with No. 1
OAR 340-41-685 (2)(d)	Replace language after heading with No. 1
OAR 340-41-725 (2)(e)	Replace language after heading with No. 1
OAR 340-41-765 (2)(e)	Replace language after heading with No. 1
OAR 340-41-805 (2)(e)	Replace language after heading with No. 1
OAR 340-41-845 (2)(e)	Replace language after heading with No. 1
OAR 340-41-925 (2)(e)	Replace language after heading with No. 1

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ISSUE STATEMENT FROM JUNE 1978 REVIEW DOCUMENT

TOTAL DISSOLVED GAS STANDARD

What is the current standard for total dissolved gases in water?

The current Total Dissolved Gas Standard in each of Oregon's 19 river basins is related to point source discharges and other activities of man. This standard reads as follows:

> No wastes shall be discharged and no activities shall be conducted which either alone or in combination with other wastes or activities will cause violation of the following standards in the waters of the _____ Basin:
>
> The concentration of total dissolved gas relative to atmospheric pressure at the point of sample collection shall not exceed one hundred and five percent (105%) of saturation, except when stream flow exceeds the 10-year average flood.

What is the primary objection of EPA to this standard?

Both Washington and Idaho have a Total Dissolved Gas Standard of 110% of saturation as opposed to Oregon's 105% standard. Thus, EPA recommends that Oregon revise its standard to be compatible with these two states, since the problem occurs mainly in the Columbia and lower Snake Rivers.

How do dissolved gases reach supersaturated levels to cause a problem?

Excess dissolved gas pressure results from both natural and man-made causes. The three main ways in which waters may become supersaturated with gases are listed in the table below:

TABLE I. EXAMPLES OF NATURAL AND MAN-MADE SOURCES OF SUPERSATURATED WATER

	Type No. I AIR ENTRAINMENT	Type No. II THERMAL	Type No. III ORGANIC
A. Natural	1. Water falls with deep plunge basins.	1. Cold water recharging an aquifer or lake, then geothermally warmed, then returned to surface.	1. Eutrophic levels of photosynthesis in conjunction with hig levels of temperatur and solar radiation.
	2. Turbulence in high velocity streams.	2. Hot weather, often preceded by cold rain	
B. Man-Made	1. Flood gates or other spillways at dams which entrain air bubbles and carry them to depths.	1. Heating water to cool steam-electric stations or other industrial processes.	1. Same as above except may occur in pollutec water to a much great degree.
	2. Injection of air to prevent "water hammer" in turbines, sluiceways, or to reaerate reservoir water.	2. Heating water in fish culture	
	3. Venturi action at pipe joints, or pumps sucking air.		

Reference: Bouck, G. B., et al, Mortality, Saltwater Adaptation, and Reproduction of Fish During Gas Supersaturation. EPA-600/3-76-050, U. S. Environmental Protection Agency, Duluth, Minn. (1976)

Of the three ways that excess dissolved gases can develop in water, which method creates a serious problem and where in Oregon?

To our knowledge, the most important source of a total dissolved gas problem exists on both the Columbia and Snake Rivers. A problem only exists during the high flows (spring freshets) in these two rivers, requiring surplus waters to be bypassed over the spillways of dams. As huge amounts of water flow over the spillways, the water drives air deep into the stilling pools below the dams, forcing the air into solution by the water pressures. The slack-water pools behind the dams also slow down and spread the water over wider areas, exposing it to solar heating. Since higher temperatures decrease the water's ability to hold gases in solution, and since the gases cannot easily escape from the broad surface areas of the relatively placid pool, super-saturation increases (EPA, 1972).

How do supersaturated dissolved gases affect fishes?

A fish needs oxygen to survive and takes in the life-giving oxygen through its gills. The gill membranes on a fish are permeable -- they let dissolved gases through to the blood, but do not let water pass into the blood. This is the key: all dissolved gases in the fish's blood and tissues become the same as in the surrounding water. The blood of the fish becomes supersaturated with dissolved gases when the fish swims in such waters.

When the fish's blood becomes supersaturated with gases two major factors can affect it: pressure change and temperature change. When a "super-saturated fish" swims into warmer water, dissolved gases in its blood come out of solution and begin to form bubbles in the blood and tissues. Or when the same fish swims closer to the surface of the water where the water pressures are less, the same thing happens.

It is very important to note that a fish need not move from deep water to shallow water for the "bubble disease" to occur. Even if the fish is resting in supersaturated water near the surface, it will be affected

by the bubble disease. There are several complex physiological processes within the fish's system that act to release dissolved gases, causing air bubbles in the blood stream. So, as a practical matter, once the blood of the fish becomes supersaturated, he is in trouble -- he will suffer in some significant degree from the ill effects of the gas bubble disease. About the only relief to the salmon is to dive to a depth where the hydrostatic pressure is great enough to hold the gases in solution in his blood, and the salmon doesn't do this since even the deep-water migrations of salmon must come to the surface to ascend fish ladders at the dams.

The bubble disease shows in the fish as small bubbles in the fins, popping eyes or, as revealed by autopsy, small bubbles in vital organs which damage the functioning of those organs. The bubble disease may not kill the fish outright, but it may cause small ruptures in the skin and cause other damage, making the fish more susceptible to ever-present disease or for the small downstream migrants, to predatory fish. And recent experiments indicate that once a fish has experienced some gas bubble disease effects, he becomes a great deal more vulnerable to second exposures (EPA, 1972).

How much supersaturation (total dissolved gas) is damaging to fish, especially to salmonids?

Research effort regarding supersaturation of dissolved gases on fish to date generally indicate the following (EPA, 1976):

1. When either juvenile or adult salmonids are confined to shallow water (1 m), substantial mortality occurs at and above 115 percent total dissolved gas saturation.

2. Some mortality occurred among sensitive fish at dissolved gas levels of 110-115% of barometric pressure when they were restricted to shallow water. These and higher gas levels may be safe for wild fish if they sound to compensatory depths (Bouck, et al, 1976).

3. When either juvenile or adult salmonids are free to sound and obtain hydrostatic compensation either in the laboratory or in the field, substantial mortality still occurs when saturation levels (of total dissolved gases) exceed 120 percent saturation.

4. On the basis of survival estimates made in the Snake River from 1966 to 1975, it is concluded that juvenile fish losses ranging from 40 to 95 percent did occur and a major portion of this mortality can be attributed to fish exposure to supersaturation by atmospheric gases during years of high flow.

5. Juvenile salmonids subjected to sublethal periods of exposure to supersaturation can recover when returned to normally saturated water, but adults do not recover and generally die from direct and indirect effects of the exposure.

6. Some species of salmon and trout can detect and avoid super-saturated water; others may not.

7. Higher survival was observed during period of intermittent exposure than during continuous exposure.

8. In general, in acute bioassays, salmon and trout were less tolerant than the non-salmonids.

What effect does supersaturated dissolved gases have on other types of aquatic life?

Limited information exists regarding the tolerance of zooplankton and other invertebrates to excessive dissolved gas pressure. Nebeker, et al., (1975) reported that the water flea, Daphnia magna exhibited a sensitivity to supersaturation similar to that of the salmonids, with 115 percent saturation lethal within a few days; stoneflies exhibited an intermediate sensitivity similar to bass with mortality at 130 percent saturation; and crayfish were very tolerant, with levels near 140 percent total gas saturation resulting in mortality.

What are the alternatives to revising the total dissolved gas standard?

The following are alternatives to the total dissolved gas standard and their probable consequences:

1. Leave the standard as is at 105%.

   a. This is an assured safe level for fishes and other aquatic life.

   b. EPA may again choose to promulgate a standard of 110% as they attempted to do several years ago.

2. Revise the standard to 110%.

   a. In light of research within recent years, the damaging affects and mortality to fishes, especially salamonids, in the Columbia and Snake Rivers probably would be very minimal if at all.

   b. This would satisfy EPA.

Summary of Written Testimony

The comments from the respondents are categorized as follows:

1. Of the five respondents supporting the current TPG standard of 105% of saturation, four suggest that both Washington and Idaho should revise their standard of 110% to 105% of saturation (5, 13, 22, 29 and 32).

2. Five respondents support revision of the TDG standard to 110% of saturation (4, 11, 19, 21 and 24).

3. One respondent comments that neither the 105% nor the 110% saturation levels can be practically achieved downstream from dams and that a variance clause should be a part of the standard (31).

4. One respondent inquires whether supersaturation resulting from photosynthetic activity by plants had any effect on the TDG standard (22).

5. One respondent inquires about the reliability for measuring total dissolved gas (5).

Response to Written Testimony

In the review of the total dissolved gas standard, it was noted that fish and other aquatic life are the beneficial users of water that are potentially impacted by supersaturated dissolved gases. Some of the comments and questions raised by the respondents indicated that the Department did not adequately address the complexity of the total dissolved gas standard in the review materials. Thus, the following discussion responds to the questions raised and attempts to place the total dissolved gas problem in proper perspective relative to current knowledge.

A respondent inquired about the reliability of measuring total dissolved gas.

According to Fickeisen et al (1975) nearly all dissolved atmospheric gas data has been generated by the Winkler-Van Slyke combination, by gas chromatography, or by the micro-gasometric method. Since 1973 the Weiss Saturometer has been in use to make both field and laboratory measurements of total dissolved gas pressures.

Swinnerton and Sullivan (1962) evaluated the gas chromatography techniques for measuring dissolved oxygen and nitrogen in sea water. The average percent saturation of 270 nitrogen determination was 100.08% with a standard deviation of $\pm$ 2.95. They compared and noted that Hamm and Thompson (1941), using the Van Slyke method obtained an average of 100.9% (percent) nitrogen for 47 determinations with a standard deviation of $\pm$ 3.5.

In 1975, Fickeisen et al compared the Weiss saturometer against a gas chromatograph. Out of 32 paired samples, the saturometer recorded 23 readings lower than that of the gas chromatograph, with these values ranging between 0.1% and 4.9% of saturation. Nine of the saturometer readings were higher than that of the gas chromatograph, with these values ranging from 0.7% to 6.8% of saturation. The mean difference of the 32 paired samples was 0.5% saturation -- the saturometer giving the lower reading. They concluded that the paired analyses did not differ significantly. Pirie and Hubert (1977) concluded that "based on non-parametric statistical techniques, the measurements of the gas chromatograph and the Weiss saturometer were not equivalent and further that the difference was not just a simple one (i.e., a shift in the median or mean) which could probably be corrected by recalibration." Fickiesen et al (1977) indicated that the "testing methods differ in what they measure, with results of gas chromatography (or Van Slyke manometry) representing total gas volume present in both the dissolved and gas-phase state. In theory, the saturometer responds only to dissolved phase gas pressure".

When either the Van Slyke or Weiss saturometer procedures is used, dissolved oxygen is usually analyzed by the Winkler method. The 14th edition of Standard Methods (1975) states that dissolved oxygen can be determined with a precision, expressed as a standard deviation, of about 20 µg/l (0.02 mg/l) in distilled water.

A respondent inquired what, if any, effect photosynthetis has on supersaturation of dissolved gases.

Photosynthetic activity can cause an increase in dissolved oxygen primarily during daylight. Under such conditions and with nitrogen + argon at saturation, the dissolved oxygen content must reach theoretical saturations of 124% and 148% in order to yield total dissolved gas pressures of 105% and 110% of saturation, respectively. These calculated values are based on a pressure of 760 mm Hg. Rucker (1972) indicated that oxygen can cause gas-bubble disease at about 350 percent air saturation.

Waters supersaturated with dissolved oxygen during daylight generally become undersaturated during the night and early morning hours. Thus, the total dissolved gas content follows a cyclical pattern during a 24-hour period.

Five respondents support the existing TDG standard of 105% of saturation and 5 support the EPA recommended standard of 110% of saturation. One respondent states that neither of these saturation levels can be practically achieved downstream from dams and a variance clause should be a part of the standard.

The total dissolved gas problem in the Columbia and Snake Rivers is one of many factors that affect the migration of juvenile and adult salmonids. Total dissolved gas becomes a problem only during high flow years when large volumes of waters are discharged over the spillways of the dams. During low flow years, total dissolved gas is not an apparent problem. For example, during the low spring freshet flow in 1973, Ebel (1973) stated that "gas concentrations rarely exceeded 110% of saturation except in the tailrace of spillways at Bonneville and McNary Dams when occasional spilling did occur". They observed that the gas bubble disease in juveniles and adults was nil.

Ebel et al (1973) noted, however, that the relative survival of juvenile chinook at The Dalles Dam that were released from the Salmon River at

Whitebird in 1973, was about one-twelfth of that measured during comparable flows and sampling effort in 1966 and 1967 (5% vs 60%). They advanced three hypotheses as possible explanations for the apparent low survival of fingerlings in 1973 as follows:

"1. Low river flows prevailed throughout most of the chinook outmigration, with minimal spilling at Snake River Dams and none at Columbia River Dams. As a result most of the migrants were confined to passage through the powerhouses and were subjected to turbine-related losses.

2. The apparent low survival may not at all be related to mortality. Increased holdover (residualism) may have occurred in reservoirs due to the delaying action of low river flows and reduced velocities in the impoundments. The travel time of out-migrants was nearly double over that in the 1966-68 period.

3. Owing to low runoff, water clarity was much higher in 1973 than in a normal flow year. Conceivably, then, the migrants were afforded less protection from predator fish and birds than would have occurred in years of turbid flow. Purse seining in the Snake River during the 1973 summer and fall revealed a large population of squawfish present in this area."

The 1973 freshet flow year provided the best opportunity for making observations of the total dissolved gas concentrations and the incidence of gas bubble disease in migrating salmonids. It also pointed out that either little or no discharge of water over spillways at dams on the Columbia and Snake Rivers is undesirable because of the delays in outmigration and/or turbine-predator related mortalities.

Gas bubble disease in fish was first described about 80 years ago, although its significance in the Columbia and Snake Rivers was not apparent until about 1969. The world literature regarding the effects of supersaturated dissolved gases and the related gas bubble disease

on fish has been critically reviewed by Weitkamp and Katz (1977).

Most of the laboratory bioassays on the various species and life stages of salmonids were performed in shallow tanks generally 25 cm (about 10 inches) to 2 feet deep. These studies generally show that mortality occurs at 110% of total gas pressure and above. But what part of the environment do such studies simulate? Stroud et al (1975) indicate that "constant exposure of fish restricted to shallow depths is typical of the problem faced by fish culturists. The development of pathological changes in wild fish may be different because they are exposed intermittently to supersaturation while moving to different compensatory water depths or to masses of water having different saturation levels. Bouck (1976) also concluded that "the typical laboratory testing program is not sufficiently robust to meet its ultimate purpose. For example, the laboratory testing circumstance typically uses the "worst possible" conditions that a fish might conceivably experience, such as crowded conditions, shallow water, continuous exposure and frequent disturbances. Moreover, the nutritional, immunological, and acclimation state of the test fish is typically unknown. All of these reasons emphasize the need for evaluating the problem in situ."

A fish kill and subsequent investigation of several naturally supersaturated Alpine streams in Klamath Basin provided Bouck (1976) the opportunity to evaluate the problem under natural conditions. He concluded that the supersaturation in the Klamath Basin streams result from geothermal warming of cold rain and melting snow that had percolated to recharge groundwater. Bouck noted that significant mortality at the fish hatchery occurred at 105% of total gas pressure. The water was degassed by allowing it to cascade into buckets which almost immediately abated the fish kill. Supersaturation levels of 107% occurred continuously below the hatchery in Crooked Creek and levels of 110% occurred diurnally in Spring Creek. Bouck reported that while the impact to the wild fish was undetermined, wild trout were present and feeding during supersaturation and apparently reproducing (judging from the presence of trout fry). The freshwater invertebrate populations also were well represented with desirable types in abundance.

Bouck hypothesized that "the low saturation levels which killed fish in the hatchery were being aggravated by solar heating of their bodies as well as by heating of the water. He indicated that since it is theoretically possible to raise the gas pressure within the fish by solar heating, sunshine may convert an otherwise tolerable gas pressure into an internally lethal gas pressure. If so, it might account for the fish mortality in the hatchery raceway."

"This leaves the unanswered question as to why the wild fish and invertebrates seemed to be thriving at high gas tensions than that which killed their hatchery counterparts. One possibility is that present bioassay methods results in hypersensitivity among the test fish. For example, it seems rather unlikely that a wild fish could expose itself continuously for 10 days to a given uncompensated lethal supersaturated dissolved gas level. Other possible factors may be involved, whatever they may be, but a significantly different problem exists when comparisons are made between hatchery and laboratory bioassays to instream conditions. After these phenomena are given further study the results may shed some much needed light on "background" levels of supersaturation and on how much supersaturation is too much in nature."

In river systems where depth compensation is possible, such as in the Columbia and lower reaches of the Snake River, the adequacy of Oregon's TDG standard should be reviewed in light of the inriver studies. Fish can compensate for supersaturation of dissolved gases by sounding or by being at a compensation depth, depending on the TDG pressure measured at the water surface. For example, if the total dissolved gas pressure at the water surface is 110% of saturation, the dissolved gas content would be 100% or at saturation at about one meter below the surface. The figure below illustrates that fish receive hydrostatic compensation of 3% total dissolved gas per foot of depth.

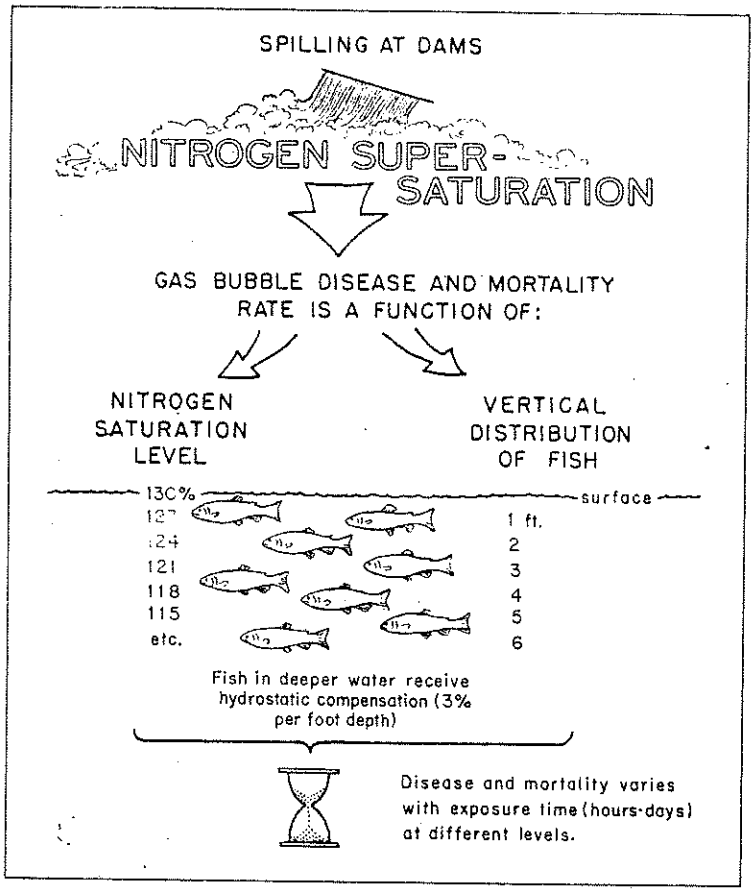

Figure 11.—Generalized representation of cause and effect relationship in gas supersaturation-gas bubble disease-fish mortality.

(After Ebel and Raymond 1976)

The most critical depth in these two rivers which adult salmonids are restricted to are the fish ladders at the dams. The water depth at the ladders is 6 feet (Ebel et al 1975). Thus, if the measured total dissolved gas pressure is 110% of saturation at the surface, an adult salmon would be compensated by hydrostatic pressure at 3 foot of depth.

Outmigrant juvenile chinook and steelhead trout apparently do not limit themselves to surface waters. Studies conducted by Smith (1974) in the forebay of Lower Monumental Dam showed that both juvenile chinook and steelhead trout migrate vertically within the water column. He observed that the proportion of chinook salmon catches in surface net (0-12 feet) increased at night whereas that of steelhead trout declined. "No chinook were taken from 0-12 feet during the day, but at night 60% of the total chinook catch in the upper 24 feet occurred in the surface nets. Steelhead catches in the surface nets declined from 74% during the day to 36% at night."

During the low freshet flow period in 1973, Ebel et al (1973) conducted

live cage studies of juvenile chinooks in the Ice Harbor Day forebay. These studies lasted 7 days and involved the use of 3 cages: one held at the surface, a volitional cage allowing the fish to sound to 15 feet of depth, and a control cage held at 20 feet. They reported no mortality occurred as a result of gas bubble disease.

A limited amount of work has been done to evaluate the sublethal effects of gas supersaturation on fish. Schiewe (1973) exposed juvenile chinook salmon to selected levels of dissolved atmospheric gas ranging from 100% (control) to 120% of saturation in shallow tanks 25 cm (≃ 10 inches) deep. The fish were stressed at 104%, 106%, 112%, 117%, and 120% of saturation. He found that the test fish experienced decreased swimming capability from exposures to concentrations ranging from 106% to 120% of saturation if they were tested immediately. Other tests indicated that recovery of swimming capabilities occurred within 2 hours if the fish were returned to equilibrated water (100% of atmospheric saturation) before testing.

Conclusion and Recommended Action

It appears from the above as well as from the review of literature by others of the dissolved gas problem that Oregon should have two dissolved gas standards. One standard should be developed for hatchery and other shallow water conditions where fish are unable to compensate by sounding and another where sufficient depth is available for fish to sound. Ebel et al (1978) noted that the deficiencies in the EPA proposed criterion in "Quality Criteria for Water (1976)" could be corrected if two or more dissolved gas criteria are proposed. Thus, the Department proposes the Total Dissolved Gas Standards shown below. The new language proposed is underscored and the existing language proposed for deletion is enclosed in brackets.

1. Fresh Waters: The concentration of total dissolved gas relative to atmospheric pressure at the point of sample collection shall not exceed one hundred and [five] ten percent [(105%)] (110%) of saturation, except when stream flow exceeds the 10-year, 7-day average flood.

2. Hatchery Receiving Waters and Waters of less than 2 feet in depth: The concentration of total dissolved gas relative to atmospheric pressure at the point of sample collection shall not exceed one hundred and five percent (105%) of saturation.

The above amended language is proposed to be incorporated into the following sections:

OAR 340-41-205(2)(n)
" " 245(2)(n)
" " 285(2)(n)
" " 325(2)(n)
" " 365(2)(n)
" " 445(2)(n)
" " 485(2)(n)
" " 525(2)(n)
" " 565(2)(n)
" " 605(2)(n)
" " 645(2)(n)
" " 685(2)(m)
" " 725(2)(n)
" " 765(2)(n)
" " 805(2)(n)
" " 845(2)(n)
" " 885(2)(m)
" " 925(2)(n)
" " 965(2)(n)

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ISSUE STATEMENT FROM JUNE 1978 REVIEW DOCUMENT

ANTIDEGRADATION POLICY

What is the current antidegradation policy?

Currently the Department views the first two statements under "Policies and Guidelines Generally Applicable to All Basins", in Oregon Administrative Rules, Chapter 340, as the Antidegradation Policy. These two statements read as follows:

1. In order to maintain the quality of waters in the State of Oregon, it is the policy of the EQC to require that growth and development be accommodated by increased efficiency and effectiveness of waste treatment and control such that measurable future discharged waste loads from existing sources do not exceed presently allowed discharged loads unless otherwise specifically approved by the EQC.

2. For any new waste sources, alternatives which utilize reuse or disposal with no discharge to public waters shall be given highest priority for use wherever practicable. New source discharges may be approved by the Department if no measurable adverse impact on water quality or beneficial uses will occur. Significant or large new sources must be approved by the Environmental Quality Commission.

What are the objections of EPA to such policy statements?

EPA does not feel that the above Antidegradation Policy statements fully comply with federal regulations. They indicated, however, that these statements satisfy federal requirements by actually describing the implementation of an antidegradation policy.

What requirements must an Antidegradation Policy meet in order to satisfy Federal Regulations?

According to EPA, the antidegradation policy must include the following four main points:

1. In all cases, existing instream beneficial uses must be maintained and protected.

2. Existing high quality waters must be maintained unless the State decides that after adequate public and intergovernmental participation, degradation is justified for economic and social reasons; however, water quality must be maintained for the national goal for fish, wildlife and recreation.

3. List high quality waters of national importance which may not be degraded to avoid confusion in the application of this policy.

4. An implementation plan as a part of the Water Quality Management Plan.

What are the options for either strengthening or adding an Antidegradation Policy?

Since the existing policies 1 and 2 meet the requirements of an antidegradation implementation plan, it would be appropriate for the Department to propose new language for an Antidegradation Policy.

Such a policy statement is proposed which would meet the first three requirements outlined above:

Existing high quality waters which exceed those levels necessary to support propagation of fish, shellfish and wildlife and recreation in and on the water shall be maintained and protected unless, the Environmental Quality Commission chooses, after full satisfaction of the intergovernment coordination and public participation provisions of the continuing planning process to allow lower water quality as a result of necessary and justifiable economic or social development. In no event, however, may degradation of water quality interfere with or become injurious to the beneficial uses of water.

Additionally, no further waste discharges shall be allowed in the following designated water:

A. Klamath Basin

Crater Lake

B. Rogue River Basin

Rogue River from Mouth of Applegate River downstream to Lobster Creek Bridge

Summary of Written Testimony

In general, all respondents are in favor of the proposed additional language to the current policy statements. Some offer additional suggestions as well.

The categories of responses received are as follows:

1. Four respondents question the phrase "necessary and justifiable economic and social development" in the proposed new policy statement. One asks that criteria used to evaluate "necessary and justifiable" development be adopted.

   Another asks if water quality standards will fall by the wayside in the face of arguments for development. In this regard a respondent suggests that the language "necessary and justifiable economic and social development" be replaced with the phrase "affirmatively demonstrable economic or social needs" (9, 12, 13 and 32).

   In addition, a provision requiring industrial, public and private projects or developments to "provide the necessary degree of waste treatment to maintain the high quality of water, including the highest and best degree of waste treatment available under existing technology" is recommended (12 and 32).

2. Four respondents cite the federal regulation concerning anti-degradation policy statements and its requirement that "no degradation shall be allowed in high quality waters which constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance (12, 25, 29, 32). These respondents comment that the proposed listing is incomplete.

3. One respondent asks how DEQ has defined waters of national importance and how additions to the list will be made. It is recommended that DEQ list the criteria and a process for selecting these waters and involve the public in the selection process (5).

4. Five respondents support the proposed additional language for the Antidegradation Policy as it is written (11, 19, 21, 20, 27).

5. One respondent comments that the statements need to include and comply with the criteria of EPA (17).

Response to Written Testimony

The following discussion is offered to clarify the intent of the proposed antidegradation statement and to address the outlined concerns.

It is the Department's position that specific criteria to determine "necessary and justifiable economic and social development" should not be adopted as administrative rules. This is because the terms "necessary and justifiable" reflect the times and prevalent social values. Since social values are not static and future values cannot be predetermined, it is unwise to define necessary and justifiable economic and social development for future use based upon existing value judgements. In addition, the process by which such decisions would be made would involve extensive public input and hearing prior to EQC adoption of Administrative Rule changes.

The Department contends that an antidegradation statement should provide adequate water quality protection and maintain a degree of flexibility for the future. However, it should be understood that at no time can the Department allow degradation of water quality to the extent that it might interfere or become injurious to the beneficial uses of water.

The initial proposed language was worded to allow lower water quality as a result of necessary and justifiable economic and social development.

A change in the wording will be made to insure that proposed development will be reviewed and evaluated prior to making a decision to allow lower water quality.

The proposed antidegradation statement currently lists two bodies of water in which no further waste discharges shall be allowed. They are: (1) the Rogue River from the mouth of the Applegate River downstream to the Lobster Creek Bridge and (2) Crater Lake.

The segment of the Rogue River was included because it is designated as a component of the National Wild and Scenic River System under Public Law 90-542. Crater Lake was included because it lies within a National Park.

Review of the written testimony suggests that those rivers and river segments designated by the Oregon Transportation Commission as Scenic Waterways should also be added to the list.

Currently, eight rivers or river segments are designated as Scenic Waterways under the Oregon Scenic Waterways Act (ORS 390.805 to 390.925) as follows:

1. The segment of the Rogue River extending from the confluence with the Applegate River downstream a distance of approximately 88 miles to Lobster Creek Bridge. (This river segment has been designated as a component of the National Wild and Scenic River System.)

2. The segment of the Illinois River from the confluence with Deer Creek downstream a distance of approximately 46 miles to its confluence with the Rogue River.

3. The segment of the Deschutes River from immediately below the existing Pelton reregulating dam downstream approximately 100 miles to its confluence with the Columbia River, excluding the City of Maupin.

4. The entire Minam River from Minam Lake downstream a distance of approximately 45 miles to its confluence with the Wallowa River.

5. The segment of the South Fork Owyhee River in Malheur County from the Oregon-Idaho border downstream approximately 25 miles to Three Forks where the main stem of the Owyhee River is formed, and the segment of the main stem Owyhee River from Crooked Creek (six miles below Rome) downstream a distance of approximately 45 miles to the mouth of Birch Creek.

6. The segment of the main stem of the John Day River from Service Creek Bridge (at river mile 157) downstream 147 miles to Tumwater Falls (at river mile 10).

7. The segment of the Sandy River from the east boundary line of Section 25 and Section 36, Township 1 South, Range 4 East, W.M., in Clackamas County at Dodge Park, downstream approximately 12.5 miles to the west line of the East Half of the Northeast Quarter of Section 6, Township 1 South, Range 4 East, W.M., in Multnomah County at Dabney State Park.

8. The segment of the Clackamas River from River Mill Dam near Estacada downstream approximately 15.4 miles to the highway bridge at Carver.

The Department of Transportation is authorized to designate these scenic waterways to preserve their quality for the benefit of the public and it has been declared that the highest and best uses of these waters are recreation, fish and wildlife uses. Since DEQ's actions already must be consistent with the scenic waterways statutes, we see no need to reference them in the Federally required Antidegradation Statement.

In addition to these waters, some respondents recommend that waters lying within National Wildlife Refuges be included in the Antidegradation Policy Statements list.

Currently there are eleven National Wildlife Refuges within Oregon. No point sources discharge wastes within these refuges; however, irrigation return flows are discharged and serve as surface water supplies to several of the refuge wetlands and lakes, including the Lower Klamath and Malheur National Refuges. Irrigation return flows are defined as nonpoint source waste waters.

If the proposed policy statement to prohibit further waste discharges specifies only point source discharges, the Department would have no objection to including the eleven National Wildlife Refuges.

It was also recommended that State Parks be included in the listing of areas where no further waste discharges to streams be allowed. Presently, The Department of Transportation, Parks and Recreations Branch, maintains 127 State Parks, but not all of these have bodies of water within their boundaries.

Until recently, two State Parks operated waste disposal systems which discharged into receiving streams. These two systems have since been converted to land disposal. The State Parks Division intends to dispose of sewage without discharge in the parks. While DEQ concurs with this effort, it is not considered desirable to limit the disposal options available in the future.

Recommended Action

Adopt the following language to meet the Federal requirements for an Antidegradation Statement:

> Existing high quality waters which exceed those levels necessary to support propagation of fish, shellfish and wildlife and recreation in and on the water shall be maintained and protected unless the Environmental Quality Commission chooses, after full satisfaction of the intergovernmental coordination and public participation provisions of the continuing planning process, to allow lower water quality for necessary and justifiable economic or social development. In no

event, however, may degradation of water quality interfere with or become injurious to the beneficial uses of water. Additionally, no further point source waste discharges shall be allowed within surface waters of the following areas:

A. National Parks
B. National Wild and Scenic Rivers
C. National Wildlife Refuges.

This new section would be added to OAR 340-41-026 as Paragraph (1). Existing paragraphs (1) through (8) would be renumbered (2) through (9).

ISSUE STATEMENT FROM JUNE 1978 REVIEW DOCUMENT

TOXIC SUBSTANCES STANDARDS

What is the current standard for toxic substances?

The current toxic substances standards are indicated below. One standard is descriptive and is common for each of Oregon's 19 river basins. The dissolved chemical guide concentrations for selected chemical constituents appear in basins bordered by interstate waters and for selected intrastate waterways. These standards generally read as follows:

> No wastes shall be discharged and no activities shall be conducted which either alone or in combination with other wastes or activities will cause violation of the following standards in the waters of the _____ Basin:
>
> The creation of tastes or odors or toxic or other conditions that are deleterious to fish or other aquatic life or affect the potability of drinking water or the palatability of fish or shell fish shall not be allowed.
>
> Dissolved Chemical Substances: Guide concentrations listed below shall not be exceeded unless otherwise specifically authorized by DEQ upon such conditions as it may deem necessary to carry out the general intent of this plan and to protect the beneficial uses set forth in Section 340-41_____:

	mg/l	
Arsenic (As)	0.01	
Barium (Ba)	1.0	
Baron (Bo)	0.5	
Cadmium (Cd)	0.003	
Chromium (Cr)	0.02	
Copper (Cu)	0.005	
Cyanide (Cn)	0.005	
Fluoride (F)	1.0	
Iron (Fe)	0.1	
Lead (Pb)	0.05	
Manganese (Mn)	0.05	
Phenols (totals)	0.001	
Total dissolved solids	100.0	(Varies by basin)
Zinc (Zn)	0.01	

Where the natural quality parameters of waters of the _____ Basin are outside the numerical limits of the above assigned water quality standards, the natural water quality shall be the standard.

What is EPA's concern with these standards?

EPA is encouraging the states to expand their coverage of numerical standards for additional toxic substances. At a minimum, they recommend that Oregon adopt numerical standards for DDT, Aldrin/dieldrin, endrin, toxaphene, PCB, and benzidine. All of the above, except for PCB, are pesticides.

What are the alternatives for modifying this standard?

The alternatives for modifying this standard and their probable consequences are as follows:

1. Leave the standards in their present form.

   a. This probably would be unacceptable to EPA.

   b. EPA may choose to promulgate certain standards of toxic substances for Oregon.

2. Add new language to the Water Quality Standards Section referencing EPA's Quality Criteria for Water, 1976, such as the following:

   "Guide concentrations for Pesticides and other toxicants shall not exceed those contained in the most recent edition of the EPA Publication, "Quality Criteria For Water," unless supporting data conclusively show otherwise.

   a. This approach is probably acceptable to EPA.

   b. This allows one to conclusively demonstrate with scientific data that a less restrictive standard than that suggested in the above publication is acceptable.

Summary of Written Testimony

Summaries of comments received are categorized as follows:

1. Three respondents concur with the proposed new language referencing EPA's publication and do not comment further (4, 8, and 30).

2. Three respondents support adoption of specific standards for DDT, Aldrin/dieldrin, endrin, toxaphene, PCB and benzidine.

   However, they question mere referencing of "Quality Criteria For Water" for other substances and toxics and believe DEQ has not evaluated the applicability of each criteria in relation to the State's waters (20, 21 and 27).

3. Three respondents propose that standards be adopted for certain additional "toxic" chemicals, including dioxin containing substances and other heavy metals organics and pesticides (13, 32, and 12).

4. One respondent suggests adoption of most of the new language but asks how the discharge and use of toxic substances not listed in EPA's publication will be controlled. Several recommendations are made in the testimony (19).

5. Three respondents recommend that the proposed language allow for a more stringent standard as well as a less restrictive one, if data supports such a change (5, 13, and 29). One respondent asks who will evaluate the data and determine if a higher or lower standard is warranted (5).

6. One respondent proposes the language be modified as follows: "....unless supporting data show conclusively that beneficial uses will not be adversely affected by exceeding a given concentration by a specific amount." (19).

7. One respondent notes that benezidine is not referenced in "Quality Criteria For Water, 1976" and wants to know where to get information on its criteria (29).

8. Two respondents feel that the numerical limits on toxic substances should be adopted as "set limits" rather than as "guide concentrations" (29 and 32).

Response to Written Testimony

There appears to be some confusion among respondents as to which of the toxicants and criteria listed in the most recent edition of EPA's publication, "Quality Criteria For Water" are being considered for adoption as water quality standards. This issue needs to be addressed.

The Department currently lacks any stream baseline data for toxicants such as pesticides and certain other organic substances. EPA, however, requires adoption of standards for several of these substances as previously discussed.

EPA's publication contains criteria for pesticides and organics which were developed from research information. Because the Department has no supporting evidence to propose anything to the contrary, it is proposed that EPA's "Quality Criteria For Water" be referenced for such toxicants.

Currently, it lists criteria for the following pesticides and organics:

Pesticides:

Aldrin-Dieldrin
Chlordane
Chlorophenoxy Herbicides
DDT
Demeton
Endosulfan
Endrin
Guthion
Heptachlor
Lindane
Malathion
Methoxychlor
Mirex
Parathion
Toxaphene

Other Organics:

Phthalate Esters
Polychlorinated Biphenyls

Recently the Department learned that EPA is developing criteria for a list of toxics which includes dioxin containing substances, benzidine, and other synthetic compounds. The Department will adopt standards for these toxicants as they appear in future revisions of "Quality Criteria for Water".

It is not the Department's intent to reference the document for such parameters as dissolved oxygen, temperature, pH and certain heavy metals. The State has standards for these parameters which are based on monitoring data and Oregon's beneficial uses of water. In many cases, these standards are more stringent than those criteria contained in EPA's document.

Although "Quality Critia For Water" contains criteria for ammonia and chlorine, the Department did not explcitly propose standards for these substances in the package of materials which were sent out for public review. The Department concurs that ammonia and chlorine do need to be addressed and proposes to do so during the basin plan updating process.

It should be noted that the existing and proposed standards for toxic substances are in-stream water quality standards and not effluent standards. The control of all toxics in waste water discharges is achieved through the following language which appears in OAR Chapter 340-41 for each river basin in the State:

"....Industrial Wastes:

(a) After maximum practicable inplant control, a minimum of Secondary Treatment or equivalent control (reduction of suspended solids and organic material where present in significant quantities, effective disinfection where bacterial organisms of public health significance are present, and control of toxic or other deleterious substances).

(b) Specific industrial waste treatment requirements shall be determined on an individual basis in accordance with the provisions of this plan, applicable federal requirements, and the following:

(A) The uses which are or may likely be made of the receiving stream;

(B) The size and nature of flow of the receiving stream;

(C) The quantity and quality of wastes to be treated; and

(D) The presence or absence of other sources of pollution on the same watershed.

(c) Where industrial, commercial, or agricultural effluents contain significant quantities of potentially toxic elements, treatment requirements shall be determined utilizing appropriate bioassays.

(d) Industrial cooling waters containing significant heat recovery prior to discharge to public waters.

(e) Positive protection shall be provided to prevent bypassing of raw or inadequately treated industrial wastes to any public waters.

(f) Facilities shall be provided to prevent and contain spills of potentially toxic or hazardous materials and a positive program containment and cleanup of such spills should they occur shall be developed and maintained. ...."

The Department feels that this language together with the NPDES Permit Program is adequate for controlling toxics in waste water discharges, even though a substance may not appear on EPA's list or in the in-stream water quality standards.

The State Department of Agriculture is responsible for listing and licensing users of pesticides and herbicides. Only those chemicals approved by the U. S. Department of Agriculture can be used.

In addition, the State Department of Agriculture sponsors a Pesticide Use Clearing House made up of concerned agencies such as Fish & Wildlife, the State Health Department and DEQ to review notices of planned pesticide use by government agencies and public utilities.

The Department concurs that wording of the alternative new language previously proposed is ambiguous and modifications to clarify the intent of the standard have been made accordingly.

Recommended Action

Adopt new language which expands coverage of the water quality standards for Toxics as follows:

> Standards for Pesticides and other organic Toxicants shall not exceed those criteria contained in the most recent edition of the EPA Publication, "Quality Criteria For Water". These standards shall apply unless supporting data show conclusively that beneficial uses will not be adversely affected by exceeding the standard by a specific amount or that a more stringent standard is warranted to protect beneficial uses.

The above new language is proposed to be added as a new paragraph in the following sections:

OAR 340-41-205(2)(p)
" " 245(2)(p)
" " 285(2)(p)
" " 325(2)(p)
" " 365(2)(p)
" " 445(2)(p)
" " 485(2)(p)
" " 525(2)(p)
" " 565(2)(p)
" " 605(2)(p)
" " 645(2)(p)
" " 685(2)(p)
" " 725(2)(p)
" " 765(2)(p)
" " 805(2)(p)
" " 845(2)(p)
" " 885(2)(p)
" " 925(2)(p)
" " 965(2)(p)

GENERAL COMMENTS

In addition to comments received regarding the specific standards for which revisions are proposed, some respondents have made general comments on the water quality standards. Those comments and the Department's responses are presented as follows:

Comment

One respondent expresses concern that the standards aren't specific enough to judge compliance or non-compliance and that the Marbet decision dictates that standards must be factually objective. The respondent relates that the standards say who will make decisions regarding waivers but not what the decision will depend on (9).

Response

The Department has reviewed the standards which contain variance language and proposes further revisions to express the criterion for granting variances.

The decision to grant a variance is based upon reasonable assurance that a variance from the standard will not adversely impact any other beneficial use disproportionately. This criterion was not previously stated in the standards with variance language; however, it has been the long-standing basis for approving variance requests.

For the Department to be more explicit would require a rule for each and every variable and condition which affects a specific stream's beneficial uses. It is the Department's belief that the proposed additional language is adequate to make the affected standards more factually objective.

Comment

One respondent suggests that the standards include limits on aquatic weeds or other vegetable growth in streams where recreation and boating are beneficial uses (23).

Response

Aquatic plants serve various functions in nature. They are primary producers, providing food for water fowl and aquatic life. They also provide shelter and habitat for fish and other organisms. It would not be prudent to regulate against nature just because aquatic plants may interfere with the recreational uses of waterways.

The existing standard relating to limits on aquatic nuisance growths applies to man's activities which could upset the balance of the stream environment. It reads as follows:

> "No wastes shall be discharged and no activities shall be conducted which either alone or in combination with other wastes or activities will cause violation of the following standards in the waters of the _____ Basin: The development of fungi or other growths having a deleterious effect on stream bottoms, fish or other aquatic life, or which is injurious to health, recreation, or industry shall not be allowed."

In addition, all of the water quality standards are written to keep waters free from substances attributable to waste water and other discharges that produce undesirable or nuisance effects. Specifically, they are written to minimize man's influences on the natural stream productivity.

Comment

A respondent recommends that the standards for Klamath Basin not be changed and requests that DEQ hold a hearing in Klamath Falls (18).

Response

The Department must propose and make revisions to certain aspects of the six standards as outlined in the June 1978 information package.

This is necessary because portions of these particular standards are unacceptable to EPA as they are written for each of the State's 19 river basins.

The possible alternatives for revising these standards were sent to public and governmental agencies. The Department urged both the private and public sectors to submit comments and suggestions for improving these standards.

The Department has reviewed and evaluated all of the comments received and has proposed changes where appropriate, based on the public's input. The public now has a further opportunity to review the Department's formulation of the revised standards.

Public hearings on the proposed revisions will be arranged before a hearings officer. The comments will be evaluated and the revised standards will be presented to the Environmental Quality Commission for adoption.

Comment

Three respondents suggest that standards be set to determine the size of mixing zones that would benefit aquatic resources (5, 13 and 29).

Response

Under the sections entitled Water Quality Standards Not to be Exceeded in OAR 340-41-001 to 41-975 for each river basin, the Department outlines conditions for establishing mixing zones.

This mixing zone standard, originally adopted in 1973, is essentially the language proposed by the EPA when they suggested that the States adopt such criteria. The standard is presented in full as follows:

"Mixing Zones:

a. The Department may suspend the applicability of all or part of the water quality standards set forth in this section, except those standards relating to aesthetic conditions, within a defined immediate mixing zone of specified and appropriately limited size adjacent to or surrounding the point of waste water discharge.

b. The sole method of establishing such mixing zone shall be by the Department defining same in a waste discharge permit.

c. In establishing a mixing zone in a waste discharge permit the Department:

1) May define the limits of the mixing zone in terms of distance from the point of the waste water discharge or the area or volume of the receiving water or any combination thereof,

2) May set other less restrictive water quality standards to be applicable in the mixing zone in lieu of the suspended standards; and

3) Shall limit the mixing zone to that which in all probability, will

a) Not interfere with any biological community or population of any important species to a degree which is damaging to the system; and

b) Not adversely affect any other beneficial use disproportionately."

The Department recognizes that to define mixing zone limits for a particular waste discharge a number of factors must be considered. The determination of size and other limitations must be made on a case by case basis for each source through an evaluation of the following:

1. The uses which are or may likely be made of the receiving stream;

2. The size and nature of flow of the receiving stream.

3. The quantity and quality of wastes to be treated and discharged in accordance with State and Federal effluent requirements.

4. The presence or absence of other sources of pollution on the same watershed.

As addressed in the standard, mixing zone limits for each source are specified in the waste discharge permit. Prior to issuing or renewing a permit, a public notice on the proposed permit is sent out on review for 30 days. During this review period, all interested parties can comment on the proposed effluent limits and other permit conditions, including the mixing zone designation.

It is the Department's belief that specifying mixing zone size limitations through the permit process provides an adequate procedure for assessing variations in effluent and stream characteristics.

Comment

One respondent indicates that the existing standard of 100/mg/l for total dissolved solids is too low since this concentration

was exceeded in DEQ's 1976 samples from the Bear Creek, Applegate, John Day, Grande Ronde, Wallowa, Powder, Burnt, Malheur, Owyhee and Klamath Rivers (3).

Response

There is a misunderstanding regarding the water quality standard for total dissolved solids (TDS).

In the information package on proposed standards revisions entitled "Review of Water Quality Standards with Local Governments and Interested Persons, June 1978", a standard for total dissolved solids of 100 mg/l appeared on page 27 as part of a list of dissolved chemical substances for which the Department has standards. This list was presented for illustrative purposes and the narrative explained that the list and standards were not necessarily common to each of Oregon's river basins.

The Department recognizes that the natural background concentrations of certain substances varies. One such parameter is total dissolved solids. Its concentration in water depends on the type of soils over which the water flows and the substrate of groundwater recharge areas.

For example, the alkaline soils of the valleys in several Eastern Oregon river basins are high in sodium and cause waters to have a higher concentration of total dissolved solids than in some Western Oregon basins. This difference in natural water quality is expressed in the standards. Language appears in OAR Chapter 340-41-001 to 41-975 for each basin as follows:

> "Where the natural quality parameters of waters of the _____Basin are outside the numerical limits of the above assigned water quality standards, the natural water quality shall be the standard."

In addition, the specific TDS standards appearing in the OARs are summarized as follows:

Total Dissolved Solids

Basin		Standard (mg/l)
North Coast		
	(1) Columbia River	500
	(2) All other fresh water streams and tributaries thereto	100
Mid Coast		100
Umpqua		500
South Coast		100
Rogue		500
Willamette		
	(1) Columbia River	200
	(2) Willamette River and Tributaries	100
Sandy		
	(1) Columbia River	200
	(2) All Other Basin Waters	100
Hood		200
Deschutes		500
John Day		
	(1) Columbia River	200
	(2) John Day River and Tributaries	500
Umatilla	Columbia River	200
Walla Walla		200
Grande Ronde		
	(1) Main Stem Grande Ronde	200
	(2) Main Stem Snake River	750
Powder	Main Stem Snake	750
Malheur River	Snake River Only	750
Owyhee River	Snake River Only	750

* There is no total dissolved solids standard for the Malheur Lake, Goose and Summer Lakes and Klamath River Basins.

BIBLIOGRAPHY OF WRITTEN TESTIMONY

	DATE	RESPONDENT
1.	June 26, 1978	Thor Mork, Home Owner's League, Waldport, Oregon
2.	June 28, 1978	Stephen R. Lindstrom, Manager, Port of Umatilla
3.	July 3, 1978	Ted L. Willrich, Extension Agricultural Engineer, Oregon State University Extension Service
4.	July 4, 1978	William R. Keyser, Chief Operator, Division of Water Treatment and Watershed Management, Department of Public Works, The Dalles, through Ben Mouchett, Resource Conservationist, State Soil and Water Conservation Commission
5.	July 10, 1978	Sydney Herbert, Eugene, Oregon
6.	July 12, 1978	Lloyd Anderson, Executive Director, Port of Portland
7.	July 12, 1978	J. S. Lee, Professor of Food Science, Oregon State University
8.	July 13, 1978	Charles Arment, Chief Forester, Northwest Pine Association
9.	July 13, 1978	John C. Platt, Executive Director, Oregon Environmental Council
10.	July 14, 1978	Otto Bohnert, President, Franklin Gebhard, Vice-President, and Gordon Kershaw, Director, Rogue River Valley Irrigation District
11.	July 17, 1978	Jon R. Brazier, Hydrologist, Rogue River National Forest, Forest Service through John LaRiviere, Rogue Valley Council of Governments
12.	July 17, 1978	Amy Svoboda, Legal Research Associate, Northwest Environmental Defense Center
13.	July 17, 1978	Annabel Kitzhaber, President and Mary Sherriffs, Chairman, Water Quality, League of Women Voters of Oregon
14.	July 18, 1978	A.G. Oard, Forest Supervisor, Wallowa-Whitman National Forest, Forest Service
15.	July 18, 1978	Gregory T. Hornecker, Attorney, representing Talent Irrigation District and their Board of Directors
16.	July 19, 1978	Guy W. Nutt, State Conservationist, Soil Conservation Service

17.	July 21, 1978	C.B. Cordy, Extension Agency Emeritus through John LaRiviere, Rogue Valley Council of Governments
18.	July 24, 1978	John L. Stewart, Jr., Secretary, Klamath Basin Water Users Protective Association
19.	July 25, 1978	John R. Donaldson, Director, State Department of Fish and Wildlife
20.	July 25, 1978	Joseph Kolberg, Regional Environmental Engineer - West, Boise Cascade
21.	July 26, 1978	Joseph Kolberg, Chairman, Oregon Water Committee and Lawrence E. Birke, Jr., Executive Director, Northwest Pulp and Paper Association
22.	July 26, 1978	John R. LaRiviere, Coordinator, Water Quality Planning Rogue Valley Council of Governments
23.	July 28, 1978	John L. Frewing
24.	July 28, 1978	Oliver A. Fick, Manager, Environmental Quality - West, International Paper Company
25.	July 31, 1978	Robert L. Rulifson, Water Quality Standards Coordinator, Region X, EPA
26.	August 1, 1978	John W. Beck, Administrator, Blue Mountain Intergovernmental Council
27.	August 2, 1978	Fred Cormack, Supervisor, Water Programs Environmental Services, Crown Zellerbach
28.	August 14, 1978	J.E. Schroeder, State Forester, Office of State Forester
29.	August 15, 1978	L.A. Mehrhoff, Area Manager, Fish and Wildlife Service
30.	August 16, 1978	E.S. Hunter, Technical Services Engineer, State Department of Transportation
31.	August 22, 1978	L.J. Stein, Chief, Engineering Division, Portland District Corps of Engineers
32.	August 29, 1978	Amy Svoboda, Northwest Environmental Defense Center
33.	September 8, 1978	Don Walker, Acting Public Works Director, and Robert L. Lee, Water Commission Manager, City of Medford

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MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. H , January 1979, EQC Meeting

Request for Authorization to Hold a Public Hearing to Consider a Modification of the Emission Limits for Wood Fired Veneer Dryers

Background

The majority of veneer dryers in Oregon are heated by the combustion of natural gas or steam supplied by a hogged fuel boiler. In these cases the atmospheric emissions from the veneer dryers are limited to an average opacity of 10% and a maximum opacity of 20%. The boiler if installed after 1971 is limited to 0.1 gr/SCF and 20% opacity.

In the past seven years several of the gas fired veneer dryers have been converted to utilize heat in the gases from the direct combustion of wood waste. Some of the existing regulations and compliance dates are not readily applicable to these dryers. Therefore, the Department is proposing modifications to the existing regulations.

Wood fired veneer dryers consist of a standard veneer dryer and a separate combustion unit which provides heat to the dryer through connecting ductwork. The combustion units vary greatly in the types of fuel used, design and the method of firing. In addition, a portion of the dryer exhaust is returned to the combustion unit or a blend chamber to reduce the desired temperature of the gases entering the dryer. By recirculating some of the dryer exhaust, a portion of the hydrocarbon emissions are incinerated. Some units also generate steam for plant operation with a portion of the heat generated in the combustion unit.

Currently there are about 26 wood fired veneer dryers operating in the Department's jurisdiction. At least 17 more wood fired dryers are in the planning or construction stage. There are approximately 250 dryers of all types in the Department's jurisdiction.

Wood fired dryers are generally converted gas dryers. Because of the high cost of gas, more gas dryers will probably be converted to wood firing. By converting to wood firing, the plant utilizes its own mill waste. Some plants can supply nearly all of the energy needed to run their processes in this manner.

There is a wide variety of combustion unit designs and the fuel varies in moisture content, size and composition. The emissions from these dryers is difficult to predict. Currently no wood fired dryers have external control equipment, some have met the existing opacity limits while others have not.

The Department's opacity limits for all veneer dryers outside of Air Quality Maintenance Areas were adopted during April 1977. The opacity is limited to a maximum of 20% and an average of 10%. Because the combustion unit is external, its emissions are limited to 0.1 gr/SCF corrected to 12% CO_2.

Because of a lack of data, the Department, with APA's cooperation, began a testing program to determine whether the combustion units met the 0.1 gr/SCF limit or not. In addition, the program would try to determine any change in the dryer emission rate as a result of the conversion to wood firing. The program required all existing dryers to be tested on wood firing, and all new conversions would be tested before and after conversion. A test procedure was designed which might be able to evaluate compliance with the 0.1 gr/SCF limit.

Statement of Need for Rule Making

The EQC is authorized to adopt rules limiting air contaminant emissions by ORS 468.295 Air Purity Standards; Air Quality Standards.

The American Plywood Association contends that wood fired veneer dryers were not adequately considered when developing the existing opacity regulations. Further study indicates that the existing opacity regulations are technology forcing when applied to wood fired veneer dryers and therefore the APA has requested additional time to comply with those regulations. Some control systems have been pilot tested in the past few months and appear capable of complying with the opacity limits. However, a full-scale unit has not been installed. If these or similar units are to be installed, equipment delivery delays would extend the attainment of compliance well past the current deadline and subject those sources to non-compliance penalties required by the Clean Air Act Amendments of 1977.

A rule is needed to limit emissions from wood fired veneer dryers and to allow a reasonable time for control strategy development and control equipment installation. The proposed rule contains limits on the mass emissions rate and opacity from wood fired dryers. A future effective date provides for adequate time to develop and install controls.

The Department has based the proposed rule on the following documents:

1. Letter from the American Plywood Association dated 10/9/78 requesting an extension of the compliance date for wood fired veneer dryers.

2. Source test data on five (5) wood fired veneer dryers.

3. Clean Air Act Amendments of 1977.

4. Source test data on 15 hogged fuel boilers.

Evaluation

As a result of the testing program the Department now has test results from seven (7) plants and additional data is being submitted as conversions to direct wood firing are made. The source tests indicate that it is impossible to separate the burner emissions from the dryer emissions because of the recirculation of the dryer exhaust. Therefore compliance with the 0.1 gr/SCF limit is impracticable to demonstrate. This problem and APA's request started an investigation of wood fired dryer emissions control strategies and possible emission limits.

At least 14 of the existing wood fired veneer dryers do not comply with the veneer dryer opacity limits. Emission rates are affected by several operating parameters including burner design, burner fuel, combustion efficiency, dryer configuration and type of veneer. With these and other variables, it is difficult to determine what the problem is when a dryer is not in compliance. However, one factor seems to have a large impact on dryer emissions. When ply trim is the main fuel, opacity is higher from these dryers than other dryers. One of the components of the plywood glue is salt. Because of the small particle size of the salt, the dryer exhaust plume is highly visible. One company has done extensive research in an effort to reduce the salt in the glue. Significant reductions in mass emissions were achieved and opacity was reduced; however, compliance with opacity limits was not achieved.

Since there are no controls on existing wood fired dryers, control strategies must be developed. Because of the small size of the particulates, controls commonly used for steam and gas dryers probably will not be effective. One control system has been pilot tested and shows promise. However, it is approximately twice as expensive as controls for other dryers and may require at least one year to fabricate and install.

The regulation proposed by the Department attempts to deal with the variability of the combustion units. The following are the main points of the proposed regulation:

1. Opacity limits are the same for all veneer dryers as in the current regulation.

2. In addition to opacity, wood fired dryers must also comply with one of the following appropriate limits.

a. 0.75#/1000 square feet of production (3/8" basis) for units with a fuel moisture content of 20% or less.

b. 1.5#/1000 square feet of production (3/8" basis) for units with a fuel moisture content of greater than 20%.

c. If steam is generated in addition to drying veneer, an additional 0.40#/1000 pounds of steam can be added to the limits in a. and b. above.

3. All wood fired dryers must be in compliance by no later than January 1, 1981.

4. Compliance schedules for all non-complying wood fired dryers shall be submitted and approved by no later than May 1, 1979.

5. The combustion units are not required to comply with the 0.1 gr/SCF limit.

6. These rules would only apply outside AQMA's unless specifically included by the adoption as part of the air quality standard's attainment/ maintenance strategy.

This proposed regulation will accommodate the APA's request for extension of the compliance deadline for wood fired veneer dryers. It will also eliminate the 0.1 gr/SCF, corrected to 12% CO_2 limit imposed by OAR 340-21-030. The mass emission limits will encourage efficient operation of the combustion units to maintain a minimum emission rate.

All of the test data received was from units using fuel with a moisture content of 20% or less. Mass emissions from these units were consistently in the .5 - .7#/1000 ft^2 range, although not all of the units were in compliance with the opacity limits. The Department proposed a limit of 0.75#/1000 ft^2 for these units. The test data indicate that a properly operated dryer should meet that limit.

There are no combustion units which use a fuel with a moisture content of greater than 20% currently operating in Oregon . However, several will be in operation within the next year. Because of the lack of data and the similarity between these units and hogged fuel boilers, the limit was based on an equivalent hogged fuel boiler and steam veneer dryer. The mass emission rates for several boilers operating at 0.1 gr/SCF were averaged. This data was added to the Department's emission factor for a controlled steam dryer.

The same boilers were used to find an average emission rate for each 1000 pounds of steam generated. This additional limit was added because some units generate steam for plant operations in addition to heating the dryers. Additional fuel is burned to supply heat to the boiler and therefore emissions are increased, but dryer production is not increased.

The mass emission limits for wood fired dryers are expected and intended to be less stringent than the opacity limits. To date, all wood fired dryers that meet the opacity limits have complied with the above mass emission limits. These limits may be changed if the test data submitted indicate a change is warranted. These mass emission limits should not be interpreted as Lowest Achievable Emission Rate (LAER) for sources located inside Air Quality Maintenance Areas.

The Department has conferred with the American Plywood Association concerning these regulatory changes. The input from the APA Committee has been helpful and the Association is in general agreement with the proposed regulation.

Summation

1. The American Plywood Association has requested an extension of the compliance date for wood fired veneer dryers.

2. The Department has been unable to develop a method to evaluate the compliance of wood fired veneer dryers with the existing 0.1 gr/SCF corrected to 12% CO_2 regulation that is normally applied to wood combustion units.

3. The number of wood fired veneer dryers is expected to increase and there is a potential for an increase in total emissions as a result of the conversion from gas firing.

4. Control equipment for wood fired dryers is not yet proven. The equipment with the best potential to meet veneer dryer regulations has a one-year delivery time.

5. The proposed rule revision requires compliance with the same opacity limits as exist in the current rule.

Director's Recommendation

Based upon the summation, I recommend that authorization be granted for a public hearing to consider a change in the veneer dryer regulation to appropriately accommodate wood fired veneer dryers.

Bill

WILLIAM H. YOUNG
Director

E. J. Weathersbee:jmd

229-5397
1/10/79

Attachment (1) Draft Regulation

- D R A F T -

BOARD PRODUCTS INDUSTRIES

(Veneer, Plywood, Particleboard, Hardboard)

Definitions

340-25-305 (1) "Department" means Department of Environmental Quality.

(2) "Emission" means a release into the outdoor atmosphere of Air contaminants.

(3) "Hardboard" means a flat panel made from wood that has been reduced to basic wood fibers and bonded by adhesive properties under pressure.

(4) "Operations" includes plant, mill, or facility.

(5) "Particleboard" means matformed flat panels consisting of wood particles bonded together with synthetic resin or other suitable binder.

(6) "Person" means the same as ORS 468.005(5).

(7) "Plywood" means a flat panel built generally of an odd number of thin sheets of veneers of wood in which the grain direction of each ply or layer is at right angles to the one adjacent to it.

(8) "Tempering oven" means any facility used to bake hardboard following an oil treatment process.

(9) "Veneer" means a single flat panel of wood not exceeding 1/4 inch in thickness formed by slicing or peeling from a log.

(10) "Opacity" as defined by Section 340-21-005(4).

(11) "Visual opacity determination" consists of a minimum of 25 opacity readings recorded every 15 to 30 seconds and taken by a trained observer.

(12) "Opacity readings" are the individual readings which comprise a visual opacity determination.

(13) "Fugitive emissions" are defined by Section 340-21-050(1).

(14) "Special problem area" means the formally designated Portland, Eugene-Springfield, and Medford AQMA's and other specifically defined areas that

the Environmental Quality Commission may formally designate in the future. The purpose of such designation will be to assign more stringent emission limits as may be necessary to attain and maintain ambient air standards or to protect the public health or welfare.

(15) "Wood fired veneer dryer" means a veneer dryer which is directly heated by the products of combustion of wood fuel in addition to or exclusive of steam or natural gas or propane combustion.

Statutory Authority: ORS 468.295

Hist: Filed 3-31-71 as DEQ 26,
Eff. 4-25-71
Amended by DEQ 132,
Filed and Eff. 4-11-77

General Provisions

340-25-310 (1) These regulations establish minimum performance and emission standards for veneer, plywood, particleboard, and hardboard manufacturing operations.

(2) Emission limitations established herein are in addition to, and not in lieu of, general emission standards for visible emissions, fuel burning equipment, and refuse burning equipment, except as provided for in Section 340-25-315.

(3) Emission limitations established herein and stated in terms of pounds per 1000 square feet of production shall be computed on an hourly basis using the maximum 8 hour production capacity of the plant.

(4) Upon adoption of these regulations, each affected veneer, plywood, particleboard, and hardboard plant shall proceed with a progressive and timely program of air pollution control, applying the highest and best practicable treatment and control currently available. Each plant shall at the request of the Department submit periodic reports in such form and

frequency as directed to demonstrate the progress being made toward full compliance with these regulations,

Statutory Authority: ORS 468.295

Hist: Filed 3-31-71 as DEQ 26,
Eff. 4-25-71
Amended by DEQ 132,
Filed and Eff. 4-11-77

Veneer and Plywood Manufacturing Operations

340-25-315 (1) Veneer Dryers:

(a) Consistent with Section 340-25-310(1) through (4), it is the objective of this section to control air contaminant emissions, including, but not limited to, condensible hydrocarbons such that visible emissions from each veneer dryer located outside special problem areas are limited to a level which does not cause a characteristic "blue haze" to be observable.

(b) No person shall operate any veneer dryer outside a special problem area such that visible air contaminants emitted from any dryer stack or emission point exceed:

(A) A design opacity of 10%.

(B) An average operating opacity of 10%, and

(C) A maximum opacity of 20%.

Where the presence of uncombined water is the only reason for the failure to meet the above requirements, said requirements shall not apply.

(c) Particulate emissions from wood fired veneer dryers shall not exceed:

(A) 0.75 pounds per 1000 square feet of veneer dryed (3/8" basis) for units using fuel which has a moisture content by weight of 20% or less.

(B) 1.50 pounds per 1000 square feet of veneer dryed (3/8" basis) for units using fuel which has a moisture content by weight of greater than 20%.

(C) In addition to (A) and (B) above, 0.40 pounds per 1000 pounds of steam generated.

The heat source for wood fired veneer dryers is exempted from Section 340-21-030.

(d) After May 1, 1979, no person shall operate a veneer dryer in existence prior to May 1, 1979, located outside a special problem area unless:

(A) The owner or operator has submitted a program and time schedule for installing an emission control system which has been approved in writing by the Department as being capable of complying with subsection 340-25-315(1)(b) & (c),

(B) The veneer dryer is equipped with an emission control system which has been approved in writing by the Department and is capable of complying with subsection 340-25-315(1)(b), & (b), or

(C) The owner or operator has demonstrated and the Department has agreed in writing that the dryer is capable of being operated and is operated in continuous compliance with subsection 340-25-315(1)(b) & c

The schedule for wood fired veneer dryers shall result in compliance as soon as practicable, but by no later than January 1, 1981.

(e) Each veneer dryer shall be maintained and operated at all times such that air contaminant generating processes and all contaminant control equipment shall be at full efficiency and effectiveness so that the emission of air contaminants are kept at the lowest practicable levels.

(f) No person shall willfully cause or permit the installation or use of any means, such as dilution, which, without resulting in a reduction in the total amount of air contaminants emitted, conceals an emission which would otherwise violate this rule.

(g) Where effective measures are not taken to minimize fugitive emissions,

the Department may require that the equipment or structures in which processing, handling, and storage are done, be tightly closed, modified, or operated in such a way that air contaminants are minimized, controlled, or removed before discharge to the open air.

(h) The Department may require more restrictive emission limits than provided in Section 340-25-315(1)(b) & (c) for an individual plant upon a finding by the Commission that the individual plant is located or is proposed to be located in a special problem area. The more restrictive emission limits for special problem areas may be established on the basis of allowable emissions expressed in opacity, pounds per hour, or total maximum daily emissions to the atmosphere, or a combination thereof.

ROBERT W. STRAUB
GOVERNOR

Environmental Quality Commission

POST OFFICE BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Hearing Officer

Subject: Agenda Item No. I, January 26, 1978, EQC Meeting

Petition for Declaratory Ruling: Ladd and Larry Henderson

Attached are the following documents in connection with the above matter:

1. Petition for Declaratory Ruling dated November 10, 1978.
2. Letter to Mr. Young from Mr. Haskins dated December 4, 1978.
3. Brief in support of Petition filed by Ladd and Larry Henderson dated December 28, 1978.

It is contemplated that, should they so desire, and subject to the discretion of the Chairman and Commission, the parties be afforded opportunity for brief oral argument in this matter.

Respectfully submitted,

Wayne Cordes

EWC:cs
Attachments
cc: Messrs. Ladd and Larry Henderson
Mr. Robert Haskins
Mr. Fred Bolton
Mr. Van Kollias
Mr. Richard Nichols

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE
STATE OF OREGON

In the matter of the application of Ladd Henderson and Larry Henderson dba Evergreen Terrace Park, for a declaratory ruling as to the availability of a community or area-wide sewerage system as referred to in OAR 340-71-015 (5) and as used by the Department of Environmental Quality to deny a subsurface disposal permit on February 28, 1977.	BRIEF, filed in support of petition for declaratory ruling.

Mr. Robert Haskins and Mr. William Young have both recommended that the Commission not make a ruling on our declaratory petition. Is this not an unusual position for a state agency to take? The Department of Environmental Quality has not been timid in their use of OAR 340-71-015 (5) to deny the petitioners a subsurface disposal permit (three different times in writing) during the last two years. Since the D.E.Q. was sure enough of its applicability to use the administrative rule and cost the petitioners thousands of dollars and months of construction delays, it would seem they should be prepared to defend their position.

If they are fearful of the outcome of such ahearing, why does Mr. Haskins recommend the state courts as the proper forum? If the D.E.Q. is improperly using an administrative rule, should it not be of prime interest to the E.Q.C.? It is the petitioners' understanding that the Environmental Quality Commission was charged with the responsibility of overseeing the activities of the D.E.Q. The E.Q.C., by previously supplied information, certainly knows the D.E.Q. has refused to give the petitioners a subsurface disposal permit (Respondents' Exhibits 9, 10, 13, and 32 in D.E.Q. vs. Henderson, case #SS-CR-77-136)

The D.E.Q. has always based these denials on OAR 340-71-015 (5). It also cannot help but be obvious to the E.Q.C. that the City of Hood River sewage treatment plant is not of adequate capacity and is not being operated in compliance with its wastewater discharge permit! We cannot believe such common knowledge would be kept from the E.Q.C., especially when a civil penalty has been assessed against the plant and is currently pending! Our motion to submit additional evidence, filed in the contested case SS-CR-77-136, contained a list of 5 items:

"1. Notice of Non-Compliance, December 23, 1975
2. Letter from City of Hood River regarding bypass of treatment plant. January 13, 1976.
3. Letter from D.E.Q. regarding the Notice of Non-Compliance January 22, 1976.
4. Letter from Kirk Jonasson, Environmental Specialist, to the City of Hood River. August 5, 1977.
5. Notice of Violation and Intent to Assess Civil Penalty dated December 1, 1977."

In addition, the daily monitoring reports (an unnumbered exhibit in case SS-CR-77-136), although ignored in that case because your hearing officer was incapable of reading them, clearly show a five month period of non-compliance.

If all we have stated above is not true, why would Mr. Haskins expend so much time and effort in giving argument against allowing a hearing? The D.E.Q. should be anxious to prove their interpretation was correct . . . . unless it wasn't! Petitioners believe the D.E.Q.'s over-reaction is an admittance of their fragile position!

For example, take Mr. Haskins' statement that we stated facts which were untrue. (Page 3, section III, Discussion) We can only ask the Commission to refer to the letter from Mr. Scott Fitch, dated February 28, 1977 (Respondents Exhibit #9, case SS-CR-77-136). This letter states:

"This letter is to confirm our conversation of February 25, 1977 re-

garding your proposal to install a septic tank and drainfield system to serve eighteen (18) mobile home spaces and a two bedroom house at the Evergreen Terrace Park. Oregon Administrative Rules Section 71-015, subsection 5 states:

> The Director or his authorized representative shall not issue a permit if a community or area-wide sewerage system is available which will have adequate capacity to serve the proposed sewage discharge and which is being, or at the time of connection will be operated and maintained in compliance with the provisions of a waste discharge permit issued by the Department.

After conferring with the City of Hood River and the Department of Environmental Quality it is my understanding that the present sewer hook-u is available and possible to be utilized. THEREFORE, THIS DEPARTMENT WILL NOT ISSUE A PERMIT FOR A SEPTIC TANK AND SUBSURFACE SEWAGE DISPOSAL SYSTEM (emphasis added)

We do not believe anyone, with the one exception of Mr. Haskins, could possibly interpret this to be anything other than a denial of a permit!!!!!

Mr. Haskins goes on to state:

"Petitioners are not even consistent. Later, in paragraph VII of the petition, petitioners implicityly admit that they have not paid the full fee for a construction permit, and therefore by inference, that the fee that they have paid was for only a site evaluation." WHAT???? Please read, paragraph VII of the petition which states:

"7. Petitioners request that the Commission rule that a permit cannot be denied the petitioners since a community or area-wide sewerage system is NOT available which meets the conditions of OAR 340-71-015 (5). It is requested that the Commission order the D.E.Q. to entertain the STANDARD permit application as submitted on February 23, 1977 upon resubmittal of appropriate application fees."

Another item which was treated in the same manner was HIS determination on page 5, Section C, that we are attempting to legitimize the system

of contention in contested case SS-CR-77-136. Mr. Haskins knows petitioners have an area available which meets all requirements for a STANDARD system. No specific area is mentioned in the February 23, 1977, permit application, nor is any area mentioned in the Declaratory Ruling Petition. It is NOT an attempt to legalize any existing system or "part thereof". This again, is a product of Mr. Haskins' amazing imagination and a very "amateurish" attempt to tie the question of the applicability of the OAR to the previous contested case. The petitioners attempted at every opportunity to make it an issue in the previous case only to see it discarded by Mr. Cordes and ultimately by the Environmental Quality Commission. It is not a dead issue; it has not been previously determined, and any citizen should have the RIGHT to a determination of applicability of an Administrative Rule which has cost them literally thousands of dollars regardless of whether it was done by misinterpretation or by premeditated, willful abuse.

Again, the Petitioners would request that testimony be allowed at the hearing.

Respectfully submitted

December 28, 1978

Ladd G. Henderson

Larry R. Henderson

dba Evergreen Terrace Park
135 Country Club Road
Hood River, Oregon 97031

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing Brief in support of our Petition for Declaratory Ruling on Robert L. Haskins, attorney for the Department of Environmental Quality, by mailing to him a true and correct copy thereof. I further certify that said copy was placed in a sealed envelope and addressed to said Department's attorney at the following address:

Mr. Robert Haskins
Assistant Attorney General
Department of Justice
Portland Division
500 Pacific Building
520 S.W. Yamhill
Portland, Oregon 97204

and deposited in the Post Office at Hood River, Oregon on the 28th day of December, 1978, and that the postage thereon was prepaid.

Ladd G. Henderson

JAMES A. REDDEN
ATTORNEY GENERAL

EQC
Hearing Section

DEC 7 1978

DEPARTMENT OF JUSTICE
PORTLAND DIVISION
500 Pacific Building
520 S.W. Yamhill
Portland, Oregon 97204
Telephone: (503) 229-5725

December 4, 1978

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
DEC 6 1978
OFFICE OF THE DIRECTOR

Mr. William H. Young, Director
Department of Environmental Quality
Yeon Building
522 S.W. 5th Avenue
Portland, Oregon 97204

Re: Petition for Declaratory Ruling by Ladd Henderson and Larry Henderson, dba Evergreen Terrace Park

Dear Bill:

I received a copy of the petition for declaratory ruling filed by Ladd Henderson and Larry Henderson, doing business as Evergreen Terrace Park, apparently filed on November 13, 1978.

I. REQUIRED PROCEDURES FOR PETITIONS FOR DECLARATORY RULINGS.

Such a petition is authorized by ORS 183.410, the Attorney General's Model Rules of Procedure, OAR 137-02-000, et seq., and the Commission's rules of procedure, OAR 340-11-062. ORS 183.410 provides in pertinent part that:

> "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." (emphasis added)

Both OAR 340-11-062(5) and OAR 137-02-020(2) require the Commission to decide whether or not it intends to issue any declaratory ruling on the matter within 30 days of November 13, 1978, that is, not later than December 13, 1978. The Commission's decision is entirely discretionary. The Commission can decide to refrain from making any ruling on the merits of the petition, and may do so for any reason. Furthermore, the Commission need not articulate its reasons. The Commission's

decision to not consider the petition would not constitute a contested case; therefore any review of that decision would be required to be commenced in an appropriate circuit court.

Should the Commission decide to make a declaratory ruling, then on or before December 13, 1978, the Department would be required to:

> "serve all specially interested persons in the petition by mail. [sic]
> "(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."

A hearing would then be held before a hearing officer or the Commission. OAR 340-11-062(7). Neither the Attorney General's Model Rules, nor the Commission's rules of procedures nor the statute expressly authorizes the taking of any testimony at such a hearing. Rather, the statute and the rules merely provide for the opportunity of presenting oral arguments and briefs. In other words, it appears that the "facts" represented by the petitioners in their petition must be accepted as true and a ruling of the applicability of the questioned rule is made regarding those assumed "facts". ORS 183.410, OAR 137-02-040(2), OAR 340-11-062(8).

An argument could be made that a fact determining hearing is possible in a declaratory ruling proceeding based on the following emphasized language:

> "A declaratory ruling * * * is binding between the Commission, the Department, and the Petitioner on the state of facts alleged, or found to exist, unless set aside by a court." OAR 340-11-062(12). See also OAR 137-02-070.

However, the same language is not found in the authorizing statute, ORS 183.410. The argument is weak, at best.

Once the hearing record is closed, both the hearing officer, if any, and the Commission shall issue their declaratory ruling within 60 days of the close of the hearing. OAR 137-02-060(1), 340-11-062(11). That is a very tight schedule compared to hearing officer and Commission practice in other contested cases.

> "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." ORS 183.410.

II. RECOMMENDATION.

As I indicated earlier, the decision by the Commission as to whether or not it shall at a future date hold a hearing and make a declaratory ruling on the matter is a decision which has been left entirely to the discretion of the Commission. The Commission may, without expressing any reasons therefor, decide to refrain from making any ruling on the merits of the petition, that is, refrain from exercising jurisdiction. However, the decision whether or not to consider the petition must be made on or before December 13, 1978. For several reasons I am of the opinion that the Commission should not consider the petition, that is, that the Commission should refrain from exercising jurisdiction.

III. DISCUSSION.

A. Petitioners State Facts Which Are Untrue.

In their petition, petitioners allege as facts matters which the Commission has already ruled in a previous case to be not true. Of course, that was the case of DEQ v. Ladd Henderson and Larry Henderson, dba Evergreen Terrace Park (Number SS-CR-77-136). For example, in Paragraph II of the petition, petitioners allege that:

> "On February 28, 1977, Mr. Scott Fitch, an agent of the Department of Environmental Quality, denied the petitioners a subsurface sewage disposal permit by citing OAR 340-71-015(5)." (Emphasis added)

The Commission has already ruled that that application was not for a permit, ORS 454.655, but rather was only an application for a site suitability evaluation, ORS 454.755(1)(b). Hearing Officer's Proposed Findings and Facts, Conclusions of Law and Final Order, proposed findings of fact nos. 4 (p. 11), 13 and 14 (p. 12), opinion p. 14 (July 26, 1978), incorporated by referenced by the Commission in its Final Order dated October 27, 1978. Petitioners are not even consistent. Later, in paragraph VII of the petition, petitioners implicitly admit that they have not paid the full fee for a construction permit, and therefore, by inference, that the fee that they have paid was for only a site suitability evaluation. Of course, it would be meaningless for the Commission to make a declaration based on alleged facts which are untrue.

B. Petitioners Have Waived Their Right to Administrative and Judicial Review of the February 1977 Denial.

Whether petitioners, in February, 1977, applied for a subsurface sewage disposal system construction permit and were denied, or whether petitioners applied for a site suitability evaluation and the site was denied, is unimportant. What is important is that in either case, petitioners were denied. Furthermore, petitioners were not given a contested case hearing on that denial. Of course, the reason that petitioners were not given a hearing regarding that denial is because the staff was of the opinion that site suitability was denied, and, as had been determined in at least one previous case before a hearing officer of the Commission, such a denial does not give the applicants the right to a contested case hearing. Whether or not petitioners were entitled to a hearing is also unimportant. The point is, they were not given an opportunity for a hearing. In either event, petitioners' remedy would have been to file a timely petition for judicial review in an appropriate circuit court under ORS 183.484, either to review the merits of the order of denial of the site suitability if the case was not a contested case as the staff opined, or to review the Department's failure to provide a contested case hearing if the Department was wrong and the case should have been treated as a contested case. In either event, the petition was required to be filed in an appropriate circuit court within 60 days of the denial. ORS 183.484(2). In either event, petitioners failed to file a timely petition for judicial review. Petitioners have slept on whatever rights they may have had. In spite of that, now, over one and one half years later, petitioners attempt to revive the dead issue by alleging as a fact a matter which they asserted in the previous proceedings, and which was found to be untrue in those proceedings. Therefore, the Commission should refuse to exercise its discretionary jurisdiction to consider the petition.

It appears from petitioners' November 4, 1978 letter to the Environmental Quality Commission and from the petitioners' petition for declaratory ruling itself that the petitioners understand that their petition is an appropriate means to appeal the denial of their February 1977 application and perhaps even was suggested by the Department. At the oral argument before the Commission in the case of DEQ v. Henderson, I argued that the question of whether or not a permit should have been issued to the Hendersons was not at issue in that case. The main issue was whether or not the Hendersons constructed the system without a permit. I contended that they should not have built the system until they got a permit, and that if they were denied a permit they then had a valid administrative remedy to appeal that denial in a contested case hearing and through the courts. I argued that since the Hendersons had not appealed the denial they failed

to exhaust their available administrative remedy and should not have been able to raise the issue collaterally in an independent proceeding. I did not, however, indicate that that administrative remedy of review of a denial would be available forever, or was even available then. As I pointed out above, the Hendersons have slept on their rights. Their right to such review has long ago expired. They have no right to revive that issue today. Declaratory rulings are authorized to give the agency an opportunity to make a declaration prospectively regarding the applicability of a given rule to an anticipated fact situation. The declaratory ruling proceeding was not intended to make reviewable prior agency actions which otherwise are no longer subject to judicial review.

C. Petitioners Had and Have Other Opportunities to Obtain Administrative and Judicial Review of the Department's Interpretation of the "Sewers Available" Rule and which Would Preserve the Department's Right to Challenge Alleged Facts.

Had the petitioners filed a timely petition for judicial review of the February 1977 DEQ action, then the DEQ would have been allowed to contest petitioners' allegations of facts rather than have to accept them as true, as apparently is the case in this ORS 183.410 declaratory ruling proceeding. Furthermore, petitioners still have a simple way to challenge the Department's application of the "sewers available" rule, OAR 340-71-015(5). That is, petitioners could actually make an application for a construction permit for a specific system, pay the full fee, and contest the anticipated denial in a contested case hearing and upon judicial review, if necessary. Here again the DEQ would have an opportunity to develop the factual record and would not have to accept petitioners' false allegations as true. Perhaps the reason petitioners seized upon the February 1977 denial was because only the "sewers available" rule was then cited as a reason for the site being unsuitable. Of course, since that denial, petitioners actually constructed an undersized system, and it is that system that they want legitimized!

D. The Petition Does Not State Sufficient Facts Upon Which to Base a Declaratory Ruling.

Besides stating untrue "facts", what facts petitioners do allege are not sufficient to base a declaratory ruling of the applicability of the subject ruled upon. Much of what is asserted is conclusory. For example, in Paragraph 4(a) petitioners referred vaguely to "frequent by-pass" and "numerous letters". It is my opinion that it would be impossible for the Commission to adequately base a declaratory ruling upon the conclusory statements made by petitioners in paragraph 4 of the petition.

In order to make a declaratory ruling, should they decide to do so, it would be necessary to have a great deal more information, including expert testimony, in order to judge whether the capacity of the Hood River sewage treatment plant is adequate, whether the by-passes were "frequent", and whether "at the time of connection [the plant] will be, operated and maintained in compliance with the provisions of a waste discharge permit. . . ." (Emphasis added) Here again, the petitioners are making another attempt where they have previously failed. The Commission stated in DEQ v. Henderson that:

> "While respondents have expressed some doubt as to the treatment capacity of the City of Hood River system, the only competent evidence came from the Department witness who stated that the system is 'adequate'. Department's evidence also adduced the fact that the system is operated in 'substantial' compliance with this permit from Department. The collection capacity was not challenged . . . ." Hearing Officer's Proposed Findings of Fact, Conclusions of Law and Final Order, opinion, p. 16, (July 26, 1978), incorporated by reference in the Environmental Quality Commission's Final Order dated October 27, 1978.

It should be noted that the only point of contention in petitioners' petition is regarding the capacity and compliance status of the Hood River treatment plant. Apparently they have dropped their previous contention that the Hood River sewer is not "available" to petitioners. It is also interesting to note in petitioners' November 4, 1978 letter to the Environmental Quality Commission that they represented that they:

> "WILL comply with the remedial order which accompanied the notice of violation as nearly as possible in that the respondents will:
>
> * * *
>
> "(2) Abandon respondent's drain field. . . ."

By doing so they would substantially, or perhaps completely, comply with the Commission's October 27, 1978 remedial action final order.

For all of the above reasons I recommend that the Commission decide not to issue any declaratory ruling in this matter.

Please call me if you have any questions.

Sincerely,

Robert L. Haskins
Assistant Attorney General

cd

November 8, 1978

Mr. William Young
Department of Environmental Quality
P. O. Box 1760
Portland, Oregon 97207

Dear Mr. Young:

Enclosed, please find a three page petition for declaratory ruling.

It is assumed that this attempt to appeal the permit denial will meet the requirements of the Environmental Quality Commission.

Although we were told by Mr. Haskins, in your presence at our meeting of October 26, 1978, that we would never be able to obtain a standard permit, we feel that the improper denial of our permit application using OAR 340-71-015 (5) is our only obstacle. Once a permit has been given and we are able to put in a subsurface disposal system, I should be able to devote full time to developing an area-wide solution, i.e. an extension of the city sewer main, rather than spending all of my time with legal work. In light of the existing sewer problems in this basin area, I still believe the D.E.Q. should be a working partner in reaching that goal.

Sincerely,

Ladd Henderson

Ladd Henderson

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE
STATE OF OREGON

In the matter of the application of Ladd Henderson and Larry Henderson DBA Evergreen Terrace Park, for a declaratory ruling as to the availability of a community or area-wide sewerage system as referred to in OAR 340-71-015 (5) and as used by the Department of Environmental Quality to deny a subsurface disposal permit on February 28, 1977.	PETITION FOR DECLARATORY RULING

1. Petitioners, Ladd and Larry Henderson, a partnership, DBA Evergreen Terrace Park is located at 135 Country Club Road, Hood River, Oregon.

2. Petitioners own and operate a mobile home park and campground outside the city limits of Hood River in Hood River County. On February 28, 1977, Mr. Scott Fitch, an agent of the Department of Environmental Quality, denied the petitioners a subsurface disposal permit by citing OAR 340-71-015 (5).

3. OAR 340-71-015 (5) states:

"The Director or his authorized representative shall not issue a permit if a community or area-wide sewerage system is available which will have adequate capacity to serve the proposed sewage discharge and which is being, or at the time of connection will be, operated and maintained in compliance with the provisions of a waste discharge permit issued by the Department."

The only "community or area-wide sewerage system" in the area is owned and operated by the city of Hood River.

4. Petitioners contend that the above Administrative Rule cannot be used to deny a permit in that:

(a) The sewage treatment plant, which is owned and operated by the City of Hood River was not of "adequate capacity to serve the proposed sewerage discharge", as shown by their frequent bypass discharge of untreated sewage into the Columbia River, and, that the City of Hood River treatment plant was not a system "which is being, or at the time of connection will be operated and maintained in compliance with the provisions of a waste discharge permit issued by the Department." These facts being well documented by the D.E.Q. in the form of numerous letters of warning, a notice of violation, a notice of non-compliance as well as the daily monitoring reports.

(b) The Department, by requiring the petitioners to connect to an already overloaded system, would have aggravated the city's problem of sewage treatment at the same time the D.E.Q. is assessing civil penalties for discharge permit violations caused by overloading!

5. Petitioners must have a method of sewage treatment to serve 18 mobile home units and a two bedroom dwelling. The other alternative available to petitioners is to have the sewage hauled at a cost of more than double the gross space rent.

6. The question presented for declaratory ruling to the Commission is if OAR 340-71-015 (5) was <u>properly</u> used by the Department of Environmental Quality to deny petitioners a permit for a subsurface disposal system on February 28, 1977.

7. Petitioners request that the Commission rule that a permit cannot be denied the petitioners since a community or area-wide sewerage system is <u>NOT</u> available which meets the conditions of OAR 340-71-015 (5). It is requested that the Commission order the D.E.Q. to entertain the <u>STANDARD</u> permit application as submitted on February 23, 1977 upon resubmittal of appropriate application fees.

8. Petitioners do not know of any other person having an interest in the requested declaratory ruling.

Dated Nov 10, 1978

Ladd Henderson

Ladd Henderson

Larry Henderson

Larry Henderson
DBA Evergreen Terrace Park

ROBERT W. STRAUB
GOVERNOR

Environmental Quality Commission

POST OFFICE BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Hearing Officer

Subject: Agenda Item No. J(1), January 26, 1979, EQC Meeting
EQC Meeting

Contested Case Review: DEQ v. Arline Laharty, No. LQ-MWR-75-209 - Motion to Dismiss Respondent's Appeal

Attached are the Department's Motion to Dismiss the Respondent's Request for Commission Review and the Respondent's Response to the Department's Motion to Dismiss.

It is contemplated that, should they desire, the parties be given opportunity for brief oral argument in this matter.

Respectfully submitted,

Peter W. McSwain

Peter W. McSwain
Hearing Officer

PWMc:cs

Attachment

cc: Mr. Randall Taylor
Mr. Robert Haskins
Mr. Fred Bolton
Mr. T. J. Osborne
Mr. Van Kollias
Mr. John Borden

File

November 16, 1978

Mr. Randall Taylor
25038 McCutcheon Avenue
Veneta, Oregon

Re: DEQ v. Arline Laharty
LQ-MWR-75-209

Dear Mr. Taylor:

It is contemplated the Commission will take up the Department's Motion to Dismiss at its December 15, 1978, meeting.

We will mail the agenda items to the Commission on December 6. If you wish to have written resistance included in our meeting, it should be filed with this office by December 1, 1978. We will send you the meeting agenda when it is prepared.

Please inform this office promptly of any questions or objections regarding the arrangements set forth above.

Sincerely,

Peter W. McSwain
Hearing Officer

PWM:jas

cc: Robert Haskins
Fred Bolton
John Borden

JAMES A. REDDEN
ATTORNEY GENERAL

McSwain

DEPARTMENT OF JUSTICE

PORTLAND DIVISION
500 Pacific Building
520 S.W. Yamhill
Portland, Oregon 97204
Telephone: (503) 229-5725

November 1, 1978

Environmental Quality Commission
522 S. W. 5th Avenue
Yeon Building
Portland, Oregon 97201

Re: DEQ v. Arline Laharty
Motion to Dismiss

Commissioners:

Enclosed for filing please find our Motion to Dismiss and Certificate of Service.

Sincerely,

Robert L. Haskins

Robert L. Haskins
Assistant Attorney General

hk
cc: w/enc. William H. Young
Fred Bolton
T. Jack Osborne
John Borden
Daryl Johnson
Roy Burns

Management Services Div.
Dept. of Environmental Quality
RECEIVED
NOV 6 1978

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
NOV 3 1978
OFFICE OF THE DIRECTOR

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY OF THE STATE OF OREGON,	)	No. LQ-MWR-75-209
Department,	)	MOTION TO DISMISS
vs.	)	
ARLINE LAHARTY,	)	
Respondent.	)	

The Department moves the Commission for an order dismissing Respondent's request for Commission review of the proposed order of the presiding officer in the above-captioned matter, for the reason that Respondent has defaulted by failure to diligently prosecute her appeal.

DATED this 31ST day of October, 1978.

JAMES A. REDDEN
Attorney General

Robert L. Haskins

ROBERT L. HASKINS
Assistant Attorney General
Of Attorneys for Department

POINTS AND AUTHORITIES

It appears from the Commission's files and records in this contested case that Respondent, by order of the Commission announced at its meeting of February 24, 1978 was granted through March 26, 1978, to file with the Commission

James A. Redden
Attorney General
500 Pacific Building
Portland, Oregon 97204
Telephone 229-5725

and serve upon the Department her written exceptions, arguments and alternative findings of fact, conclusions of law and final order. This order followed the Department's December 15, 1977 Motion to Dismiss and February 9, 1978 Supplemental Motion to Dismiss for Respondent's failure to file a timely request for Commission review and failure to diligently prosecute her appeal.

Respondent did not meet this time limitation set by the Commission and instead, by letter dated March 24, 1978, requested an additional 30 day extension in which to file exceptions. The extension request was granted by the Department's Director.

In a letter dated April 21, 1978, Respondent requested yet an additional extension purportedly in order to allow Respondent time to apply for a reinspection of the site in question. Specifically, Respondent requested an extension of 30 days, to begin running after there was an approval or denial of the application for reinspection of Respondent's property. On April 27, 1978, the Director ordered the extension as requested.

After more than four months elapsed, during which Respondent failed to file any application for reinspection of the site, the Department moved for a modification of the extension order, whereby Respondent would have a 30 day time limit to file her exceptions, etc., regardless of any action taken by Respondent for a site reinspection. In an order dated September 21, 1978, this motion was granted, by Director Young, giving Respondent 30 days from the order date to file her ex-

James A. Keaden
Attorney General
500 Pacific Building
Portland, Oregon 97204
Telephone 229-5725

ceptions, etc. The 30 day extension has expired and Respondent neither filed exceptions and argument nor has Respondent requested additional time to do so.

Therefore, the Department respectfully moves the Commission to issue a final order adopting and affirming the hearing officer's proposed findings of fact, conclusions of law and final order.

Under the rules of the Commission, the Respondent in a contested case must diligently prosecute her appeal by timely filing of exceptions, alternative findings of fact, conclusion of law and proposed order with the Commission. OAR 340-11-132(4). The history of the case clearly shows that Respondent has failed to comply with this rule.

Respondent began her appeal by filing an untimely request for Commission review, and failure to file exceptions, etc. before the date required by rule. The Commission, in its discretion, allowed Respondent an extension to file arguments on appeal. More than six months have now passed since the original extension was granted, and Respondent has failed to produce any exceptions to the proposed findings of fact, conclusions of law, and final order. Instead, Respondent, has apparently used this time to take advantage of the Director's discretion to grant extensions, and thereby thwart a final determination of the case.

James A. Redden
Attorney General
500 Pacific Building
Portland, Oregon 97204
Telephone 229-5725

Now it appears that Respondent is in default, as she has made no further effort to prosecute the appeal. The only conclusion to be drawn from Respondent's failure to either file exceptions, etc., or request yet another extension is that she has abandoned her appeal. Thus Respondent is in default for her failure to diligently prosecute her appeal in compliance with the rules of the Commission. There appearing no set of circumstances justifying a continuance of this matter, the Commission should issue a final order dismissing Respondent's request for review and adopting and affirming the hearing officer's proposed findings of fact, conclusions of law and final order and opinion.

James A. Redden
Attorney General
500 Pacific Building
Portland, Oregon 97204
Telephone 229-5725

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Motion to Dismiss on Respondent, by mailing to her attorney of record a true and correct copy thereof. I further certify that said copy was placed in a sealed envelope addressed to said Respondent's attorney of record, R. Randall Taylor, at 25038 McCutcheon Avenue, P. O. Box 274, Veneta, Oregon 97487, his last known address, and deposited in the Post Office at Portland, Oregon on the 2nd day of December, 1978, and that the postage thereon was prepaid.

Holly Ketter

HOLLY KETTER
Secretary

McSwain

TAYLOR AND TAYLOR
ATTORNEYS AT LAW
88124 TERRITORIAL ROAD
MAILING ADDRESS: P.O. BOX 247
VENETA, OREGON 97487

R. RANDALL TAYLOR
R. SCOTT TAYLOR

TELEPHONE
(503) 935-2246

November 6, 1978

William H. Young, Director
Department of Environmental Quality
P.O. Box 1760
Portland, Oregon 97202

Re: DEQ v. ARLINE LAHARTY
No. LQ-MWR-75-209

Dear Mr. Young:

Enclosed herein please a Response to Department's Motion to Dismiss which I would ask be filed regarding the above entitled matter. Thank you.

Very truly yours,

R. RANDALL TAYLOR

RRT/js

Enclosure

cc: Robert Haskins
Dept. of Justice
500 Pacific Bldg.
520 S.W. Yamhill
Portland, Oregon 97204

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY OF THE STATE OF OREGON, Department, vs. ARLINE LAHARTY, Respondent.	No. LQ-MWR-75-209 RESPONSE TO DEPARTMENT'S MOTION TO DISMISS

The Respondent moves the Commission for an order extending Respondent's request for Commission review of the proposed order of the presiding officer in the above-captioned matter for a period of thirty (30) days, and denying the Department's Motion to Dismiss for the reason that the Respondent has been delayed in prosecuting her appeal for the reasons stated below.

DATED this 6 day of November, 1978.

TAYLOR AND TAYLOR

By: R. Randall Taylor
Of Attorneys for Respondent.

* * *

POINTS AND AUTHORITIES

I

For the past eight (8) months, Respondent, ARLINE LAHARTY, has been operating under assurances that the Buyer of the property in question, PHIL ROSE, would seek and obtain septic tank approval of this property and has relied on these assurances (Reference "Exhibit A", Ernest Money Agreement, attached).

/ / /

/ / /

TAYLOR AND TAYLOR
ATTORNEYS AT LAW
P.O. BOX 247
VENETA, OREGON 97487
935-2246

II

The Respondent did not obtain the complete record of the hearings before the Environmental Quality Commission until October 30, 1978 and needs and requests a thirty (30) day extension to have adequate and sufficient time to review the material and findings and transcripts of these proceedings and to discuss and evaluate this material with her attorney.

TAYLOR AND TAYLOR

By: _____
R. Randall Taylor
Of Attorneys for Respondent.

TAYLOR AND TAYLOR
ATTORNEYS AT LAW
P.O. BOX 247
VENETA, OREGON 97487
935-2246

Exhibit A

EARNEST MONEY RECEIPT, OFFER AND ACCEPTANCE

Veneta, Or. June ...

RECEIVED FROM Phil Rose

hereinafter called "buyer"), the sum of $ 1000.00 in the form of CASH (CASH, CHECK, DRAFT, NOTE) as earnest money and part payment for the following described real estate situated Tax lot 201 3 Sec 23 T 17S R 6 WWM (WHERE APPLICABLE, DESCRIBE PROPERTY BY LOT, BLOCK, ADDITION, CITY, COUNTY AND STATE)

together with the following personal property: none

which we have sold to the buyer subject to the seller's approval for a total purchase price of sixty-five thousand Dollars $ 65,000

on the following terms, to-wit: The earnest money hereinabove receipted for $ 1000.00
~~on owner's acceptance~~ * (Strike whichever not applicable)
~~on~~ closing, 19 ..., as additional earnest money, the sum of $
upon delivery (1) of the title report mentioned below and (2) of ~~deed~~* (Strike whichever not applicable) contract the sum of $ 10,000.00 $
balance of fifty four thousand Dollars $ 54,000
payable as follows: four hundred fifty three 17/100 (453 17/100) per month at 9% interest. Sale to close as soon as site approved for septic tank.

1) Seller shall furnish to buyer in due course at seller's expense a title policy insuring marketable title in an amount equal to purchase price of aforesaid real estate. Preliminary to closing, seller shall deliver to buyer a title insurance company's title report showing its willingness so to insure seller's title to said property.
2) If seller does not accept this sale within the period allowed broker below to obtain such acceptance, or if seller's title is not insurable and cannot be made so within 30 days after the date of said preliminary title report, the said earnest money shall be refunded, but buyer's acceptance thereof shall not constitute a waiver of other remedies available to him. But if seller accepts this sale and said title is insurable and buyer neglects or refuses to comply with any of said conditions, or to make all said required payments promptly, then said earnest money and additional earnest money, if any, shall be forfeited and disposed of as stated in Section F below and this contract will be of no further binding effect.
3) The property is to be conveyed by good and sufficient deed, free and clear of all liens and encumbrances excepting zoning ordinances, building and use restrictions, reservations in federal patents, easements of record and none
4) Seller shall leave on the premises as part of the property purchased all irrigation, plumbing, heating and built-in appliances; fixtures and equipment (including oil tanks but excluding unattached fireplace equipment), water heaters, light fixtures, bulbs and tubes, bathroom fixtures, venetian blinds, shades, drapery and curtain rods, window and door screens, storm doors and windows, attached linoleum, attached television antenna, wall-to-wall carpeting, all shrubs, plants and trees and other attached fixtures not herein expressly reserved or excepted.
5) Taxes for the current year, rents, interest, insurance premiums and other matters shall be prorated between buyer and seller; buyer shall pay seller for all or other fuel on hand at date of possession and shall reimburse seller for sums held in seller's reserve account, if any, for any indebtedness on said property; all adjustments are to be made as of the date of delivery of possession unless otherwise specified. Encumbrances to be discharged by seller may be paid, at seller's option, out of the purchase money at date of closing. CLOSE IN ESCROW. YES ☒ NO ☐; IF CLOSED IN ESCROW, ESCROW COSTS TO BE SHARED EQUALLY BY SELLER AND BUYER. (INDICATE YES OR NO)
6) Possession of said premises is to be delivered to buyer on or before ..., 19 ... Time is of the essence hereof. This contract is binding upon the heirs, executors, administrators, successors and assigns of buyer and seller. However, the buyer's rights herein are not assignable without written consent of seller. In any suit or action brought on this contract the losing party therein agrees to pay the prevailing party therein (1) the prevailing party's reasonable attorney's fees in such suit or action, to be fixed by the trial court, and (2) on appeal, if any, similar fees in the appellate court, to be fixed by the appellate court.

Special conditions: Sale subject to Buyer securing septic tank approval. Buyer acknowledges prior site was disapproved.

Broker's Address ... ☐ Cooperating Broker ☐ Listing Broker

Phone No. ... By ...

B. AGREEMENT TO PURCHASE

..., 19...

I hereby agree to purchase the above described property in its present condition, for the price and on the terms set forth above and grant to said broker a period of ... days hereafter to secure seller's acceptance hereof, during which period my offer shall not be subject to revocation. I acknowledge delivery of an executed copy of this earnest money receipt, said deed or contract to be in the name of ...

Buyer's Address 4122 W 11th Ave Buyer Phil Rose

Phone

C. BUYER'S AND SELLER'S AGREEMENT RE DEPOSIT OF EARNEST MONEY

..., 19...

The Earnest Money deposit in this transaction of $ ... in the form stated above shall be deposited in the Client's Trust Account of the Broker indicated above until this offer is accepted, whereupon the parties agree and direct that such funds be 1. ☐ deposited (or retained) in the Client's Trust Account of ..., the listing Broker, or 2. ☐ deposited in escrow with ... Address ... to be held pending closing of this transaction pursuant to the attached escrow instructions.

... Buyer ... Seller

... Buyer ... Seller

D. AGREEMENT TO SELL

..., 19...

I hereby approve and accept the above sale for said price and on said terms and conditions and agree to consummate the same as stated.

Seller's Address 24725 Warthen Rd. Elmira, Ore. Seller Thomas & Arlene Salody

Phone

E. Deliver promptly to buyer, either manually or by registered mail, a copy hereof showing seller's acceptance.

Buyer acknowledges receipt of the foregoing instrument bearing his signature and that of the seller showing acceptance.

Buyer ...

Date ...

Copy hereof showing seller's signed acceptance sent buyer by registered mail to buyer's above address (return receipt requested) on ..., 19...
Return receipt card received and attached to broker's copy ..., 19...

F. SELLER'S CLOSING INSTRUCTIONS AND AGREEMENT WITH BROKER RE FORFEITED EARNEST MONEY

..., 19...

I, the seller whose signature appears below, agree to pay forthwith to said broker a commission amounting to $ ... for services rendered in this transaction. In the event that the buyer's deposit is forfeited pursuant to sub-paragraph 2, above, said forfeited deposit shall be disposed of between broker and seller in the following manner:

Seller acknowledges receipt of a copy of this contract bearing signatures of seller and buyer named above.

... Broker ... Seller

By ... Seller

FORM No. 909
Stevens-Ness Law Pub. Co., Portland, Oreg.

NOTE: IF ABOVE BLANK SPACES ARE INSUFFICIENT, USE S-N No. 810 ADDENDUM, TO BE SEPARATELY SIGNED BY BUYER AND SELLER.

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Response to Department's Motion to Dismiss on Department, by mailing to their attorney of record a true and correct copy thereof. I further certify that said copy was placed in a sealed envelope addressed to said Department's attorney of record, Robert L. Haskins, Assistant Attorney Department's General at Attorney Generals' Office, Salem, Oregon, his last known address, and deposited in the Post Office at Veneta, Oregon on the ____ day of _____ 1978, and that the postage thereon was prepaid.

_____

JILL SOUZA
Secretary

ROBERT W. STRAUB
GOVERNOR

Environmental Quality Commission

POST OFFICE BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Hearing Officer

Subject: Agenda Item No. J(3), January 26, 1979, EQC Meeting

DEQ v. Brookshire, AQ-SNCR-76-178, Request for Additional Time

On December 8, 1978, the Department received Respondent's request for more time to answer the hearing officer's Proposed Order of November 22, 1978.

On December 21, 1978, the Department filed resistance to the request.

Both writings are attached. It is contemplated that after the parties are given an opportunity to be heard briefly, the Commission should resolve this matter.

Respectfully submitted,

Peter W. McSwain

Peter W. McSwain

PWMc:cs
Attachments

cc: Mr. Van Kollias, DEQ
Mr. Scott Freeburn, DEQ
Mr. E. J. Weathersbee, DEQ
Mr. John Borden, DEQ

6200 Champoeg Rd., N.E.
St. Paul, Oregon 97137
December 6, 1978

RE: AQ-SNCR-76-178

Department of Environmental Quality,
522 Southwest 5th Ave.,
Portland, Oregon.

Gentlemen:

I respectfully request a thirty day (30 day) extension to answer your No. AQ-SNCR-76-178, FINDINGS OF FACT, CONCLUSION OF LAW, FINAL ORDER AND JUDGEMENT.

Due to the inconsistencies and discrepancies in the FINDINGS OF FACT, CONCLUSIONS OF LAW, FINAL ORDER AND JUDGEMENT and the hearing of April 19, 1978, it is imperative that I have the additional time to determine the proper course of action.

Thank you,

Kenneth F. Brookshire

Kenneth F. Brookshire

JAMES A. REDDEN
ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

PORTLAND DIVISION
500 Pacific Building
520 S.W. Yamhill
Portland, Oregon 97204
Telephone: (503) 229-5725

December 21, 1978

Mr. Peter W. McSwain
Hearing Officer
Environmental Quality Commission
Yeon Building
522 S. W. Fifth Avenue
Portland, Oregon 97204

Re: DEQ v. Brookshire
Before the Environmental Quality Commission
No. AQ-SNCR-76-178

Dear Mr. McSwain:

I received your December 11, 1978 letter with a copy of Respondent's December 6, 1978 letter enclosed therein. You requested that I respond to Respondent's request for an extension to "answer" the Findings of Fact, Conclusions of Law, Final Order and Judgment which your staff served upon Respondent on November 22, 1978.

Inasmuch as Respondent has not filed a request that the Environmental Quality Commission review your ruling, it has become the final order of the Environmental Quality Commission by operation of the law. OAR 340-11-132(3). To the extent that Respondent's December 6, 1978 letter is construed as such a request, it is not timely. OAR 340-11-132(2) requires that such a request shall be filed with the Commission and served on the other parties within 14 days of the date of mailing the Proposed Order. That rule required Respondent's request to be filed with the Commission on December 6, 1978. Respondent's letter was not received by the Commission until December 8, 1978. The order is final. The Commission's rule does not provide any exceptions. It does not allow the Director of the Department, the hearing officer, or its attorney to waive timely filing. The order has become final by operation of the law.

At the most, Respondent's letter could be considered as a petition for rehearing or reconsideration. ORS 183.482(1). As such, it would be a matter entrusted to the discretion of the Environmental Quality Commission, which need not even act upon it since, in the Commission's failure to act, it would be deemed denied on the sixtieth day following the date it was filed. ORS 183.482(1).

Therefore, this matter should be referred to the Environmental Quality Commission for their consideration at the next regularly scheduled meeting.

Sincerely,

Robert L. Haskins

Robert L. Haskins
Assistant Attorney General

RLH:kth

cc: Kenneth M. Brookshire
William H. Young
Fred Bolton
E. J. Weathersbee
John Borden

ROBERT W. STRAUB
GOVERNOR

Environmental Quality Commission

POST OFFICE BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

January 9, 1979

Mr. Kenneth F. Brookshire
6200 Champoeg Road, N.E.
St. Paul, Oregon 97137

Re: DEQ v. Kenneth Brookshire
AQ-SNCR-76-178

Dear Mr. Brookshire:

Thank you for your letter of January 4, 1979. The letter is captioned "No. AQ-SNCR-76-178 FINDINGS OF FACT CONCLUSIONS OF LAW FINAL ORDER AND JUDGEMENT." Nevertheless, it commences with "In reply to No. AQ-SNCR-76-178." Unless we are otherwise informed within ten days, we will assume that it is your intent, by the January 4 letter, to file your argument and exceptions with regard to the hearing officer's proposed findings.

As our letter to you of January 4 indicates, the Commission will take up the matter of your earlier request for additional filing time at its January meeting. If it is decided to grant your request and accept your letter of January 4 as timely, we will schedule, at a later date, the Commission's review going directly to the merits of the hearing officer's proposal. You will be notified and given an opportunity to appear.

In the interim, both this letter and yours will be attached to the report before the Commission on January 26 so you may make known to the Commission any questions or objections you may have to the arrangement set forth above.

At the commencement of the hearing you were told a copy of the tape of the hearing would be made available to you. We do not know whether to construe your letter as implying that you would ask for a copy but for your failure to believe it would be forthcoming. Therefore, arrangements are being made to send you copies.

The other tape made at your farm is neither in the possession of the undersigned nor within his responsibility to display under the public records law.

The file in this matter indicates a document dated December 28, 1976 which the Department claimed was a verbatim transcript of a tape recorded conversation between yourself, a Mr. Oliver and a Mr. Phillips which occurred on August 18, 1976. The Department called upon you to admit genuineness by letter of December 28, 1976. A Certificate of Service indicates its having been mailed to you and a letter from you indicates your having answered the Department's demand.

While this transcript was not offered in evidence (and was in no way considered in the formulation of the hearing officer's proposal), it may well be a transcript of the tape you claim the Department will not copy to you. I will be happy to send you another copy of that document upon your request.

Sincerely,

Peter W. McSwain

Peter W. McSwain
Hearing Officer

PWMc:cs

cc: Environmental Quality Commission
Mr. Robert Haskins, Dept. of Justice

6200 Champoeg Rd., N.E.
St. Paul, Oregon 97137
January 4, 1979

Department of Enviornmental Quality,
522 Southwest 5th Ave.,
Portland, Oregon

Re: No. AQ-SNCR-76-178
FINDINGS OF FACT,
CONCLUSION OF LAW,
FINAL ORDER AND JUDGEMENT

Gentlemen:

In reply to No. AQ-SNCR-76-178.

At the beginning of this illegal kangaroo court - hearing -, I ask Mr. McSwain to hear the first tape that I made. He refused. I had been refused the tape before. They said they would make the tape of this kangaroo court available. If the first tape is not available to me, then why should I believe the next tape would be.

I have the name and phone number of the news person that said that Mr. McSwain was going to get me. I will present this name in front of a legal court, but not a kangaroo court. If this goes to a legal court they would laugh at you welfare Bureaucrats.

At the beginning of this illegal court hearing, I ask Mr. McSwain when he was appointed or elected a judge. He did agree that he was the judge and jury.

You say that the fire burned from the southern half toward the Willamette River. Also that there was a north easterly wind. The fire started at the river. You could see a film made by Channel 2 TV of this fire. If you will check this film the fire is burning from north to south. You seem to have forgotten when you sent your three goons out to burn me out that you also called TV 2 to take film.

You say the fire burned from the southern half toward the river, then you say the barley field at the end of the fire didnt burn. Why didnt the barley field burn with a north east wind? You say that the fire started in the southern half of my field.

I asked to hear the tape made by your agent. I was refused by them, I was also refused at the beginning of this kangaroo court by Mr. McSwain to hear the tape made at my ranch.

You say I was disruptive and contemptuous of the preceedings. I believe that even a farmer, not only the Bureaucratic leeches, has the same right ~~even~~ in a kangaroo court. At the beginning of this hearing, I ask who the third person was at the table and they refused to tell me. They seem to have all the time they wanted but when I had something to say they didnt have the time.

I did not cause or allow my field to be burned. You Bureaucrats sent your goons out to burn me out.

I did explain my silence on testifying. I will not go on tape when I have been refused to hear the first tape made. I did offer to testify if the proceedings were taken down by a stenographer.

There is no evidence that I intentionally or negligently caused or allowed my field to be burned. I have no control over vandalism or crime when it is committed against me. This very letter I am answering is a crime against me. I will always fight against the GREAT BUREAUCRATS, which have control of our Country. You can burn me out but I will still fight you Bureaucrats.

I did not violate the statute pertaining to registration and permits. I am not responsible for the vandilism which I believe you Bureaucrats did to my property.

You say there was direct testimony that the fire began back from the river and simultaneously burned on two fronts. If you will check TV 2 files, you will see that the fire burned from the river to the south of my property and from east to west on the Dority property. Your testimony is incorrect.

If your agent wasnt stupid he would have noticed that the clover and barley fields were green and green fields do not butn.

You say my tractor and sprayer was at the ranch only 35 minutes after the fire. I do not remember any one saying where I was. I was at the ranch from the beginning to the end.

When I have been refused the tape I made, I will not go on tape again. This is not an illogical or less than credible excuse for failure to testify. Also at the beginning of the kangaroo court, I suggested a legal secretary take down the testimony. Mr. McSwain said no, it was too slow and expensive.

Your professional fire fighter lied when he said the fire burned toward the river. Also that the fire started several thousand yards from the river. The field is not several thousand yards long. According to his testimony the fire

would have had to start on the south side of the Champoeg Road.

You have violated my constitutional rights. You have nothing to fine me for. You are trying to justify the expense of your agency.

I have gone over No. AQ-NCR-76-178 with Mr. Bert Bernards, St. Paul fire chief and Mr. Dan Dority. They cannot understand where you come up with your findings in this kangaroo court.

Kenneth F. Brookshire

Kenneth F. Brookshire

ROBERT W. STRAUB
GOVERNOR

Environmental Quality Commission

POST OFFICE BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. K, January 26, 1978, EQC Meeting

NOISE CONTROL RULES - CONSIDERATION OF ADOPTION OF PROPOSED AMENDMENTS TO NOISE CONTROL REGULATIONS FOR NEW AUTOMOBILE AND LIGHT TRUCKS, OAR 340-35-025

Background

This matter came on for Commission action on November 17, 1978. See Attachment B which is the Agenda Item of that meeting.

Statement of Need for Rule Making

Again, see Attachment B.

Evaluation and Summary

It was discovered after the Commission's adoption of the change reflected in Attachment A hereto, that a draft copy of the proposal had not been filed with Legislative Counsel and Legislative Counsel Committee as required by ORS 171.707.

The Commission should again take formal action to adopt the rule. A draft was submitted to Legislative Counsel and Legislative Counsel Committee on December 28, 1978.

Director's Recommendation

Based upon the considerations set forth above, it is recommended that the Commission take action as follows:

1. Adopt Attachment A as a permanent rule amendment, to take effect on its prompt filing with the Secretary of State.

2. Adopt as its Final Statement of Need for rulemaking that Statement commencing on page one of Agenda Item G to the November 17, 1978 Commission meeting (Attachment B).

3. Instruct the staff to promptly file with Legislative Counsel, Legislative Counsel Committee and the Secretary of State the amended rule (TABLE A of OAR 340-35-025) and the Statement of Need for Rulemaking.

Bill

WILLIAM H. YOUNG

PWMcSwain:cs
229-5383
December 27, 1978
Attachments
A. TABLE A (OAR 340-35-025)
B. Agenda Item G, November 17, 1978, EQC Meeting

TABLE A

New Motor Vehicle Standards

Moving Test At 50 Feet (15.2 meters)

Vehicle Type	Effective For	Maximum Noise Level, dBA
Motorcycles	1975 Model	86
	1976 Model	83
	1977-1982 Models	81
	1983-1987 Models	78
	Models after 1987	75
Snowmobiles as defined in ORS 481.048	1975 Model	82
	Models after 1975	78
Truck in excess of 10,000 pounds (4536 kg) GVWR	1975 Model	86
	1976-1981 Models or Models manufactured after Jan. 1, 1978 and before Jan. 1, 1982	83
	Models manufactured after Jan. 1, 1982 and before Jan. 1, 1985	80
	Models manufactured after Jan. 1, 1985	(Reserved)
Automobiles, light trucks, and all other road vehicles	1975 Model	83
	1976-1980 Models	80
	Models after [~~1980~~] 1981	75
Bus as defined under ORS 481.030	1975 Model	86
	1976-1978 Models	83
	Models after 1978	80

ROBERT W. STRAUB
GOVERNOR

Environmental Quality Commission

POST OFFICE BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. G, November 17, 1978, EQC Meeting

Noise Control Rules - Consideration of Adoption of Proposed Amendments to Noise Control Regulations for New Automobiles and Light Trucks, OAR 340-35-025

Background

Oregon Revised Statute Chapter 467 directs the Environmental Quality Commission to establish maximum permissible levels of noise emissions. In 1974 the Commission adopted noise standards and associated procedure manuals for new motor vehicles. These standards began at a regulatory level of 83 dBA for 1975 models, 80 dBA for model years 1976 through 1978 and 75 dBA for subsequent models.

In June, 1976 the Department received a petition from General Motors Corporation to amend OAR 340-35-025, Noise Control Regulations for the Sale of New Motor Vehicles. This petition proposed to delete the 75 dBA requirement for passenger cars and light trucks that was scheduled to be effective for 1979 and subsequent models. After public hearings, the Commission adopted an amendment that did not rescind the 75 dBA standard but postponed its implementation two years, until 1981.

In May, 1978 General Motors again petitioned to amend Noise Control Regulations to delete the 75 dBA standard, now scheduled to be effective for model years after 1980.

A public hearing to consider the General Motors petition was authorized by the Commission at its June 30, 1978 meeting. This hearing was held in Portland on October 10, 1978. Testimony was presented by representatives of the motor vehicle industry and other interested parties.

Statement of Need for Rule Making

1. The proposed rule may be promulgated by the EQC under authority granted in ORS. 467.030.

2. New automobiles and light trucks significantly contribute to excessive environmental noise levels in Oregon.

3. Principle documents relied upon in considering the need for this rule include:

   a) Petition for Rule Amendment, submitted by General Motors Corporation dated May 19, 1978.

   b) Hearing Report: October 10, 1978, Public Hearing on Petition to Amend Noise Control Regulations.

   c) "Determination of Urban Acceleration Rates for Light Vehicles", Environmental Activities Staff, General Motors Corporation.

   d) "Manual Transmission Shift Point Study", Environmental Activities Staff, General Motors Corporation.

   e) "Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety", U.S. EPA, March 1974.

   f) "Transportation Noise and Noise from Equipment Powered by Internal Combustion Engines", U.S. EPA, December 31, 1971.

   g) Other materials entered into the record of the October 10, 1978 public hearing.

Evaluation

In 1971 California adopted new vehicle standards for automobiles and light trucks to meet progressively tougher standards over a 15-year period. By 1977 the requirement would have been 75 dBA and by 1987 a 70 dBA standard was to be met. Many other states and some local governments followed California by establishing similar standards. However, in the last few years the major automobile manufacturers, specifically General Motors and Ford Motor Company, have successfully persuaded regulatory agencies, local governments, and state legislators that any standard below 80 dBA was not needed.

At this time the few remaining jurisdictions with standards more restrictive than 80 dBA are Florida with 75 dBA by 1985, Maryland with 77 dBA by 1982, and Chicago with 75 dBA by 1981.

The major points made by the automobile industry representatives at the October 10, 1978 hearing were as follows:

   a) The current "wide-open throttle" compliance test procedure does not correlate with real traffic conditions.

   b) The costs to achieve the 75 dBA standard are greater than any environmental benefit.

   c) The Federal EPA is currently studying this product and may preempt state and local regulations by 1982 or possibly 1983.

Other issues raised by the Industry were:

a) Motor vehicle noise is caused by in-use vehicles with defective or modified exhaust systems.

b) The national energy goal to meet fuel consumption standards supersedes vehicle noise standards as the noise control package adds excessive weight.

Issues raised by non-industry testimony and supportive of the existing 75 dBA standard were as follows:

a) Noise reductions gained under the present compliance test procedure are reflected in real traffic situations.

b) Median noise levels near many urban streets are in excess of ambient limits established for commercial and industrial noise sources. Autos and light trucks are accountable for these high levels and should share the burden to achieve protective ambient noise levels.

c) The motor vehicle industry should be held to the two-year "compliance schedule" granted during its 1976 petition on this matter. Industry did not consider the extension as a schedule but only as a delay.

Since the receipt of the General Motors petition, staff has been reviewing the large amounts of test information that GM believes supports its petition. It is obvious there are some deficiencies in the present compliance test procedure and the Industry and the federal government have been working to develop new procedures. The federal EPA, after two years of development, is ready to publish a proposed procedure. General Motors has not yet proposed a new procedure. The European Common Market countries have developed a new procedure, however, it has not been proposed for adoption.

The present test procedure is most accurately described as a method to measure the maximum noise capacity of the vehicle at relatively low speeds (to eliminate the effects of tire generated noise). Thus, this procedure is not designed to measure real traffic or "real world" situations. It does provide a method to accurately compare one vehicle with another and measure the noise capabilities of each.

Industry contends that this method discriminates against some classes of vehicles in real traffic situations. For example, an automobile with a large engine and relatively low weight (high horsepower to weight ratio) seldom operates at or near the conditions required during the compliance test, and may be "over soundproofed."

Industry contends that the conditions under which the vehicles are certified are seldom duplicated in real traffic situations, however, it has not proven that there is no correlation between the compliance test and typical urban traffic operations. In 1972 Ford Motor Company conducted a demonstration with three vehicle classes--a compact, a full sized car, and a pickup truck.

Ford brought to Portland current production models meeting the 80 dBA standard and retrofitted models that were quieted to achieve the 75 dBA standard. Although the ideal difference between the 80 and 75 decibel models should have been 5 decibels (80-75) during a compliance test, the measured values ranged from approximately 3 to over 6 decibels.

A second test typical of urban accelerations was also performed to provide correlative data.

The quiet (75 dBA) compact vehicle was 3.7 dBA quieter in the compliance test and 3.1 dBA quieter in the typical acceleration test than its 80 dBA counterpart. The pickup data showed a compliance test difference of 6.5 dBA and a typical acceleration difference of 4.5 decibels. The full size car data was not as impressive; the compliance test difference was 4.2 dBA and typical acceleration difference was 2.4 decibels. In a percentage form, these data show the following correlation between the compliance test and the typical acceleration test for these vehicles:

Compact	84%
Pickup	69%
Full Size	57%

The Cost of Control

The petitioner has stated that the public would not pay added costs for quieter vehicles that the industry has estimated at approximately $10 to $260 for automobiles and light trucks. Data from a Florida survey was offered in testimony as an indication that the public would not support noise control efforts. The survey in fact showed that the average citizen polled favored having approximately 3 of his tax dollars spent on noise control. The most recent statistics available indicate that the Florida noise control program receives less than $.02 for every citizen in the state. It should be noted that Florida has one of the most active noise control programs in the nation.

The Federal Role

Part of the motor vehicle manufacturing industry's argument for the deletion of tougher standards is that these products should be regulated at the federal level and that EPA is moving toward the adoption of preemptive standards for automobiles and light trucks.

While it is true that EPA regulations in this area would be preemptive, EPA is moving slowly on the path toward establishing standards for light duty vehicles. It has been investigating the health and welfare impacts of noise produced by these products since 1975 and has been developing a compliance test procedure since early 1977. When the Commission heard General Motors Corporation's petition in 1976, the industry believed that federal standards would be adopted and applicable to model years 1980 or 1981. Now the industry estimates that the earliest federal standards might become effective will be 1982 or 1983.

EPA's role in the regulation of automobiles and light trucks has been cautious. It has not yet identified this vehicle class as a "major noise source" because that would initiate the rule adoption timetable that it must maintain by law. EPA has expended much effort toward the development of a better compliance test procedure, but this process has been slow. It is doubtful that a procedure will be accepted in the near term, although EPA is now prepared to ask for comments on a proposed procedure.

EPA has determined some significant facts in its investigation of light vehicles:

a) The major deficiency of the present test procedure is that it fails to properly rank vehicles according to typical urban traffic operation conditions. It does properly rank vehicles by noise producing capability.

b) Sub-compact and diesel powered cars and light trucks are the major contributors to real world traffic noise due to their low power to weight ratio.

c) Many current model vehicles, measured during the compliance test procedure, emit levels of 75 dBA or less.

It is anticipated that increasingly stringent fuel economy standards will alter the composition of the light motor vehicle fleet. Gasoline V8 engine equipped cars currently comprise 56% of the current market, but these vehicles will represent no more than 18% of the total by 1985. Conversely, the percentage of diesel and 4-cylinder vehicles will double.

Diesel and 4-cylinder vehicles are approximately 5 dBA and 7 dBA, respectively, noisier than the average V8 engine vehicle when compared during a typical acceleration, and 1 dBA and 3 dBA noisier during cruise.

An EPA conducted test of representative 1977 model vehicles demonstrated that over 80% of the 76 vehicles tested would pass the 75 dBA test without any modification. Of those vehicles in excess of 75 dBA, nearly half (40%) were 4-cylinder.

EPA tests indicated that engine radiated noise in diesels and 4-cylinder vehicles was a significant contributor during the compliance test, and that engine radiated noise was the primary noise source during typical acceleration and cruise conditions. This indicates that until engine noise is more effectively controlled, the compliance test is an effective indicator of the noise that 4-cylinder vehicles will produce under typical operating conditions.

It appears that the 4-cylinder and diesel vehicles should be the focus of our interest. These vehicles are rapidly becoming the dominant segment of the "on-road" population, and they make more noise in all modes of operation than the vehicles they are replacing. Finally, 4-cylinder and diesel vehicles yield an acceptable correlation between the compliance test and typical urban driving.

New vs. In-Use Control

The ambient noise levels measured near streets and roads in terms of "median" and "average" noise descriptors are not greatly impacted by those relatively few excessively loud vehicles. To achieve reductions in ambient noise near these traffic corridors, all vehicles must become quieter, and the light duty vehicles (due to their high volumes) are responsible for most of the noise that makes up the average ambient noise level.

The fact remains that motor vehicles significantly contribute to the ambient noise measured near streets and roads. The standards established for industrial and commercial noise sources are believed to achieve acceptable noise levels at noise sensitive uses, but near many streets and roads the noise caused by traffic is in excess of these desirable ambient levels.

Testimony was presented by an engineering consultant that calculated the effects of light duty vehicle noise on a typical heavily traveled arterial. The calculated distance from the road at which the median noise level equalled 55 dBA was 400 feet. However, if the light duty vehicle source strength were reduced by an amount gained under the 75 dBA standard, the distance to the 55 dBA point would move toward the road 200 feet. Thus, all noise sensitive property between 200 feet and 400 feet from the road would be brought within acceptable ambient noise levels.

The question of energy consumption was not fully addressed by the industry. Although noise controls would tend to add weight to the vehicle and therefore raise its fuel consumption, no quantitative data has been submitted for evaluation.

Summation

Drawing from the background and evaluation presented in this report, the following facts and conclusions are offered:

1. The present light duty vehicle compliance test procedure, although not reflective of real traffic conditions, is an acceptable method to establish noise standards that effectively reduce "real world" traffic-caused noise.

2. The development of a new test procedure may more effectively identify vehicles needing additional noise controls, however such a procedure has not been proposed or fully developed.

3. Motor vehicles, specifically light duty vehicles, are responsible for establishing the median ambient noise level near major traffic corridors. The noise levels at noise sensitive properties near these streets and roads are often in excess of standards with which industrial sources must comply.

4. Implementation of the 75 decibel standard could reduce impacted land by as much as one-half near major traffic corridors.

5. EPA is slowly moving toward the adoption of standards for light duty vehicles, but it may fail to identify this category as a major noise source if state and local standards are continued to be rescinded.

6. The U.S. Environmental Protection Agency should exercise its authority to regulate the noise emissions of new light motor vehicles nationwide to ensure consistency of regulation, fairness to the automotive industry, and meaningful protection of the public from the effects of motor vehicle noise.

Director's Recommendation

Based on the Summation, it is recommended that the effective date for the 75 dBA noise level for automobiles and light trucks be amended from "models after 1980" to read "models after 1982."

Bill

WILLIAM H. YOUNG

John Hector:dro
229-5989
10/16/78

ROBERT W. STRAUB
GOVERNOR

Environmental Quality Commission

POST OFFICE BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. L, January 26, 1979, EQC Meeting

Adoption of Amendments to Administrative Rules Governing Subsurface and Alternative Sewage Disposal

Background

Administrative rules governing subsurface and alternative sewage disposal, are provided for by statute, ORS 454.625. The present rules, Chapter 340, Sections 71, 72, 74 and 75 were adopted by the Commission and became effective September 25, 1975. There have been two major sets of amendments since that date, the latest set adopted by the Commission became effective March 1, 1978.

All administrative rules adopted are reviewed by Legislative Counsel Committee to determine among other things, whether the rules appear to be within the intent and scope of the enabling legislation. The Department has received a report from Legislative Counsel stating that two of the rules adopted March 1, 1978 appear to be outside the scope of authority of the Commission. Those rules are:

1. OAR 340-71-020(1)(i); and
2. OAR 340-72-010(5).

Please see Attachment "A", Administrative Rule Review Report to the Legislative Counsel Committee, ARR Number 1440, and letter dated August 4, 1978 transmitting information on Legislative Counsel Committee's action.

Legal counsel has reviewed ARR Number 1440 and is of the opinion that the two rules in question do need to be amended in order to meet intent of enabling legislation. Please see Attachment "B".

At it's August 25, 1978 meeting the Commission authorized a public hearing on the question of amending these two rules. That public hearing was held on December 1, 1978. See Hearing Officer's report, Attachment "D".

Statement of Need for Rule Making

1. Legal authority for adoption of rules pertaining to subsurface and alternative sewage disposal is ORS 454.615 and ORS 454.625.

2. Rules as presently structured are outside the scope of the Environmental Quality Commission's authority. Amendments are necessary to correct that.

3. Principal documents relied upon in considering the need for these two rule amendments:

   a. Administrative rule review report ARR Number 1440, dated April 3, 1978, Attachment "A".

   b. Letter from legal counsel, dated July 21, 1978, Attachment "B".

Evaluation

Under the provisions of ORS 454.625 the Department proposed and the Commission adopted two administrative rules, OAR 340-71-020(1)(i) and 340-72-010(5), that appear to exceed statutory authority. Legislative Counsel Committee has requested that the two rules be amended. Legal counsel is of the opinion that amendments are in order.

Public hearing has been conducted without adverse comment. After the public hearing record was closed a letter was received from Mr. John Munro, Oregon Association of Realtors. (Attachment "E").

Proposed amendments are set forth on Attachment "C".

Summation

1. ORS 454.625 provides that the Commission, after public hearing, may adopt rules it considers necessary for the purpose of carrying out ORS 454.605 to 454.745.

2. ORS 171.707 requires Legislative Counsel Committee to review adopted rules and report to the agency on whether the rules in question appear to meet the intent of enabling legislation.

3. Legislative Counsel Committee Report ARR Number 1440, dated April 3, 1978, addressed to the Commission states that two rules adopted by the Commission appear to be outside the scope of the authority of the Commission.

4. Legal counsel has reviewed Report ARR Number 1440 and is of the opinion that amendments are in order.

5. EQC authorized public hearing August 25, 1978. Public notice given by mailing to Secretary of State for publication in the Bulletin and by mailing lists (approximately 318 mailings) on November 1, 1978.

6. Public hearing held on December 1, 1978. Hearing record held open for 10 days. No adverse comments received.

Director's Recommendation

Based upon the summation, it is recommended that the Commission adopt the proposed amendments to OAR 340-71-020(1)(i) and 340-72-010(5) as set forth on Attachment "C" to become effective upon filing with Secretary of State.

Bill

WILLIAM H. YOUNG

T. Jack Osborne:nrj
229-6218
December 29, 1978
Attachment(s): A, B, C, D, and E

Attachment "A"

LEGISLATIVE COUNSEL
S101 State Capitol
Salem, Oregon 97310

April 3, 1978 ARR Number: 1440

Administrative Rule Review
REPORT
to the
Legislative Counsel Committee
(Pursuant to ORS 171.709)

State Agency: Environmental Quality Commission

Rule: Subsurface and alternative sewage disposal systems

These rules are modifications of existing rules of the commission relating to subsurface and alternative sewage disposal systems. Included are:

(1) Amendments of OAR 340-71-005, 71-010, 71-016, 71-020, 71-025, 71-030, 71-035, 71-037, 71-040 and 71-045, relating to standards for subsurface and alternative sewage and nonwater-carried waste disposal.

(2) Amendments of OAR 340-72-010 and 72-025, relating to fees for permits, licenses and evaluation reports.

(3) Repeal of OAR 340-74-005 to 74-020 and substitution of new OAR 340-74-004 to 74-025, relating to experimental sewage disposal systems.

(4) Amendments of OAR 340-75-015 and 75-050, relating to variances.

DETERMINATIONS
(Questions 1 to 3 pursuant to ORS 171.709(3))
(Question 4 pursuant to request of Committee)

1. Does the rule appear to be within the intent and scope of the enabling legislation purporting to authorize the adoption thereof? Yes, with two exceptions. The enabling legislation is ORS 454.615, 454.625 and 468.020.

2. Has the rule been adopted, or is it being adopted, in accordance with all applicable provisions of law? Yes.

3. Does the rule raise any constitutional or legal issue other than described in Question 1 or 2? No.

4. Does violation of the rule subject the violator to a criminal or civil penalty? Yes. A civil penalty is imposed by ORS 468.140(1)(c).

Intent and scope of enabling legislation

Two exceptions are noted in the response to question 1 of this report reviewing rules of the Environmental Quality Commission relating to subsurface and alternative sewage disposal systems. Among the many rule modifications are an amendment of OAR 340-71-020 relating to the size of lots necessary to adequately provide for a subsurface sewage disposal system, and an amendment of OAR 340-72-010 relating to refund of fees for certain permits and licenses.

OAR 340-71-020 sets forth minimum requirements for subsurface sewage disposal systems. Subsection (1) of that rule enumerates general standards applicable to all such systems. The amendment in question adds a new paragraph to subsection (1) that provides:

> (i) Lots or parcels created after March 1, 1978 shall be adequate in size to accommodate a system large enough to serve a three (3) bedroom home.

In a publication entitled "Proposed Amendments to Oregon Administrative Rules Pertaining to Alternative and Subsurface Sewage Disposal," dated February 1978, the Department of Environmental Quality identifies the problem addressed by the rule amendment in question as follows:

> Newly created lots or parcels should have room for a system to serve at least a three (3) bedroom dwelling. Many lots are now being subdivided or parceled where soil or topographical conditions will allow a home no larger than two bedrooms. Quite often a buyer is not made aware of this restriction until he has purchased the lot or if he is aware will often try to get approval for a larger system in spite of the restriction. Most new homes have a minimum of three (3) bedrooms. It is not realistic to allow new lots to be created where only a two (2) bedroom home may be built. (Proposed Amendments, p. 14)

ORS 454.615 requires the Environmental Quality Commission to promulgate standards prescribing minimum requirements for sewage disposal systems, including requirements for construction, operation, maintenance and cleaning. Responsibility for sewage disposal system regulation is vested in the commission and the Department of Environmental Quality to protect the public health and the waters of the state. The rule amendment in question does not appear to serve those purposes.

The authority to limit the size of subdivision lots or partitions of land is vested in the cities and counties by the provisions of ORS 92.010 to 92.160. Any division of land must be approved by a local planning commission or governing body, and the power to specify minimum lot sizes accompanies that function. In addition,

the provisions of the Subdivision Control Law, ORS 92.305 to 92.495, require disclosure of the provision made by a seller for sewage disposal. In view of those statutes governing land division and sale, it does not appear to be within the scope of the authority of the Environmental Quality Commission to specify lot sizes by administrative rule.

The second exception to the affirmative response to question 1 of this report concerns an amendment of OAR 340-72-010 that provides:

> The provisions of ORS 454.655(3) notwithstanding fees required by ORS 454.745(1) may be refunded under the following conditions:
>
> (a) The fee or application was submitted in error.
>
> (b) Applicant requests refund and the application has not been acted upon through staff field visits.

The fee refund rule amendment is contrary to ORS 454.655(3), which provides:

> The applications for a permit required by this section [i.e., for construction, installation, alteration, repair or extension of a sewage disposal system] must be accompanied by the nonrefundable permit fee prescribed in ORS 454.745. (Emphasis added)

In respect to ORS 454.655(3) the Department of Environmental Quality has stated:

> It is felt that it was legislative intent to allow some discretion in application of the statute with regard to fee refunds. It appears logical to provide for refunds under certain conditions. Those conditions should be spelled out in Administrative Rules.

The department also has indicated it relies on the provisions of a general statute permitting refunds by state agencies. ORS 293.445 provides for refunds of moneys received by state agencies in excess of amounts legally due and payable or to which the agencies have no legal interest.

A 1968 Attorney General's opinion construed the provisions of ORS 293.445. In that opinion it was stated:

> The language of ORS 293.445(2) provides that moneys may be refunded on two grounds: (1) Where money is held in excess of the amount legally due, and (2) if the agency has no legal interest in the funds. The first ground for refund is not pertinent to the facts you have presented. Therefore we turn to the second ground, i.e., whether the board has any "legal interest" in the examination fees paid under the three enumerated situations you present.

> The term "legal interest" is a broad and relative term not capable of any absolute definition. However, it is clear that the legislature intended that erroneous payments to state agencies could not confer a legal interest. Under ORS 293.445(2) it is stated that refunds may be made of "excess or erroneous payment." (33 OAG 561 (1968))

The fee refund rule amendment does not speak to the question of excess payments, which might be refundable in spite of ORS 454.655(3). However, the commission has a "legal interest" in all permit application fees it receives. It is unclear what types of errors in submission of sewage disposal system permit applications are contemplated by the rule amendment, but it appears that ORS 293.445 would not apply.

A general rule of statutory construction is that when a specific statutory provision cannot be harmonized with a general statute relating to the same subject, the specific provision controls. Thompson v. IDS Life Ins. Co., 274 Or 649, 549 P2d 510 (1976). In this instance the statute, ORS 454.655(3), specifically states that the fee which is to accompany an application for a sewage disposal system construction permit is nonrefundable. We believe the Environmental Quality Commission would exceed its statutory authority in attempting to refund such fees.

THOMAS G. CLIFFORD
LEGISLATIVE COUNSEL

5101 STATE CAPITOL
SALEM, OREGON 97310
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378-8148

STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

August 4, 1978

Mr. William Young, Director
Department of Environmental Quality
522 S.W. 5th Avenue
Portland, OR 97204

Dear Mr. Young:

At its July 14, 1978 meeting, the Legislative Counsel Committee considered staff report ARR 1440 which concerned rules of the Department of Environmental Quality relating to subsurface and alternative sewage disposal systems. That report raised questions with respect to two rule changes; OAR 340-70-020 which prescribed a minimum lot size adequate to accommodate a three bedroom home, and OAR 340-72-010 which authorizes refunding of permit fees under certain circumstances.

Prior to the committee meeting, staff contacted Mr. T. J. Osborne of your department for his comments on the report. He indicated that OAR 340-70-020 had been inartfully drafted, and would be amended. He reserved comment on OAR 340-72-010 until he received advice from the department's counsel. We have since received a copy of Mr. Ray Underwood's response to staff report ARR 1440.

The Legislative Counsel Committee concurred with the staff report and made the following recommendations:

1. That OAR 340-70-020 be amended as soon as possible; and

2. That the department consult its counsel regarding OAR 340-72-010, and act reasonably on that advice.

The committee on its own motion will introduce legislation to amend ORS 454.655 to authorize refunds under certain circumstances.

Very truly yours,

Elizabeth S. Achorn
Deputy Legislative Counsel

ESA:mh
cc: T.J.Osborne

JAMES A. REDDEN
ATTORNEY GENERAL

Attachment "B"

DEPARTMENT OF JUSTICE

PORTLAND DIVISION
500 Pacific Building
520 S.W. Yamhill
Portland, Oregon 97204
Telephone: (503) 229-5725

July 21, 1978

Mr. Jack Osborne
Department of Environmental
Quality
Yeon Building
522 S.W. Fifth Avenue
Portland, Oregon 97204

Re: Administrative Rule Review Report No. 1440, dated April 3, 1978, by Legislative Counsel

Dear Jack:

This letter is in reply to your July 14, 1978 memorandum to me requesting that I review the above-designated report and give you my comments thereon.

OAR 340-71-020(1)(i) is worded in a way that lends support to the assertion in the report that the Environmental Quality Commission is attempting to specify minimum lot sizes outside the scope of its statutory authority. I shall be glad to review your proposed amendatory language to this subsection. In drafting that language emphasis on the minimum requirements for the system, rather than on minimum requirements in the sizes of lots or parcels, might help avoid the criticism in the report.

OAR 340-72-010(5) provides two apparently independent grounds for refund of fees.

OAR 340-72-010(5)(a) comes within the provisions of ORS 293.445(2). The 1968 Attorney General's opinion, cited in the report, states that it is clear that the Legislature intended that erroneous payments to state agencies could not confer a legal interest and that under ORS 293.445(2) refunds may be made of "excess or erroneous payment." Any apparent

PROPOSED AMENDMENTS

1. Rescind 340-71-020(1)(i) in its entirety and substitute the following:

"(i) Subsurface sewage disposal systems for single family dwellings designed to serve lots or parcels created after March 1, 1978 shall be sized to accommodate a minimum of a three (3) bedroom house."

2. Amend 340-72-010(5) as follows:

"(5) The provisions of ORS 454.655(3) notwithstanding, fees required by ORS 454.745(1) or(2) may be refunded [under the following conditions: (a)] if the fee or application was submitted in error. [(b) applicant requests refund and the application has not been acted upon through staff field visits."]

Note: Bracketed [ ] material to be deleted.

Underlined _____ material is new.

ATTACHMENT D

HEARING OFFICERS REPORT

December 11, 1978

Public hearing to consider amendments to OAR 340-71-020(1)(i), 340-72-010(5) and 340-72-010(4).

Hearing convened at 10:00 a.m., December 1, 1978, Conference Room 511, 522 S.W. Fifth Ave., Portland.

In the week prior to the hearing the Hearing Officer received 3 inquiries about the content of the proposed rule amendments.

No one appeared to testify on the proposed rule amendments.

Hearing adjourned at 10:45 a.m.

The record was held open for ten (10) days to December 11, 1978. Douglas County Commissioner's office informed by telephone on December 1, 1978 that record would be held open in the event they wished to submit written testimony. At end of ten (10) day period no written testimony received.

T. Jack Osborne
Hearing Officer

TJO:nrj

ATTACHMENT E

REALTOR®

OREGON ASSOCIATION of REALTORS

JOHN R. MUNRO Legislative Director

Associated Oregon Industries
1149 Court St. N.E.
P.O. Box 12519, Salem, Oregon 97309
503-588-0050 — Portland Area 503-227-5636

December 18, 1978

Mr. Jack Osborne
Department of Environmental Quality
P.O. Box 1760
Portland, Oregon 97207

Dear Jack:

Unfortunately I received a copy of your proposed rule changes with inadequate time to review them and comment at the December 1st hearing. However, I offer the following comments with regard to the amendment to OAR 340-71-020 (1)(i).

While certainly more artfully redrafted than the rescinded language, I think it objectionable for the same reasons.

There is a direct relationship between the size of a lot and the size of the type of system covered by the rule. Either the lot, given soil conditions, is too small or inadequate for the system or the system can be too demanding in terms of the lot size.

Legislative Counsel suggested that your regulatory authority does not encompass the prescription of minimum lot sizes. You apparently concur with that decision given your recission action. Yet, rather than limiting your regulatory activities to establishing minimum performance standards for sewage disposal systems, you continue to suggest the promulgation of sizing standards. The effect of your proposed rule is the same. By mandating a particular system size you are designating, or specifying minimum lot sizes. The size of those lots will, of course, vary in accordance with soil conditions in given areas.

As is no secret, we are involved in a rather massive land use planning program. Elemental to that program is planning for the public facilities necessary to accommodate residential development. The DEQ is supposed to play an important role as a coordinating agency in providing expertise to local jurisdictions and in adequately reviewing plans prior to their acknowledgment.

By prescribing a minimum system size you seemingly preclude some very viable housing options. For example, a need may exist for moderately priced

housing for retirees. Such a need may be satisfied by small two-bedroom units on small lots. This need may be satisfied by a planned subdivision appropriately reviewed by both the local jurisdiction and the Real Estate Division. Your proposed rule may make that type of development impossible. Regardless of the need for a large dwelling unit, you are going to require an oversized system which in turn requires a larger lot. The result is a higher cost to potential purchasers and from a planning perspective a lower density than may be the optimum. It should be no secret to you that there are subdivisions utilizing alternate subsurface sewage systems.

In conclusion, I think that your proposed rule is a questionable exercise of your rulemaking authority. Concurrently, it interjects a degree of rigidity or inflexibility into the planning process that is clearly inappropriate.

Sincerely,

John R. Munro
Legislative Director

JRM:sjm

cc: Steve Hawes
Wes Kvarsten
Fred VanNatta

ROBERT W. STRAUB
GOVERNOR

Environmental Quality Commission

POST OFFICE BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. M, January 26, 1979, EQC Meeting

Adoption of Temporary Rule, Geographic Region Rule "C" Amending Administrative Rules Governing Subsurface & Alternative Sewage Disposal

Background

ORS 454.615 requires the Commission to adopt by rule standards for the design and construction of subsurface sewage disposal systems, alternative sewage disposal systems and nonwater-carried waste disposal facilities. This statute also allows adoption of rules that may vary in different areas or regions of the state.

A large area of Jackson County, and to some extent other counties, have a soil condition that does not meet current rules for subsurface sewage disposal. As a result, the denial rate is quite high within these areas. Through the experimental systems program and drawing upon the experiences of Jackson County, the Department has developed an evapotranspiration-absorption (ETA) system to overcome the site limitations identified as the problem. Based upon a history of good operation of systems installed under the experimental systems program, as well as systems authorized by Jackson County, in repair situations it is felt that a rule authorizing these ETA systems under certain conditions, should be adopted. That rule is proposed in the form of Geographic Region Rule "C" and set forth on Attachment "A".

Statement of Need for Rule Making

1. Under ORS 183.335(5) the EQC has the authority to adopt, amend or suspend a rule without notice if the EQC finds that failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned and sets forth specific reasons for its findings. In addition, under ORS 454.615, the EQC has the authority to adopt by rule, standards which prescribe minimum requirements for the design and construction of subsurface disposal systems.

2. It has been determined that a high percentage of applications for subsurface sewage systems in Jackson County are being denied in certain soil conditions. A disposal system has been developed to overcome the site limitations where many of these denials are occurring. Adoption of the proposed rule will result in a greater number of approved sites.

3. In considering the need for and in preparing the temporary rule, the Department has utilized:

   a. Information gathered by monitoring of installed systems under the experimental systems program;

   b. Information from Jackson County Department of Planning and Development on their experiences with the system under repair conditions;

   c. Letter from Jackson County supporting adopting of proposed Geographic Region Rule "C", Attachment "B".

Summation

1. A high denial rate for subsurface sewage systems exists under certain soil conditions in Jackson and other counties within the state.

2. A system has been developed that will overcome the specific site limitations and permit a greater number of approvals without causing health hazards or degradation of public waters.

3. There is a need to allow the use of these systems as quickly as possible, so that individuals will not be damaged by unnecessary permit denials.

4. The EQC has authority to adopt a temporary rule to be effective immediately in the event the EQC finds that failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned.

Director's Recommendation

Based upon the findings in the summation, it is recommended that the EQC take the following actions:

1. Enter findings that:

   a. Failure to act would result in serious prejudice to the public interest or the interest of the parties concerned in that continued permit denials will cause monetary and personal prejudice to individual applicants that could otherwise be avoided.

b. The attached proposed temporary rule amendment (Attachment "A") if adopted, will not cause health hazards or degradation of public waters.

2. Adopt the proposed temporary rule amendment to OAR 340-71-030 (Attachment "A") to take effect upon prompt filing with the Secretary of State, pursuant to ORS 183.355 for a period of not longer than 120 days.

3. Authorize the hearing officer to proceed with the appropriate hearings for permanent rule amendment to OAR 340-71-030.

Bill

WILLIAM H. YOUNG

T. Jack Osborne:em
229-6218
January 3, 1979

Attachments: "A" Proposed Geographic Region Rule "C"
"B" Letter from Jackson County

Proposed amendment to OAR Chapter 340, 71-030, add new subsection (10) to read as follows:

"(10) Geographic Region Rule C:

(a) In areas where the mean annual precipitation does not exceed twenty-five (25) inches, subsurface sewage construction permits for evapotranspiration-absorption (ETA) systems may be issued provided:

(A) There exists a minimum of twenty-four (24) inches of soil. The subsoil at a depth of twelve (12) inches and below shall be fine textured.

(B) The soil is moderately-well to well drained. Exposure and slope aspect may be taken into consideration during the site evaluation.

(C) The slope gradient of original ground surface does not exceed fifteen (15) percent.

(b) ETA beds shall be designed according to the following criteria:

(A) The ETA bed shall be sized at a minimum of eight hundred-fifty (850) square feet surface area per bedroom where the annual precipitation in is excess of fifteen (15) inches and six hundred (600) square feet per bedroom where the annual precipitation is less than fifteen (15) inches.

(B) The ETA bed(s) shall not be excavated deeper than thirty-six (36) inches on the uphill side nor deeper than twenty-four (24) inches on the downhill side.

(C) There shall be at least one (1) distribution pipe in each bed.

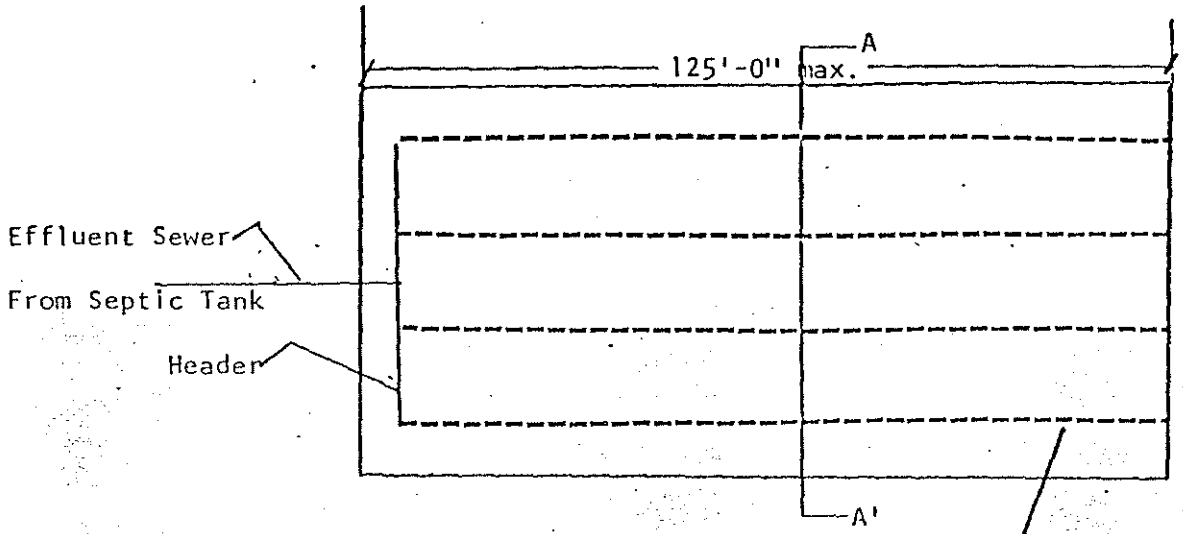
(D) The surface of ETA bed(s) shall be seeded according to the requirements of the construction permit.

(K) Refer also to Diagram 7C (A) and (B) for additional bed construction standards.

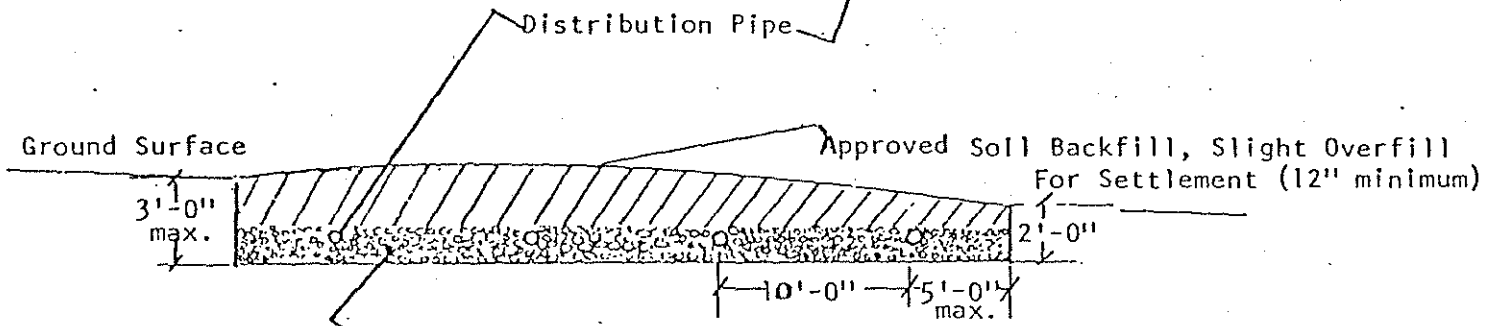
(L) Two (2) compartment septic tanks sized at twelve hundred-fifty (1250) gallons may be required by the Director or his authorized representative.

(c) With the exception of the requirements in this subsection, all conditions required under OAR Chapter 340, 71-005 through 71-035 and appendices must be met."

MPR:nrj
12/19/78



PLAN VIEW



SECTION A - A'

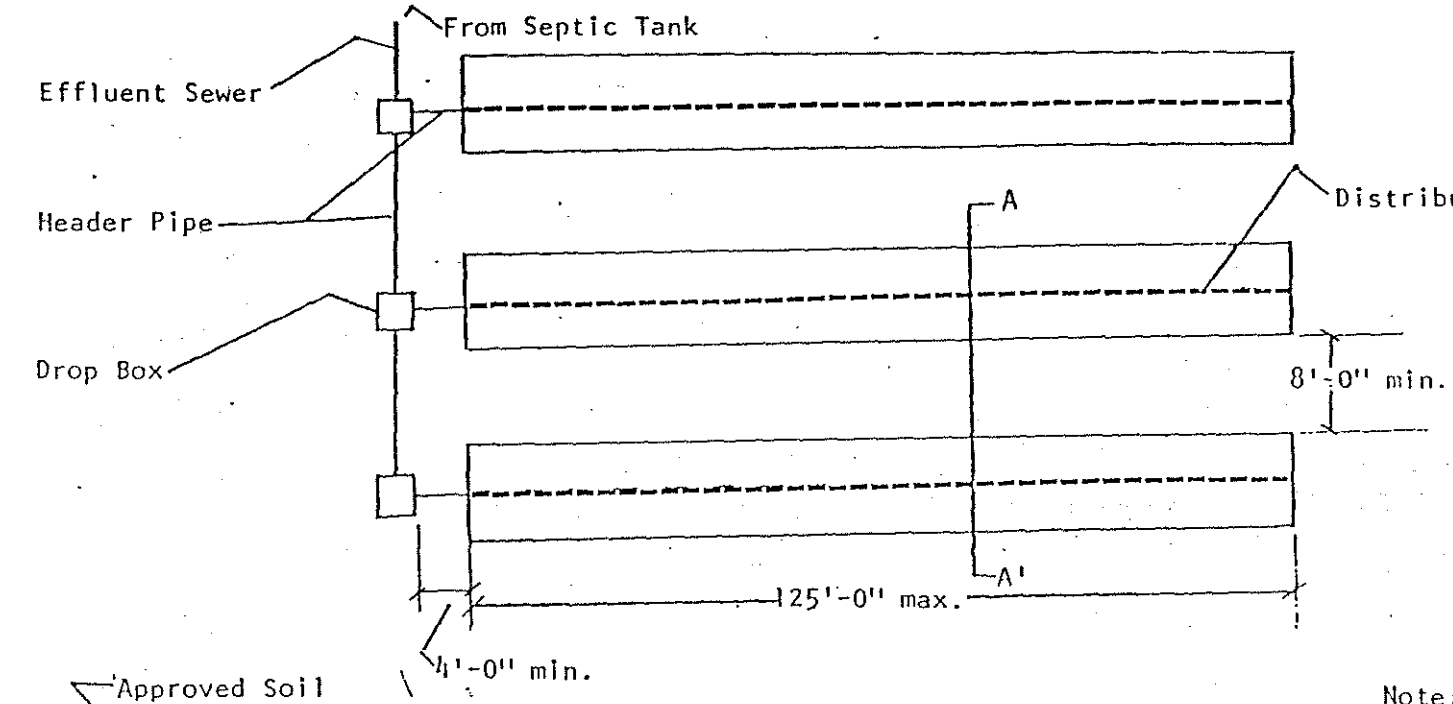
12" of 3/4" to 2 1/2" Washed Round Gravel
Covered by Untreated Building Paper
or 6" Straw

Note: The beds effective sidewall shall be placed in fine textured soil. The bottom of the bed shall be level within a tolerence of ± 2".

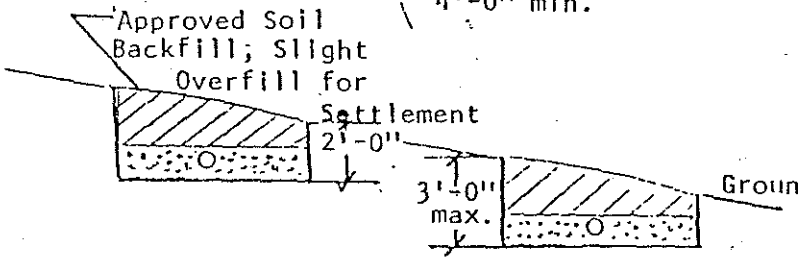
DIAGRAM 7C (A)

SCALE: None	ETA BED	
DATE: 12/14/78		

ON NEARLY LEVEL SITE



PLAN VIEW



Note: Bed's effective sidewalls to be placed in fine textured soils. The botto of the bed shall be level within a tolerence of ± 2"

SECTION A - A'

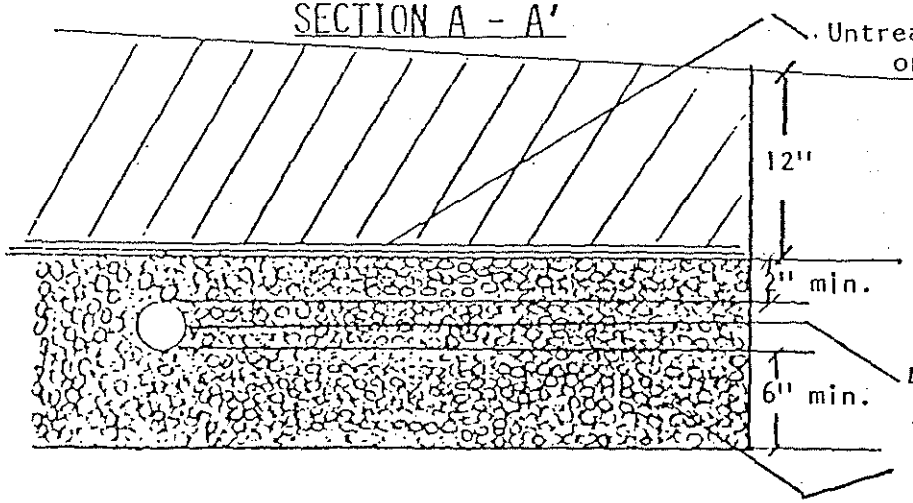


DIAGRAM 7C (B)

SCALE: None

DATE: 12/14/78

ETA BED, SERIAL DISTRIBUTION

ATTACHMENT B

Jackson County Oregon

COUNTY COURTHOUSE / MEDFORD, OREGON 97501

BOARD OF COUNTY COMMISSIONERS
Commissioners Office 776-7231

January 9, 1979

Mr. Jack Osborne
Department of Environmental Quality
Post Office Box 1760
Portland, Oregon 92707

Dear Mr. Osborne:

Our sanitation staff has reviewed the proposed Geographic Regional Rule C, and finds that its adoption would be most beneficial to our administration of the state subsurface sewage disposal program.

As you are aware, the application denial rate in Jackson County has been at or near fifty percent for several years. The public has reluctantly endured this condition, with the expectation that the experimental program would yield some alternative directions, where standard systems will not function. We believe that any system which has demonstrated reasonable success should be given approval by the Environmental Quality Commission.

Enclosed for your information is a map outlining the area of Jackson County, which would benefit most from the proposed regional rule. The present denial rate in this area is about eighty-five percent. Staff indicates the rule change would address approximately one-third of these denials, numbering about two hundred per year.

Again, we strongly support the adoption of Geographic Regional Rule C, and recommend that it be implemented by the Commission at the earliest possible time.

Sincerely,

JACKSON COUNTY BOARD OF COMMISSIONERS

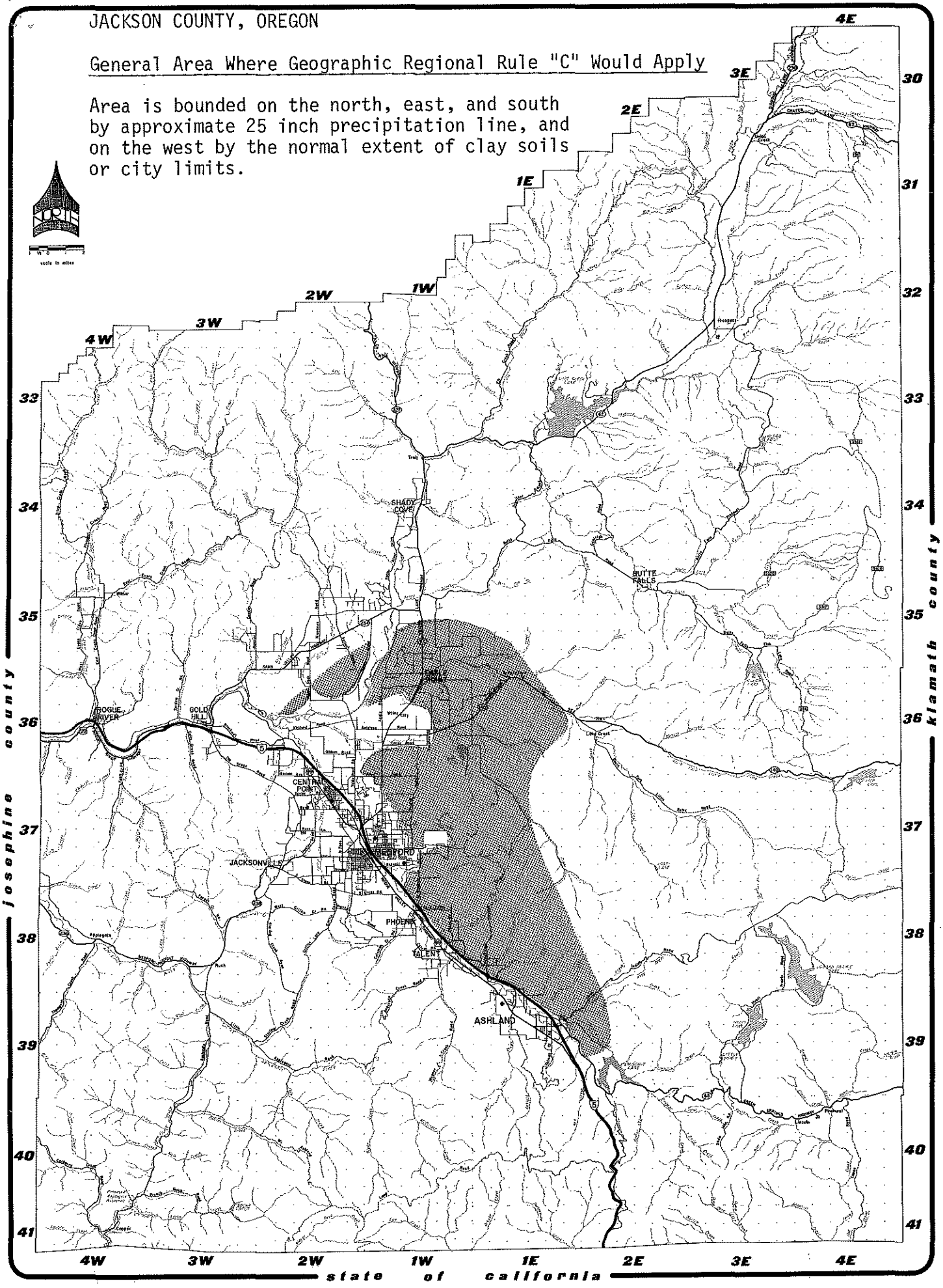
Carol N. Doty, Chairwoman

CND:jc

JACKSON COUNTY, OREGON

General Area Where Geographic Regional Rule "C" Would Apply

Area is bounded on the north, east, and south by approximate 25 inch precipitation line, and on the west by the normal extent of clay soils or city limits.



ROBERT W. STRAUB
GOVERNOR

Environmental Quality Commission

POST OFFICE BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. N, January 26, 1979, EQC Meeting

Used Oil Recycling - proposed adoption of rules pertaining to used oil recycling

Background

The 1977 Legislature passed HB 3077 (ORS 468.850 to 468.871), the "Used Oil Recycling Act. The act became effective on January 1, 1978.

This legislation requires:

That the DEQ carry out a public education program including:

a. Establishing a public information center, and

b. Encouraging the establishment of voluntary oil collection and recycling facilities.

That the Environmental Quality Commission adopt a rule requiring sellers of more than 500 gallons of lubricating oil for off premise use to post signs with specific information about recycling.

That the DEQ enforce existing statutes to prevent the improper disposal of used oil to Oregon's air and water.

A public hearing was held December 6th on the proposed rule. A new requirement on minimum sign size was introduced at the hearing prior to receiving testimony. Attachment B is the hearings report on the public hearing.

Principal points of discussion at the hearing associated with this rule were:

1. sign size.

2. inclusion of the oil recycling logo.

3. inclusion of the Portland and statewide toll free phone numbers for the Recycling Information Switchboard.

Attachment A is the proposed rule for Environmental Quality Commission adoption. Changes in the rule as a result of testimony are as follows:

line 3	"at the point of sale" instead of "in plain view of the point" as suggested by Oregon Environmental Council.
line 7 and 8	added at the suggestion of Oregon Environmental Council.
line 9 thru 20	criteria for those wishing to print their own signs as recommended by the Oregon Retail Association.
line 16 and 17	added at the suggestion of the Oregon Environmental Council.

Statement of Need for Rule Making

a. The Environmental Quality Commission is directed by ORS 468.862 to adopt a rule requiring signs be posted that give information on how, where and why to recycle used oil.

b. Last year approximately 5 million gallons of used motor oil were improperly disposed to Oregon's sewers, drainage ditches, rivers, backyards, and vacant lots or wastefully burned.

Most of this oil comes from automobile owners who change their own motor oil. In Oregon 50% of all automobile owners change their oil. Not only is this a source of pollution, but a waste of a non-renewable resource.

At present there exists a system of used oil recycling depots throughout the state. These include new car dealerships, retail stores, full time recycling depots and volunteer gas stations. The problem faced by the Used Oil Recycling Program is a lack of information by the public as to where and how to recycle their used oil, and why it is important to recycle. The posting of signs with this information will provide Oregonians with an environmentally sound method for disposing of used motor oil and conserving energy. The rule is necessary to make certain the signs are posted and that the information is seen by the public.

c. The principal documents relied upon are an unpublished report entitled "Waste Oil Recycling" by the Metropolitan Service District and the California "Used Oil Recyling Act", SB 68. Copies are available for viewing at the Solid Waste Division office, DEQ.

Evaluation

The proposed rule is a straight forward attempt to put a statute into a form suitable for implementation. The principal points of discussion associated with this rule were:

1. Sign Size- Testimony from the Fred Meyer Company favored a sign the size of 7 x 11 inches so that it could be permenantly affixed at oil displays and be consistent with other advertising. The Oregon Recycling Association supported the larger sized signs, 11 x 14 inches, saying that they felt the signs must be large enough to be seen by the public.

   The staff feels that 7 x 11 is too small a sign size and that a sign the size of 11 x 14 will be large enough to be easily seen yet not too large to be obstructive. It also is a size that is used in retail stores and would fit in standardized sign holders. The signs that the department will provide are 11 x 14. It is our opinion that all signs should be this size in order to be easily seen.

2. Inclusion of the oil recycling logo - Testimony from Fred Meyer Company did not favor inclusion of the oil reycling logo saying that it would take up space on a sign that could otherwise be used for information. The Oregon Environmental Council favored the inclusion of the logo saying that it would serve as an identifying symbol of the oil recycling program for the public. The staff feels that inclusion of the oil recycling logo on the sign is essential. It serves as an identifying symbol throughout the public information program and its placement on retail signs is necessary for the public to recognize oil recyling information.

3. Inclusion of the Portland and Statewide toll free telephone numbers for the Recycling Information Switchboard - Testimony from Fred Meyer Company opposed the inclusion of the toll free phone number on signs displayed in Portland stores. The Oregon Environmental Council favored having both phone numbers on all signs. The staff feels that these signs will be seen by broad segments of the population, not just Portland residents, and the Statewide toll free phone number, 1-800-452-7813 should be included for their use.

Summation

Used Motor Oil is improperly disposed causing pollution.

Used Motor Oil is a valuable non-renewable resource.

ORS 468.862 has directed the EQC to adopt a rule requiring signs be posted by retail sellers to give information on why, how and where to recycle used oil.

To be effective used oil recycling signs must meet certain criteria and contain pertinent information as outlined in the Proposed Rule, Attachment A.

In particular signs must:

1. be of a size no smaller than 11 x 14 inches.

2. display the oil recycling logo.

3. include the Portland and statewide toll free phone numbers for the Recycling Information Switchboard.

Directors' Recommendation

Based on the summation, it is recommended that the Commission take action as follows:

1) Adopt as its final Statement of Need for Rulemaking the Statement of Need commencing on page 2 herein.

2) Adopt Attachment A hereto as a permanent rule to become effective upon its prompt filing, along with the Statement of Need, with the Secretary of State.

Bill

WILLIAM H. YOUNG

Elaine Glendening:mt
December 28, 1978
Attachment A Proposed Rule for EQC Adoption
Attachment B Hearings Report

ATTACHMENT A

Proposed Rule for the Posting of Signs in Retail Store

A NEW OAR 340-61-062 is hereby adopted to read as follows:

61-062 USED OIL RECYCLING SIGNS.

Retail sellers of more than 500 gallons of lubrication or other oil annually in containers for use off premises shall post and maintain durable and legible signs, of design and content approved by the DEQ, at the point of sale or display. The sign shall contain information on the importance of proper collection and disposal of used oil, and the name, location, and hours of a conveniently located used oil recycling depot.

Signs will be provided upon request by the DEQ -- Recycling Information Office at 229-5555.

Retail sellers wishing to print their own signs are required to provide the following for their signs:

A. Oil Recycling Logo.

B. Information on the energy and environmental benefits gained by recycling used motor oil.

C. The Recycling Switchboard's Portland number 229-5555 and the toll free statewide number 1-800-452-7813.

D. Information on how to recycle used oil.

E. Information on at least one conveniently located used oil recycling depot, i.e., name, location and hours of operation.

F. Sign size which shall be no smaller than 11 inches in width and 14 inches in height.

Above information is also available from the DEQ -- Recycling Information Office.

The DEQ suggests that the following appear on the sign "Conserve Energy - Recycle Used Motor Oil" in at least inch high letters.

ROBERT W. STRAUB
GOVERNOR

Environmental Quality Commission

POST OFFICE BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

ATTACHMENT B

MEMORANDUM

To: Environmental Quality Commission

From: Hearings Officer, Elaine Glendening

Subject: Hearings Report: Public hearing to consider a proposed rule requiring the posting of signs in retail stores, selling 500 gallons, or more, of lubricating oil per year; for off premise use.

SUMMARY

Pursuant to public notice, a hearing was held before the undersigned at 10:00 A.M. on December 6, 1978; in room 602 of the Multnomah County Courthouse.

Over 350 hearings notices were mailed to interested persons, with a special effort to contact all retail stores effected by the rule. This direct mailing was augmented by publication of the public notice in trade and environmental publications, and the Secretary of State's Bulletin.

Thirteen people were present at the public hearing. Four of these persons represented the used oil industry, five from the retail industry, two were from the media, one from the automotive trades and one representing an environmental group. Written testimony was also received from the State Recycling Association.

SUMMARY OF TESTIMONY

Prior to taking testimony the hearings officer introduced a new requirement to be included in the rule, i.e., sign size of 11 by 14 inches.

There was also a brief, 10 minute, question and answer period on the rule and the used oil recycling program in general. This was followed by testimony. Three people offered testimony. The first was Cheryl Perrin of Fred Meyer, Inc. Ms. Perrin indicated that Fred Meyer, Inc. wished to print their own sign, and that their proposed sign would perhaps list two or three depot locations. She added that the sign should not include the oil recycling logo since this would take up much space and that the size should be 7 inches by 11 inches in size, instead of the proposed 11 inches

by 14 inches and that it should contain only the Portland phone number for the Recycling Switchboard. Ms. Perrin said that these changes were necessary to make the sign consistent with other signs which were displayed in Fred Meyer stores. She added that only one sign should be displayed in the store, at the point of sale, since so many signs are currently displayed to consumers. Ms. Perrin noted that this scheme would also save tax dollars since the stores would bear the cost of printing.

Mr. Otto Wilson, of the Oregon Retail Council, testified next. Mr. Wilson said that his organization represented a large segment of the retail industry which would be effected by the rule, and that Fred Meyer was a member of his organization. He endorsed the remarks of Ms. Perrin, concerning the size, logo requirements of the rule, and display point. Mr. Wilson questioned DEQ's procedure for approving signs, indicating that this may be too troublesome and costly; criteria should be listed for store-produced signs. He concluded by pledging his organization's continuing support of the program.

Ms. Judy Roumpf, of the Oregon Environmental Council, concluded the public testimony. Ms. Roumpf said that her organization endorsed the proposed rule, in general. Ms. Roumpf noted that it was her understanding that enough signs were being printed to cover all retail stores effected by the rule, and that the wording of the rule should be changed to indicate this. She endorsed DEQ's approval of store printed signs, and the inclusion of the Recycling Switchboard's phone numbers. Ms. Roumpf added that specific information concerning the depots' addresses and hours of operation should be included as a requirement in the rule's criteria for sign content. She added that the logo should be displayed on the sign, to create a consistent identification of the program for the public.

Written testimony was received from Mr. Jerry Powell, of the Association of Oregon Recyclers. He supported the requirements of the rule as proposed, in terms of signing, and felt that these signs will enhance the reclamation of waste oil. In particular he felt that the suggested sign size,11 inches by 14 inches, should be kept due to a need for a strong effective public information program as directed by the legislature. He also noted that "selling" the need to recycle is similar to any other sales effort and begins with adequate exposure. Mr. Powell said he would be opposed to any roll back in the other requirements of signing.

RECOMMENDATIONS

Your hearing officer makes no recommendation in this matter.

Respectfully Submitted,

Elaine Glendening

Elaine Glendening
Hearings Officer

EG:lb

ROBERT W. STRAUB
GOVERNOR

Environmental Quality Commission

522 S.W. 5th AVENUE, P.O. BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. 0, January 26, 1979 EQC Meeting

Adoption of Rules to Amend Oregon's Clean Air Act Implementation Plan Involving an Emission Offset Rule for New or Modified Emission Sources in the Medford-Ashland AQMA.

Background

At the March 31, 1978 meeting, the EQC adopted special rules to control particulate emissions in the Medford-Ashland Air Quality Maintenance Area (AQMA). At that meeting the Commission acknowledged that the growth allowance built into the rules was inadequate to allow construction of all proposed new projects and they directed the Department to develop a permanent emission offset rule for the AQMA.

In the interim, the U. S. Environmental Protection Agency (EPA) requirement covering offsets in nonattainment areas such as the Medford AQMA, remains in effect until the state submits and EPA approves a control strategy for Medford which contains either a permanent offset rule or a control strategy sufficient to accommodate projected growth.

The Department drafted an offset rule as directed and held a public hearing on September 19, 1978. Based on testimony, the proposed rule was revised. On November 17, 1978 the EQC considered adoption of the revised proposed rule. New testimony raised two issues which the EQC referred to staff for resolution. Issues raised were:

1. Industry and economic development interests felt development of a better control strategy combining the federal offset rule and further, yet unidentified, emission reductions was a more acceptable alternative than adoption of the proposed offset rule.

2. The proposed rule could require an emission offset to be obtained for installation of equipment necessary to comply with elimination of wigwam wood waste burners.

Statement of Need

The Statement of Need prepared pursuant to ORS 183.335(7) and 183.355(1) is attached as Attachment 4.

Evaluation

The major issues are discussed in this section.

ISSUE: Develop additional control strategies and use the Federal offset rule in lieu of the proposed Department rule to accommodate growth.

The key differences between the two choices in accommodating growth focus on the latitude available for increased industrial emissions without being subject to offsets.

(A) The present control strategy adopted in March 1978 and the proposed offset rule would attain and maintain compliance with particulate air quality standards through 1985 without degradation in existing air quality while accommodating projected growth. Requirements of the proposed offset rule are tight. Almost all industrial sources would need offsets if locating or expanding in the nonattainment portion of the AQMA. In the attainment portion of the AQMA, new sources may not need offsets if emissions do not impact the non-attainment portion above specified limits. Legitimate concerns about the proposed rule have been expressed by the business community as new sources might avoid locating in Jackson County as stringent offset requirements may represent additional cost. Also, small sources, in particular, might incur severe financial hardship and other difficulties in arranging offsets.

(B) The alternative approach would be to request an extension from EPA, up to 18 months (allowable under the Clean Air Act), to develop further control strategies with the objective of providing more room in the airshed to assimilate new or expanding industry. The federal offset rule would apply during the extension period and could even be permanently used to accommodate large chunks of growth. During the extension period most new and expanding sources in the nonattainment area of the AQMA would not be subject to offsets as the federal rule has a 100 TPY actual emission applicability level in contrast to the 5 TPY limit of the proposed offset rule. The federal rule limit may be revised to 50 TPY shortly, however. This approach likely would cause some deteoriation of air quality before presently adopted control strategies are implemented. Some risk would be taken that new strategies might not be able to be identified or might be too costly to implement leaving the area with no attainment or maintenance strategy.

A comparison of the options is shown in Table 1 below.

Table 1 SIP Development Options

	(A) Proposed Offset Rule	(B) New Control Strategy
Control strategy:	-March 1978 Rules	-March 1978 Rules + additional new rules (including nontraditional sources)
Growth mechanism:	-Proposed Offset Rule	-Federal Offset Rule at least until additional new rules adopted
SIP revision completed:	Upon adoption of Rule	-Up to 18 months to complete
EPA approvable	Likely	Likely
Sources size affected by offsets*	TSP 5 tons per year or more 50 pounds per day or more VOC 20 tons per year or more 200 pounds per day or more CO 1000 tons per year or more	TSP 100 tons per year or more (likely to change to 50 t/yr) VOC 100 tons per year or more CO 1000 tons per year or more
Advantages	-Attainment strategy already adopted -No degradation in air quality	-Most expanding or new sources unaffected by offset requirement (minimum restriction on growth and development)
Disadvantages	-Financial cost to small sources could be burden in obtaining offsets -Possible disincentive for new industry to locate in Medford area	-Questionable attainment of standards -Air quality could get worse before getting better -Additional control strategies needed -Extension needed from EPA to submit SIP

*Offset needed to locate in nonattainment portion of AQMA; offset not needed in attainment portion of AQMA if modelled incremental AQ impact is less than specified limits in the nonattainment portion of the AQMA.

Possible air quality changes with the two alternatives are depicted in Figure 1. Note the attainment feature of the present control strategy would stop the present trend of degrading air quality.

Interested parties were informed of these options, the Medford-Ashland AQMA Citizens' Advisory Committee on November 27, the greater Medford Chamber of Commerce on December 4, and the EQC, informally, on December 15.

The Citizens' Advisory Committee passed a motion December 4, 1978 that testimony on the proposed rule submitted September 19, 1978 stands as originally submitted. This testimony supported the proposed rule.

The Citizens' Advisory Committee rejected a motion proposing the 18 month extension after hearing the Medford Chamber of Commerce advocate their position to the Committee. This motion is attached as Attachment 1.

Implementation of the Emission Offset Rule

Some concerns have been raised about implementation of the proposed stringent offset rule. Emission offsets would be reviewed during the Notice-of-Construction and permit process. Prearranged offsets between companies and internal offset within a company can be submitted to the Department along with the notice-of-construction application. Conversely, the Department could request emission offset after reviewing the application. Should offsets be difficult to locate, the Department would assist in identifying them or, if sufficiently desirable to the community, propose additional control strategies to provide the offset.

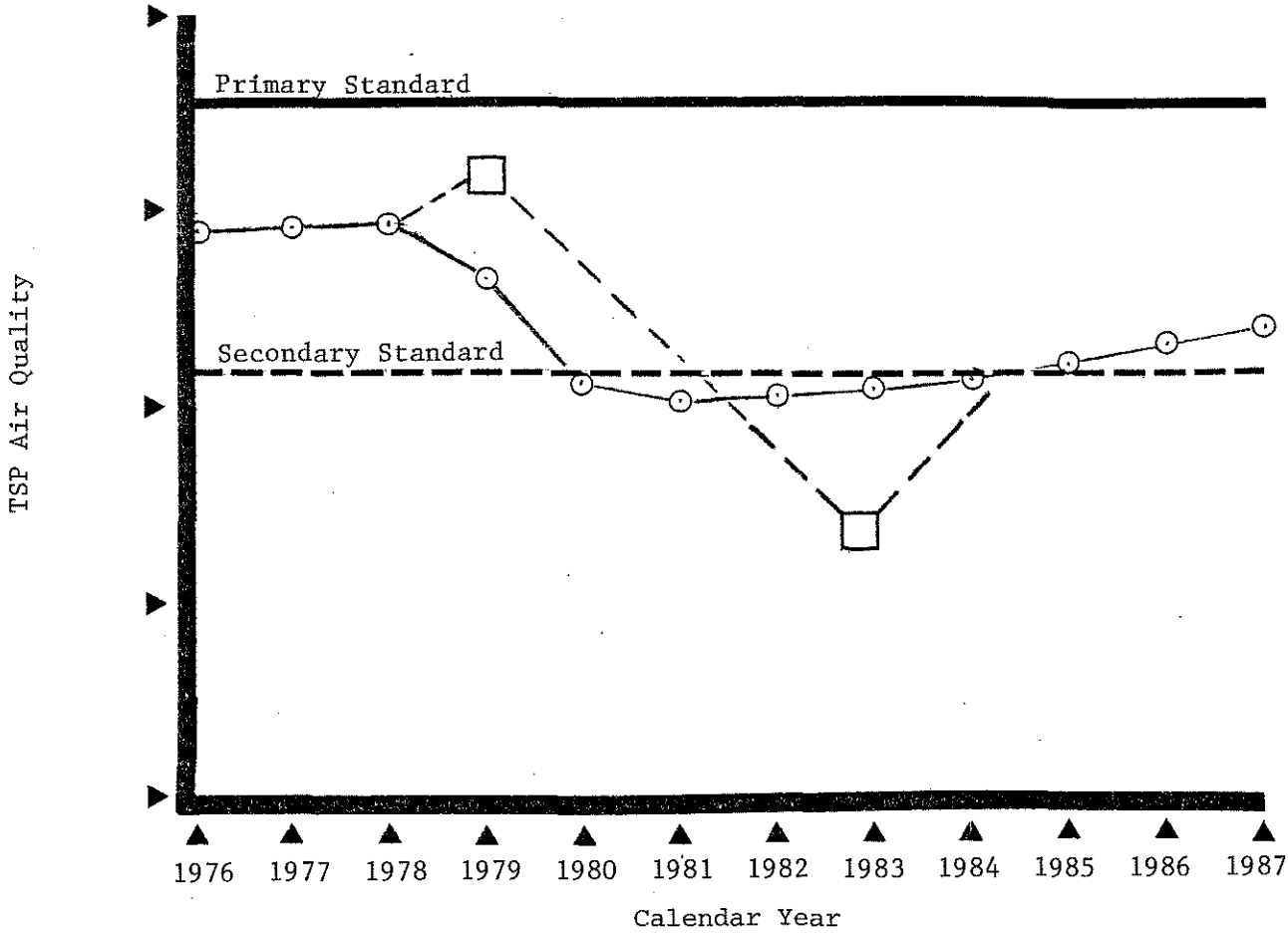
It should be understood that the Department will only allow offsets of equivalent particle size emission; that is, control of coarse particles (>2.5 microns) would not be allowed to offset new fine particulate (<2.5 microns) emissions. This administrative procedure will prevent trading off control of nontoxic, innocuous, particulate new emissions for particulate having expected adverse health effects.

ISSUE: The proposed rule would require emission offsets to cover new equipment installed to comply with the elimination of wigwam waste burners.

A review of the wording of the proposed rule shows that this could occur in the case of elimination of wigwam waste burners. This is not the intent of the rule. The proposed rule has been revised to clarify the requirements in this special case.

The revised proposed rule allows the sources affected to emit, from equipment used to replace wigwams, one-fourth the emissions attributed to the wigwam burner in calendar year 1976 without triggering the offset process. This revision to the rule is based upon replacing a wigwam burner (normally emitting at 0.2 grains per standard cubic foot (gr/scf) corrected to 12 percent CO_2) with a wood fired boiler emitting at the adopted strategy limit of 0.05 gr/scf.

Figure 1 Possible Air Quality Changes



Key ○ : Control Strategy & Proposed Offset Rule

□ : Unidentified Control Strategy & EPA Offset Rule

Summation

1) EQC requested staff to develop an offset rule for the Medford-Ashland AQMA to accommodate future growth while attaining and maintaining AQ standards.

2) After reviewing the need for these rules, and the authority to adopt them (Statement of Need), the EQC authorized a hearing on the proposed offset rules.

3) The business community opposes the proposed rule on grounds that it will stifle growth and development. It favors use of the less stringent federal offset rule in the interim and development of new control strategies to accommodate growth over the long term.

4) The proposed rule and the control strategy adopted in March 1978 will attain and maintain federal secondary TSP standards through 1985 with no degradation of existing air quality, while use of the federal offset rule and development of additional control strategies would allow deterioration of present particulate air quality over the next couple of years. Both options would require adoption of further control strategies, probably including control of nontraditional sources to maintain AQ standards over the long term.

5) Support of the proposed offset rule has been reaffirmed by the Citizens' Advisory Committee.

6) Adoption of the proposed rule is the most expedient means of improving air quality and complying with requirements of the Clean Air Act.

7) A clause has been added to the proposed rule to accommodate a new source replacing a wigwam waste burner without subjecting this new source to offset requirements.

8) Offsets will only be accepted on like contaminants and on a comparable particle size range.

Director's Recommendation

Based on the summation, it is recommended that the Commission adopt the redrafted proposed rule contained in Attachment 2 and 3 and transmit them to the Environmental Protection Agency for approval as a revision to Oregon's State Implementation Plan, and adopt as its final Statement of Need for rulemaking the statement attached to this report, Attachment 4.

Bill

WILLIAM H. YOUNG
Director

JFKowalczyk:eve
(503)229-6459
1/11/79

Attachments:
1) Minority Report of the Medford-Ashland AQMA CAC
2) Emission Offset Regulation for the Medford-Ashland AQMA
3) Federal Register page 55528-30, December 21, 1976, Interpretative Ruling for Implementation 40 CFR 51.18
4) Statement of Need

ATTACHMENT 1

Note: The full CAC failed to pass a motion adopting the minority report and reaffirmed previous testimony supporting the proposed offset rule.

DECEMBER 4, 1978

MINORITY REPORT OF THE MEDFORD-ASHLAND AQMA CAC

RE: POSITION ON THE PROPOSED MEDFORD-ASHLAND AQMA OFFSET RULE

The matter having recently come before the CAC that alternatives worthy of consideration now exist other than immediate adoption and implementation of the above mentioned proposed offfset rule in the State's SIP:

FINDINGS:

A. The November 27, 1978, DEQ staff presentation to the CAC graphically depicting projected results of implementing alternative offset schemes (copy attached) show that attainment of the State's primary TSP standard (Federal secondary) will be marginal without a broader strategy base including area wide sources.

B. The attachment clearly shows that the projected differences of ambient TSP levels from implementing either the proposed offset rule or the Federal rule are small with both alternatives staying well within the Federal primary standard and that the greater majority of projected increases to TSP levels in both cases are due to uncontrolled area sources.

C. The Clean Air Act as amended in 1977 mandates states to reach attainment with the Federal primary standard and requests states seek methods to comply with the Federal secondary standard.

D. The process of states meeting attainment with the Federal secondary standard grants an extended time period for SIP revision minus Federal sanctions.

E. The concepts and principles of an offset policy have not been addressed by the Oregon Legislature and represent a significant change in direction worthy of Legislative review in this a Legislative session year.

F. The Federal primary TSP standard has been purposely and scientifically set by EPA with the protection of the public as a foremost consideration and includes a margin for safety.

G. While the geographical and meteorlogical conditions of the Medford-Ashland AQMA combine to give the area a high pollution potential, current exacerbations of TSP and oxidant standards are no greater numerically than exist in many sections of the State and Country and a strategy is in effect for TSP, the results of which will begin to show in 1979.

It is therefore the opinion, advice and vote of the undersigned members of the CAC that:

1. The DEQ, acting on behalf of the EQC and the state of Oregon, not submit at this time a SIP revision including the subject proposed offset rule based upon Medford-Ashland AQMA attainment of the Federal secondary standard for TSP, and

2. The DEQ file for an extension of time to develop a more comprehensive, broader strategy if indeed the Federal secondary standard for TSP is to be the State's ultimate goal, and

3. During this period of broader strategy development, the Federal offset policy, including the provisions of LAER (lowest achievable emission rate) technology application, be applied to new sources having the potential of exacerbating the Federal primary standard.

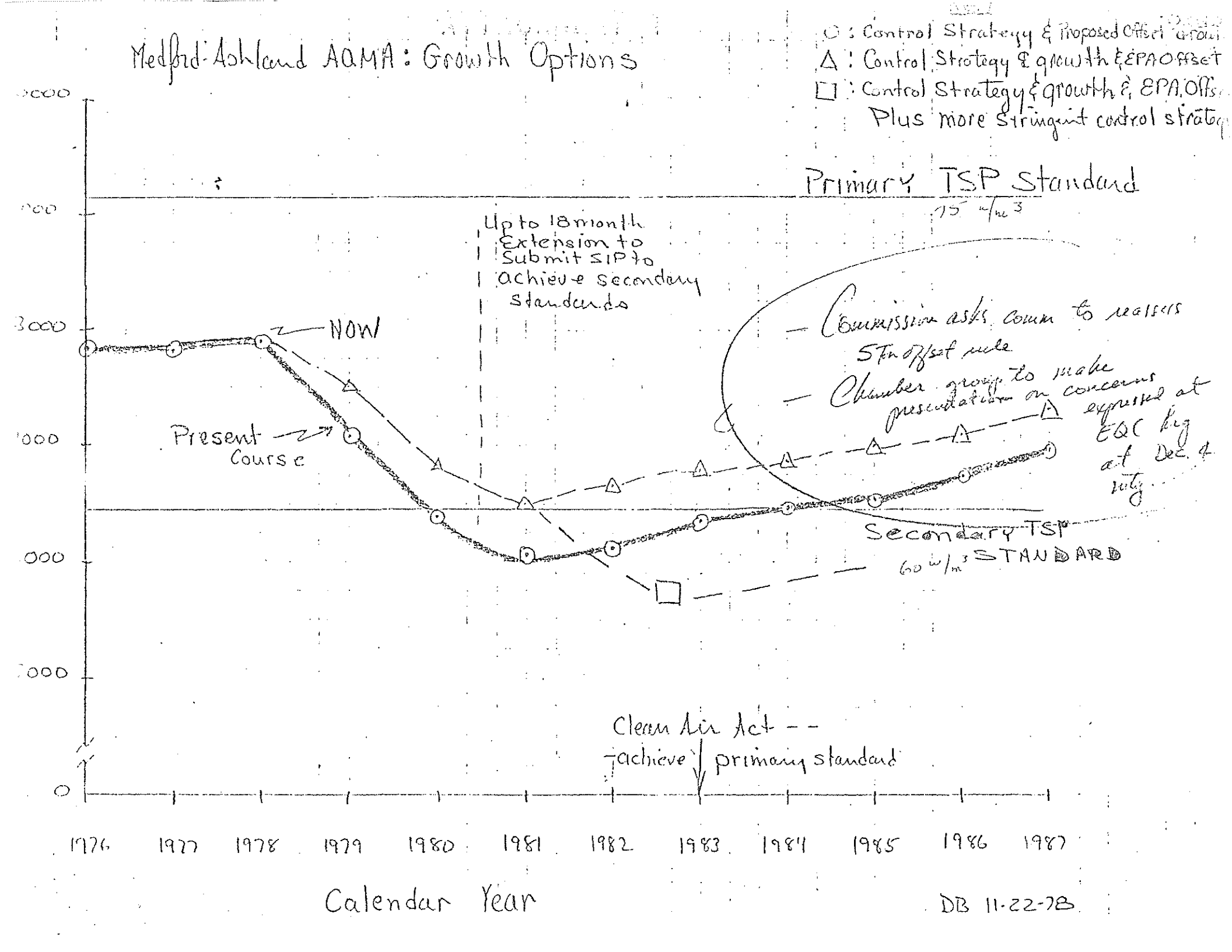
Respectfully submitted,

Gary Grimes

Doug Roach

Roger Wilkerson

Don Moody


Medford-Ashland AQMA: Growth Options
○ : Control Strategy & Proposed Offset Growth
△ : Control Strategy & growth & EPA Offset
□ : Control Strategy & growth & EPA Offs
Plus more Stringent control strateg
Primary TSP Standard
75 µg/m³
Up to 18 month Extension to Submit SIP to achieve secondary standards
NOW
Present Course
Commission asks comm to reassess 5% offset rule
Chamber group to make presentation on concerns
expected at EQC hg at Dec. 4 mtg
Secondary TSP
60 µg/m³ STANDARD
Clean Air Act -- achieve primary standard
3000
1000
0
1976
1977
1978
1979
1980
1981
1982
1983
1984
1985
1986
1987
Calendar Year
DB 11-22-78

Addition to Division 30

Emission Offset Regulation

for the Medford-Ashland AQMA

DEFINITIONS (to be added to 340-30-010)

(13) "Criteria Pollutants" means Particulate Matter, Sulfur Oxides, Nonmethane Hydrocarbons, Nitrogen Oxides, or Carbon Monoxide, or any other criteria pollutant established by the U. S. Environmental Protection Agency.

(14) "Facility" means an identifiable piece of process equipment. A stationary source may be comprised of one or more pollutant-emitting facilities.

(15) "Lowest Achievable Emission Rate" or "LAER" means, for any source, that rate of emissions which is the most stringent emission limitation which is achieved in practice or can reasonably be expected to occur in practice by such class or category of source taking into consideration the pollutant which must be controlled. This term applied to a modified source means that lowest achievable emission rate for that portion of the source which is modified. LAER shall be construed as nothing less stringent that new source performance standards.

(16) "Modified Source" means any physical change in, or change in the method of, operation of a stationary source which increases the potential emission of criteria pollutants over permitted limits, including those pollutants not previously emitted and regardless of any emission reductions achieved elsewhere in the source.

(a) A physical change shall not include routine maintenance, repair, and replacement.

(b) A change in the method of operation, unless limited by previous permit conditions, shall not include:

(i) An increase in the production rate, if such increase does not exceed the operating design capacity of the source;

(ii) Use of an alternative fuel or raw material, if prior to December 21, 1976, the source was capable of accommodating such fuel or material; or

(iii) Change in ownership or a source.

(17) "New Source" means any source not previously existing or permitted in the Medford-Ashland Air Quality Maintenance Area on the effective date of these rules.

(18) "Offset" means the reduction of the same or similar air contaminant emissions by the source:

(a) Through in-plant controls, change in process, partial or total shut-down of one or more facilities or by otherwise reducing criteria pollutants; or

(b) By securing from another source or, through rule or permit action by DEQ, in an irrevocable form, a reduction in emissions similar to that provided in subsection (a) of this section.

(19) "Source" means any structure, building, facility, equipment, installation or operation, or combination thereof, which is located on one or more contiguous or adjacent properties and which is owned or operated by the same person, or by persons under common control.

(20) "Volatile Organic Compound," (VOC), means any compound of carbon that has a vapor pressure greater than 0.1 mm of Hg at standard conditions (temperature 20^0 C, pressure 760 mm of Hg). Excluded from the category of Volatile Organic Compound are carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, ammonium carbonate, and those compounds which the U. S. Environmental Portection Agency classifies as being of negligible photochemical reactivity which are methane, ethane, methyl chloroform, and trichlorotrifluoroethane.

OFFSET

OAR 340-30-110

The intent of this rule is to supplement and in some cases be more stringent than the Federal Interpretative Ruling promulgated in the December 21, 1976, Federal Register on pages 55,528 through 55,530 (40 CFR, Part 51) hereby incorporated by reference.

OAR 340-30-110

(1) Any new or modified source which emits at a rate equal to or greater than in Table 1 and is proposed to be constructed or operated in an area of the Medford-Ashland AQMA where a state or federal ambient air quality standard is:

(a) being violated, shall comply with offset conditions (a) through (d) of Section (2);

(b) not being violated, but by modeling is projected to exceed the incremental air quality values of Table 2 in the area where the state or federal ambient air standard is being violated, shall comply with offset conditions (a) through (d) of Section (2).

TABLE 1

	Emission Rate					
	Annual		Day		Hour	
Air Contaminant	Kilograms	(tons)	Kilograms	(lbs)	Kilograms	(lbs)
Particulate Matter (TSP)	4,500	(5.0)	23	(50.0)	4.6	(10.0)
Volatile Organic Compound (VOC)	18,100	(20.0)	91	(200)	-	-

TABLE 2

	Incremental Value	
Air Contaminant	Annual Arithmetic Mean	24 Hr Average
Particulate Matter (TSP)	0.10 ug/m^3	0.50 ug/m^3

(2) Offset Conditions

(a) The new or modified source shall meet an emission limitation which specifies the lowest achievable emission rate for such a source.

(b) The applicant provides certification that all existing sources in Oregon owner or controlled by the owner or operator of the proposed source are in compliance with all applicable rules or are in compliance with an approved schedule and timetable for compliance under state or regional rules.

(c) Emission offset from existing source(s) in the Medford-Ashland AQMA, whether or not under the same ownership, are obtained by the applicant on a greater than one-for-one basis.

(d) The emission offset provides a positive net air quality benefit in the affected area.

(3) A new source installed and operated for the sole purpose of compliance with OAR 340-30-035 shall be exempt from (1) and (2) of OAR 340-30-110 providing all of the following are met:

(a) The new emission source complies with the applicable emission limitations in effect at the time the notice of construction is received by the Department; and

(b) Annual emissions from the new or modified source do not exceed one-fourth of the annual emission attributed to the wigwam burner in calendar year 1976.

ATTACHMENT 3

INTERPRETATIVE RULING FOR IMPLEMENTATION OF THE REQUIREMENTS OF 40 CFR 51.18

I. INTRODUCTION

This notice sets forth EPA's Interpretative Ruling on the preconstruction review requirements for stationary sources of air pollution under 40 CFR 51.18. This ruling reflects EPA's judgment that the Clean Air Act allows a major new or modified source[1] to locate in an area that exceeds a national ambient air quality standard (NAAQS) only if stringent conditions can be met. These conditions are designed to insure that the new source's emissions will be controlled to the greatest degree possible; that more than equivalent offsetting emission reductions ("emission offsets") will be obtained from existing sources; and that these will be progress toward achievement of the NAAQS.

II. INITIAL ANALYSIS AND APPLICABLE REQUIREMENTS

A. *Review of all sources for emission limitation compliance.* The reviewing authority must examine each proposed new source subject to the SIP preconstruction review requirements approved or promulgated pursuant to 40 CFR 51.18 to determine if such a source will meet all applicable emission requirements in the SIP. If the reviewing authority determines that the proposed new source cannot meet the applicable emission requirements, the permit to construct must be denied.

B. Review of major sources for air quality impact. In addition, for each proposed "major" new source or "major" modification, the reviewing authority must perform an air quality analysis[2] to determine if the source will cause or exacerbate a violation of a NAAQS. A proposed source which would not be a "major" source may be approved without further analysis, provided such a source meets the requirement of Part II.A.

The term "major source" shall, as a minimum, cover any structure, building, facility, installation or operation (or combination thereof) for which the allowable emission rate is equal to or greater than the following:

	tons per year
Particulate matter	100
Sulfur oxides	100
Nitrogen oxides	100
Non-methane hydrocarbons (organics)	100
Carbon monoxide	1,000

Similarly a "major modification" shall include a modification to any structure, building, facility, installation or operation (or combination thereof) which increases the allowable emission rate by the amounts set forth above. A proposed new source with an allowable emission rate exceeding the above amounts is considered a major source under this ruling, even though such a source may replace an existing source with the result that the net additional emissions are increased by less than the above amounts.

Where a source is constructed or modified in increments which individually do not meet the above criteria, and which are not a part of a program of construction or modification in planned incremental phases previously approved by the reviewing authority, all such increments commenced after the date this ruling appears in the FEDERAL REGISTER or after the approval issued by the reviewing authority, whichever is most recent, shall be added together for determining applicability under this ruling. Moreover, where there is a group of proposed sources which individually do not meet the above criteria, but which would be constructed in substitution for a major source, the group should be collectively reviewed as a major source.

Allowable annual emissions shall be based on the applicable New Source Performance Standard (NSPS) set forth in 40 CFR Part 60 or the applicable SIP emission limitation, whichever is less, and the maximum annual rated capacity of the source. If the source is not subject to either a NSPS or SIP emission limitation, annual emissions shall be based on (1) the maximum annual rated capacity, and (2) the emission rate agreed to by the source as a permit condition.

The following shall not, by themselves, be considered modifications under this ruling:

(1) Maintenance, repair, and replacement which the reviewing authority determines to be routine for a source category;

(2) An increase in the hours of operation, unless limited by previous permit conditions;

(3) Use of an alternative fuel or raw material (unless limited by previous permit conditions), if prior to the publication of this ruling in the FEDERAL REGISTER, the source is designed to accommodate such alternative use; or

(4) Change in ownership of a source.

C. Air quality impact analysis. For "stable" air pollutants (i.e., SO_2, particulate matter and CO), the determination of whether a source will cause or exacerbate a violation of a NAAQS generally should be made on a case-by-case basis as of the proposed new source's operation date using the best information and analytical techniques available (i.e., atmospheric simulation modeling, unless a source will clearly impact on a receptor which exceeds a NAAQS). This determination should be independent of any general determination of nonattainment or judgment that the SIP is substantially inadequate to attain or maintain the NAAQS. This is because the area affected by a determination of SIP inadequacy usually conforms to established administrative boundaries such as Air Quality Control Regions (AQCR's) rather than a precisely-defined area where air quality problems exist. For example, a SIP revision may be required for an AQCR on the basis of a localized violation of standards in a small portion of the AQCR. If a source seeks to locate in the "clean" portion of the AQCR and would not affect the area presently exceeding standards or cause a new violation of the NAAQS, such a source may be approved. For major sources of nitrogen oxides, the initial determination of whether a source would cause or exacerbate a violation of the NAAQS for NO_2 should be made using an atmospheric simulation model assuming all the nitrogen oxide emitted is oxidized to NO_2 by the time the plume reaches ground level. The initial concentration estimates may be adjusted if adequate data are available to account for the expected oxidation rate. For major sources of hydrocarbons, see the discussion entitled "Geographic Applicability of Emission Offset Requirements for Hydrocarbon Sources" in the Notice appearing in today's FEDERAL REGISTER at 41 FR 55538.

III. SOURCES LOCATING IN "CLEAN" AREAS, BUT WOULD CAUSE A NEW VIOLATION OF A NAAQS

If the reviewing authority finds that the allowable emissions[3] from a proposed major source would cause a new violation of a NAAQS, but would not exacerbate an existing violation, approval may be granted only if both of the following conditions are met:

Condition 1. The new source is required to meet a more stringent emission limitation[4] and/or the control of existing sources below allowable levels is required so that the source will not cause a violation of any NAAQS.

Condition 2. The new emission limitations for the new source as well as any existing sources affected must be enforceable in accordance with the mechanisms set forth in Part V below.

IV. SOURCES THAT WOULD EXACERBATE AN EXISTING VIOLATION OF A NAAQS

A. *Conditions for approval.* If the reviewing authority finds that the allowable emissions[3] from a proposed source would exacerbate an "existing" violation (i.e., as of the source's proposed start-up date) of a NAAQS, approval may be granted only if all the following conditions are met:

Condition 1. The new source is required to meet an emission limitation which specifies the lowest achievable emission rate for such type of source.[5] In determining the applicable emission limitation, the reviewing authority must consider the most stringent emission limitation in any SIP and the lowest emission rate which is achieved in practice for such type of source. At a minimum, the lowest emission rate achieved in practice must be specified unless the applicant can sustain the burden of demonstrating that it cannot achieve such a rate. In no event could the specified rate exceed any applicable NSPS. Even where the applicant demonstrates that it cannot achieve the lowest

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[1] Hereafter the term "new source" will be used to denote both new and modified sources.

[2] Required only for those pollutants causing the proposed source to be defined as a "major" source, although the reviewing authority may address other pollutants if deemed appropriate.

[3] Where a new source will result in specific and well defined indirect or secondary emissions which can be accurately quantified, the reviewing authority should consider such secondary emissions in determining whether the source would cause or exacerbate a violation of the NAAQS. However, since EPA's authority to perform indirect source review relating to parking-type facilities has been restricted by statute, consideration of parking-type indirect impacts is not required.

[4] If the reviewing authority determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an enforceable numerical emission standard infeasible, the authority may instead prescribe a design, operational or equipment standard. In such cases, the reviewing authority shall make its best estimate as to the emission rate that will be achieved and must specify that rate in the required submission to EPA (see Part V). Any permits issued without an enforceable numerical emission standard must contain enforceable conditions which assure that the design characteristics or equipment will be properly maintained (or that the operational conditions will be properly performed) so as to continuously achieve the assumed degree of control. Such conditions shall be enforceable as emission limitations by private parties under Section 304. Hereafter, the term "emission limitations" shall also include such design, operational, or equipment standards.

emission rate achieved in practice, this in itself would not operate to raise the required emission limitation to the applicable NSPS. The "lowest achievable emission rate" requirement must still apply, and the applicant would retain the burden of demonstrating that it cannot achieve any rate more stringent than the NSPS rate.

Condition 2. The applicant must certify that all existing sources owned or controlled by the owner or operator of the proposed source in the same AQCR as the proposed source are in compliance with all applicable SIP requirements or are in compliance with an approved schedule and timetable for compliance under a SIP or an enforcement order issued under Section 113. The reviewing authority must examine all enforcement orders for sources owned or operated by the applicant in the AQCR to determine if more expeditious compliance is practicable. Where practicable, a more expeditious compliance schedule for such sources must be required as an enforceable condition of the new source permit.

Condition 3. Emission reductions ("offsets") from existing sources in the area of the proposed source (whether or not under the same ownership) are required such that the total emissions from the existing and proposed sources are sufficiently less than the total allowable emissions from the existing sources under the SIP [6] prior to the request to construct or modify so as to represent reasonable progress toward attainment of the applicable NAAQS.[7] Only intrapollutant emission offsets will be acceptable (e.g., hydrocarbon increases may not be offset against SO_2 reductions).

Condition 4. The emission offsets will provide a positive net air quality benefit in the affected area (see Part IV.D. below).[8]

Condition 5. For a source which would be located in an area where EPA has found that a SIP is substantially inadequate to attain a NAAQS and has formally requested a SIP revision pursuant to Section 110(a)(2)(H)(ii) (or an area where EPA has called for a study to determine the need for such a revision), permits granted on or after January 1, 1979 [9] must specify that the source may not commence construction until EPA has approved or promulgated a SIP revision for the area (if the source is a major source of the pollutant subject to the call for revision or study).

B. *Exemptions from certain conditions.* The reviewing authority may exempt a source from Condition 1 under Part III or Conditions 3 and 4 under Part IV.A., in cases where the source must switch fuels due to lack of adequate fuel supplies or where the source is required as a result of EPA regulations (i.e., lead-in-fuel requirements) to install additional process equipment and no exception from such an EPA regulation is available to the source. Such an exemption may be granted only if: (i) the applicant demonstrates that it made its best efforts to obtain sufficient emission offsets to comply with Condition 1 under Part III or Conditions 3 and 4 under Part IV.A. and that such efforts were unsuccessful; (ii) the applicant has secured all available emission offsets; and (iii) the applicant will continue to seek the necessary emission offsets and apply them when they become available. Such an exemption may result in the need to revise the SIP to provide additional control of existing sources.

C. *Baseline for determining credit for emission offsets.* Except as provided below, the baseline for determining credit for emission and air quality offsets will be the SIP emission limitation in effect at the time the application to construct or modify a source is filed. Thus, credit for emission offset purposes may be allowable for existing control that goes beyond that required by the SIP.

1. *No applicable SIP requirement.* Where the applicable SIP does not contain an emission limitation for a source or source category, the emission offset baseline involving such sources shall be the actual emissions at the time the permit request is filed (determined by source test or other appropriate means).

2. *Combustion of fuels.* Generally, the emissions for determining emission offset credit involving an existing fuel combustion source will be the allowable emissions under the SIP for the type of fuel being burned at the time the new source application is filed (i.e., if the existing source has switched to a different type of fuel at some earlier date, any resulting emission reduction [either actual or allowable] shall not be used for emission offset credit). If the existing source commits to switch to a cleaner fuel at some future date, emission offset credit, based on the allowable emissions for the fuels involved, is acceptable; provided, that the permit must be conditioned to require the use of a specified alternative control measure which would achieve the same degree of emission reduction should the source switch back to a dirtier fuel at some later date. The reviewing authority should ensure that adequate long-term supplies of the new fuel are available before granting emission offset credit for fuel switches.

Where the particulate emission limit for fuel combustion exceeds the appropriate uncontrolled emission factor in "Compilation of Air Pollutant Emission Factors" (AP-42) (as when a State has a single emission limit for all fuels), emission offset credit will only be allowed for control below the appropriate uncontrolled emission factor in AP-42. (Actual emissions determined by a source test may be used in place of the uncontrolled emission factor in AP-42 in the above situation.)

3. *Operating hours and source shutdown.* Emission offsets generally should be made on a pounds-per-hour basis when all facilities involved in the emission offset calculations are operating at their maximum expected production rate. The reviewing agency should specify other averaging periods (e.g., tons per year) in addition to the pounds-per-hour basis if necessary to carry out the intent of this ruling. A source may be credited with emission reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below that which existed at the time the new source application was submitted; provided, that the work force to be affected has been notified of the proposed shutdown or curtailment. Emission offsets that involve reducing operating hours or production or source shutdowns must be legally enforceable, as is the case for all emission offset situations.[10]

Nothing contained in this ruling is intended to alter EPA's interpretation of the Clean Air Act with regard to the use of "supplemental control systems" or "stack height increases" as set forth at 41 FR 7450 (February 18, 1976).

4. *EPA has requested a SIP revision (or study).* Where EPA has found that a SIP is substantially inadequate to attain a NAAQS and has formally requested a SIP revision pursuant to Section 110(a)(2)(H)(ii) (or EPA has called for a study to determine the need for such a revision) the baseline for emission offset credit involving sources of the relevant pollutant will be the emissions resulting from the application of reasonably available control measures. The intent of this requirement is to prevent sources from receiving emission offset credit against an inadequate SIP and nullifying the gains that will be achieved through the required SIP revision. In effect, States should use the anticipated SIP revision as the baseline for emission offset credit until such time as the SIP is formally revised.

5. *Credit for hydrocarbon substitution.* EPA has found that almost all non-methane hydrocarbons are photochemically reactive and that low reactivity hydrocarbons eventually form as much photochemical oxidant as the highly-reactive hydrocarbons. Therefore, no emission offset credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity.

6. *No "banking" of emission offset credit.* Once an emission offset has been exempted for a particular new source, there can be no left-over credit to "bank" for additional new source growth in the future. This "no banking" rule would not prohibit, however, the issuance of a single permit to cover more than one phase of a phased-construction project.[11] Similarly, for State-initiated emission offsets (see Part V.B.), several different sources may be allowed to construct as part of a general SIP revision, so long as the plan for each source are definite and such sources are specifically identified as the recipients of the emission offset credits in the SIP revision.

D. *Geographic area of concern.* In the case of emission offsets involving hydrocarbons or NO_x, the offsets may be obtained from sources located anywhere in the broad vicinity of the proposed new source (within the area of non-attainment, and usually within the same air quality control region). This is because area-wide oxidant and NO_2 levels are generally not as dependent on specific hydrocarbon or NO_x source location as they are on overall area emissions. However, since the air quality impact of SO_2, particulate and carbon monoxide sources is site dependent, simple area-wide mass emission offsets are not appropriate. For these pollutants, the reviewing authority should require atmospheric simulation modeling to ensure that the emission offsets provide a positive net air quality benefit. However, to avoid unnecessary consumption of limited, costly and time consuming modeling resources, in most cases it can be assumed that if the emission offsets are obtained from an existing source on the same premises or in the immediate vicinity of the new source, and the pollutants disperse from sub-tantially the same effective stack height, the air quality test under Condition 4 in Part IV.A. above will be met. Thus, when stack emissions are offset against a ground level source at the same site, modeling would be required.

E. *Reasonable progress towards attainment.* As long as the emission offset is greater than one-for-one, and the other criteria set

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[6] Subject to the provisions of Part IV.C. below.

[7] Or, if later, the date which is six months after the deadline for submittal of the revision.

[8] Source shutdowns and curtailments in production or operating hours occurring prior to the date the new source application is filed generally may not be used for emission offset credit. However, where an applicant can establish that it shut down or curtailed production after SIP approval as a result of enforcement action providing for a new source as a replacement for the shut down or curtailment, credit for such shut down or curtailment may be applied to offset emissions from the new source.

[9] If any phase covered by the permit is for any reason not constructed, there would be no resulting credit to "bank."

forth above are met, EPA does not intend to question a reviewing authority's judgment as to what constitutes reasonable progress towards attainment as required under Condition 3 in Part IV.A. above. Reviewing authorities should bear in mind, however, that the control achieved through emission offsets can significantly assist the authorities in developing legally acceptable SIP's.

V. ADMINISTRATIVE PROCEDURES

The necessary emission offsets may be proposed either by the owner of the proposed source or by the local community or the State. The emission reduction committed to must be enforceable by authorized State and/or local agencies and under the Clean Air Act, and must be accomplished by the new source's start-up date.

A. *Source initiated emission offsets.* A source may propose emission offsets which involve (1) reductions from sources controlled by the source owner (internal emission offsets); and/or (2) reductions from neighboring sources (external emission offsets). The source does not have to investigate all possible emission offsets. As long as the emission offsets obtained represent reasonable progress toward attainment, they will be acceptable. It is the reviewing authority's responsibility to assure that the emission offsets will be as effective as proposed by the source. An internal emission offset will be considered enforceable if it is made a SIP requirement by inclusion as a condition of the new source permit and the permit is forwarded to the appropriate EPA Regional Office.[8] An external emission offset will not be accepted unless the affected source(s) is subject to a new SIP requirement to ensure that its emissions will be reduced by a specified amount in a specified time. Thus, if the source(s) does not obtain the necessary reduction, it will be in violation of a SIP requirement and subject to enforcement action by EPA, the State and/or private parties. The form of the SIP revision may be a State or local regulation, operating permit condition, consent or enforcement order, or any other legally enforceable mechanism available to the State. If a SIP revision is required, the public hearing on the revision may be substituted for the normal public comment procedure required for all major sources under 40 CFR 51.18. The formal publication of the SIP revision approval in the FEDERAL REGISTER need not appear before the source may proceed with construction. To minimize uncertainty that may be caused by these procedures, EPA will, if requested by the State, propose a SIP revision for public comment in the FEDERAL REGISTER concurrently with the State public hearing process. Of course, any major change in the final permit/SIP revision submitted by the State may require a reproposal by EPA.

B. *State or community initiated emission offsets.* A State or community which desires that a source locate in its area may commit to reducing emissions from existing sources to sufficiently outweigh the impact of the new source and thus open the way for the new source. As with source-initiated emission offsets, the commitment must be something more than one-for-one. This commitment must be submitted as a SIP revision by the State.

The provisions of Part IV.C.4. above remain applicable to State or community initiated emission offsets. Therefore, where EPA has found that a SIP is substantially inadequate to attain an N[illegible] and has formally requested a SIP revision pursuant to Section 110(a)(2)(H)(ii) (or called for a study to determine the need for such a revision), the resulting emission reduction may not be used as an emission offset.

VI. POLICY WITH RESPECT TO SECONDARY STANDARDS

The statutory attainment dates for the primary NAAQS have now passed or will pass very soon and cannot be administratively extended. Therefore, this ruling does not allow a new source to cause or exacerbate a primary NAAQS violation on the grounds that the SIP will eventually achieve the NAAQS (as may have been permitted in some cases before the statutory attainment dates).

The Act provides more flexibility with respect to secondary NAAQS's. Rather than setting specific deadlines, Section 110 requires secondary NAAQS's to be achieved within a "reasonable time." Under 40 CFR 51.13(b), a State may revise its SIP to provide extensions from its present secondary NAAQS deadlines. If, therefore, a State submits (and EPA approves) such a revision, a new source which would cause or exacerbate a secondary NAAQS violation may be exempt from the Conditions of Part IV.A. so long as the new source meets the applicable SIP emission limitations and will not interfere with attainment by the newly-specified date.

[FR Doc.76-37346 Filed 12-20-76;8:45 am]

[8] The emission offset will therefore be enforceable by EPA under Section 113 as an applicable SIP requirement and will be enforceable by private parties under Section 304 as an emission limitations. EPA will publish notice of such emission offsets in the FEDERAL REGISTER.

[FRL 656-4]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Alabama: Approval of Plan Revision

On October 7, 1976 (41 FR 44194), the Agency announced as a proposed rulemaking, an implementation plan change which the State of Alabama had adopted and submitted for EPA's approval. Copies of the materials submitted by Alabama were made available for public inspection and written comments on the proposed revision were solicited. The purpose of the present notice is to announce the Administrator's approval of this revision. An evaluation of them may be obtained by consulting the personnel of the Agency's Region IV Air Programs Branch, 345 Courtland Street, Atlanta, Georgia 30308, or telephone 404/881-3286.

On August 20, 1975, the Administrator revised 40 CFR Part 51 by changing the emergency level for photochemical oxidants from 1200 $\mu g/m^3$ to 1000 $\mu g/m^3$, one-hour average. The Alabama Air Pollution Control Commission, on March 30, 1976, amended its regulation to reflect this change. The amendment was submitted for EPA's approval on April 23, 1976.

This revised emergency level for photochemical oxidants is hereby approved. These actions are effective immediately since they serve only to notify implementation plan changes already in effect under Alabama law and impose no additional burden to anyone.

Copies of the information submitted by the State are available for public inspection during normal business hours at the following locations:

Air Programs Branch, Air and Hazardous Materials Division, Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30308.
Alabama Air Pollution Control Commission, 645 South McDonough Street, Montgomery, Alabama 36104.
Public Information Reference Unit, Library Systems Branch PM-213, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

(Section 110(a), Clean Air Act (42 U.S.C. 1857c-5(a)))

Dated: December 14, 1976.

JOHN QUARLES,
Acting Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart B—Alabama

Section 52.50 is amended by adding paragraph (c)(15) as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

(15) Revised emergency level for photochemical oxidants (emergency episode control plan) submitted by the Alabama Air Pollution Control Commission on April 23, 1976.

[FR Doc.76-37347 Filed 12-20-76;8:45 am]

[FRL 657-4]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Revision to the Virgin Islands Implementation Plan

This notice announces approval by the Environmental Protection Agency (EPA) of a revision to the Virgin Islands Implementation Plan.

As requested by the Virgin Islands on August 16, 1976, the EPA has reconsidered its disapproval of the revised 12 V.I.R. & R. 9:204-26, "Sulfur Compounds Emission Control," subsections (a)(1), (a)(3), (b), (c) and (d) as they apply to the island of St. Croix. Receipt of this request was announced in the October 1, 1976 FEDERAL REGISTER at 41 FR 43421 which contains a full description of the proposed revision.

In the October 1, 1976 notice, EPA established a 30-day period for receipt of comments from the public on whether or not the proposed revision to the Virgin Islands Implementation Plan shhould be approved. No comments were received.

EPA has determined that approval of this proposed revision to the Virgin Islands Implementation Plan would not result in the contravention of any applicable ambient air quality standard. The proposed revision has been found to be consistent with current EPA policies and goals set forth by the requirements of section 110(a)(2)(A)-(H) of the Clean Air Act and EPA regulations in 40 CFR Part 51 and, therefore, is approved.

ATTACHMENT 4

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

In the Matter of the Adoption of an Air Pollution Offset Rule for the Medford-Ashland Air Quality Maintenance Area, OAR 340-30-080

STATEMENT OF NEED

The Environmental Quality Commission intends to adopt an Air Pollution Offset Rule (OAR 340-30-080) for the Medford-Ashland Air Quality Maintenance Area.

a. Legal Authority: ORS 468.020 (general) and 468.295.

b. Need for Rule: The Medford-Ashland Air Quality Maintenance Area is violating State and Federal standards for the air contaminant known scientifically as Total Suspended Particulate (TSP). The Environmental Quality Commission has adopted rules to reduce the TSP to slightly below the standard. In order to maintain that standard, and yet allow growth involving more TSP, a rule is needed to mitigate the TSP from new and modified significant sources. The Federal Environmental Protection Agency requires an offset rule in a control strategy to allow for growth if the control strategy itself does not specifically allow for projected growth. Such is the case for the Medford-Ashland AQMA.

c. Documents Principally relied Upon:

1. Oregon Air Quality Report 1976, by State of Oregon, Department of of Environmental Quality (DEQ), Appendix IA, pg. 7, showing the Medford area violating the 60 ug/m^3 annual geometric mean standard.

2. DEQ File AQ 15-0015 containing reports and data from February, 1978, concerning modeling and impact of growth projects.

3. Federal Environmental Protection Agency "Interpretive Ruling for Implementation of the Requirements of 40 CFR 51.8," December 21, 1976, Federal Register, pages 55528 through 55530.

4. Agenda Item No. F. December 16, 1977, EQC Meeting, "Public Hearing to Consider Amendments to Oregon Clean Air Act Implementation Plan Involving Particulate Control Strategy Rules for the Medford-Ashland AQMA," Memorandum from the DEQ, Director, William H. Young, to the Oregon Environmental Quality Commission (EQC).

5. Agenda Item No. L, February 24, 1978, EQC Meeting, "Adoption of Rules to Amend Oregon's Clean Air Act Implementation Plan Involving Particulate Control Strategy for the Medford-Ashland AQMA," Memorandum for the Director of DEQ to the EQC.

6. Agenda Item No. I, March 31, 1978, EQC Meeting, same subject and addressee as 5 above.

7. U. S. Environmental Protection Agency, May 5, 1978, draft, Appendix S to 40 CFR 51, "Emission Offset Interpretive Ruling."

ROBERT W. STRAUB
GOVERNOR

Environmental Quality Commission

522 S.W. 5th AVENUE, P.O. BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

MEMORANDUM

TO: Environmental Quality Commission

FROM: Director

SUBJECT: Addendum to Agenda Item No. O, January 26, 1979, EQC Meeting

Adoption of Rules to Amend Oregon's Clean Air Act Implementation Plan Involving an Emission Offset Rule for New or Modified Emission Sources in the Medford-Ashland AQMA

The Legislative Committee on Trade and Economic Development has requested the EQC through resolution (Attachment 1) to delay adoption of the proposed offset rule. It appears the committee is concerned with the impact this rule could have on the economic base of the Medford-Ashland area and they would like to review this rule and all others affecting the Oregon Clean Air Act Implementation Plan before they are submitted to the Environmental Protection Agency.

There are some points the EQC should be aware of in considering this request.

While it is true that EPA would allow an extension until July, 1980 to submit a complete strategy to attain and maintain compliance with secondary particulate standards, the Department and the Medford Citizens' Advisory Committee have been trying to prevent further worsening and solve the serious air quality problem in the area as soon as possible. Submitting a complete strategy to EPA by July 1, 1979 has been the goal.

Aside from all federal requirements, the Department has proposed the stringent offset rule as a means of immediately preventing further degradation of the AQMA's particulate air quality. Latest monitoring information shows a continual, accelerated, and substantial deterioration of particulate air quality over the 3 year time in which strategy development has taken place. Figure 1 depicts this degradation. The original strategy was developed on 1975 data and used a base line air quality value of 72 ug/m^3, and provided for a 13 ug/m^3, reduction to 1 ug below the secondary standard of 60. Particulate air quality has now deteriorated to not only above the health standard of 75, but to a record high of 99 in 1978 all based on annual averages. It is now very questionable that the adopted strategy can even meet primary standards

as the degradation does not appear to be a direct result of meteorological changes since background levels have not changed substantially. The degradation appears to be due to increased local emissions. Greater increases have occurred near the industrial monitoring areas than at residential type monitoring sites. The particulate air quality situation now faced in Medford appears substantially worse than that faced in the Portland area in 1974, when the EQC adopted an emergency stringent emission ceiling rule which affected sources 10 tons/year and greater. It seems justified that at least similar immediate action is warranted in the Medford AQMA.

It would be desirable for the legislature to have a clear understanding of the problems, in the Medford airshed as support of all concerned is needed to solve this very serious problem. As the Department does not have to act in any pending permit applications for new sources in the next 60 days, it would be reasonable to defer action on the offset rule until the April meeting giving the legislature committee time to review pertinent issues. This short delay would not jeopardize degradation of Medford air quality nor totally eliminate the possibility of meeting the current SIP revision schedules. In light of current data trends, the Department would likely submit to EPA the existing emission reduction rules as an attainment strategy based on data available at the time of development and request the 18 month extension to develop an adequate maintenance strategy to address not only projected growth but the apparent worsening conditions that have occurred over the last 3 years. In this case the Department would not have to submit a state offset rule as a SIP revision during this interim period but would use the proposed rule, if adopted, as a state rule to prevent further irreversible degradation of a condition that is a threat to public health.

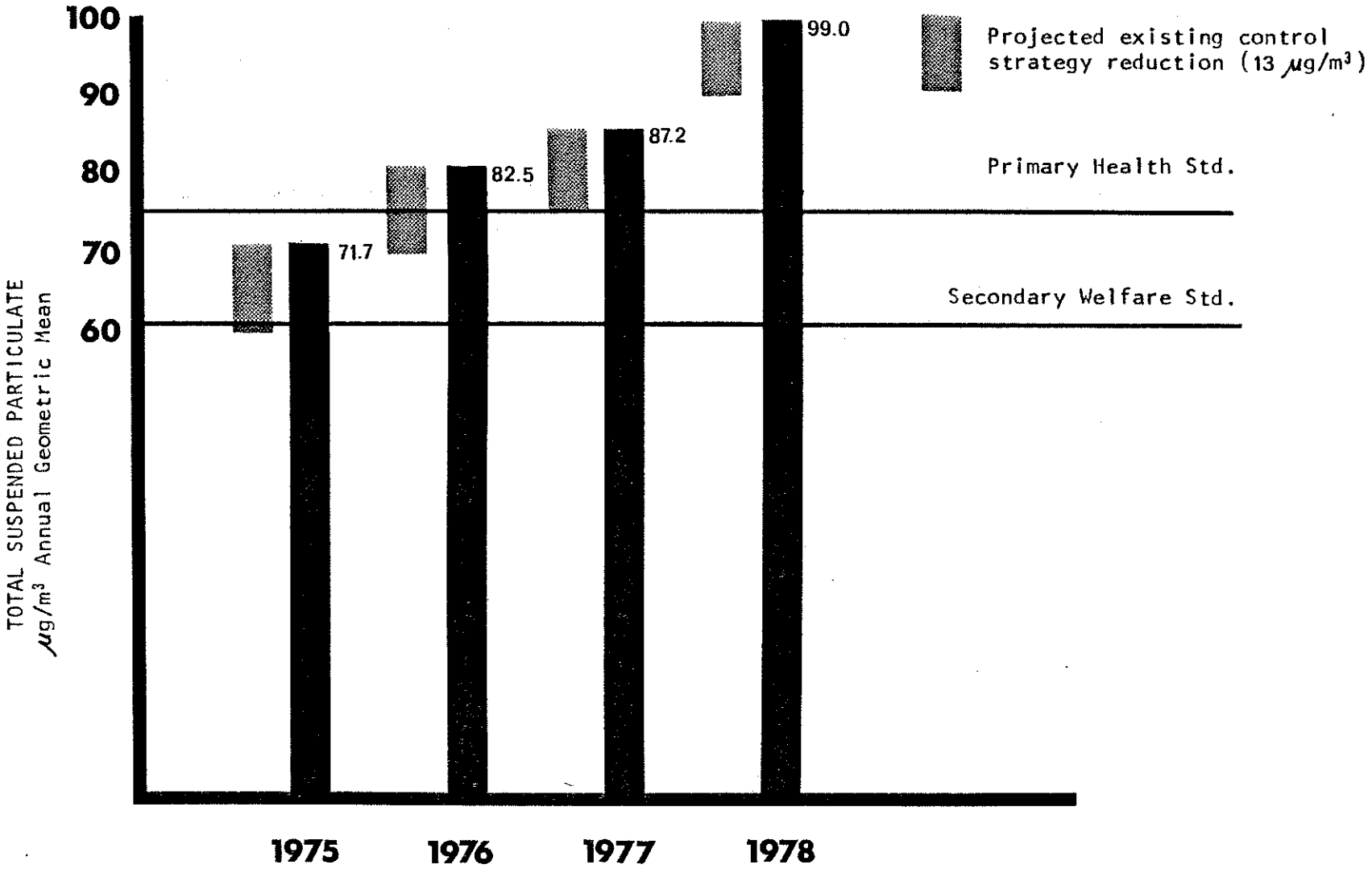
WILLIAM H. YOUNG
Director

JFKowalczyk:kmm
(503) 229-6459
1/25/79

Attachments: 1) January 17, 1979, Resolution of the Legislative Committee on Trade and Economic Development
2) Graph of Medford Air Pollution

Figure 1

MEDFORD COURTHOUSE AIR POLLUTION



ATTACHMENT 1

JANUARY 17, 1979

RESOLUTION

Be It Resolved by the Legislative Committee on Trade and Economic Development:

(1) The Environmental Quality Commission is urged to postpone taking any action to adopt a Clean Air Act Implementation Plan for the Medford-Ashland Air Quality Maintanance Area until the Legislative Committee on Trade and Economic Development has the opportunity to investigate and evaluate the problems of air quality maintenance and Clean Air Act implementation in that area.

(2) The Environmental Quality Commission is further urged not to adopt any rules involving offsets for air pollutant emission sources in this state until the Legislative Committee on Trade and Economic Development has an opportunity to review the Oregon Clean Air Act Implementation Plan.

(3) The Environmental Quality Commission is further urged to refer all proposed Clean Air Act Implementation Plans for other air quality maintenance areas in this state to the Legislative Committee on Trade and Economic Development for review, prior to submission of those plans to the federal Environmental Protection Agency.

ROBERT W. STRAUB
GOVERNOR

Environmental Quality Commission

522 S.W. 5th AVENUE, P.O. BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Addendum to Agenda Item No. O, January 26, 1979, EQC Meeting

Adoption of Rules to Amend Oregon's Clean Air Act Implementation Plan Involving an Emission Offset Rule for New or Modified Emission Sources in the Medford-Ashland AQMA.

The Legislative Committee on Trade and Economic Development has requested the EQC through resolution (Attachment 1) to delay adoption of the proposed offset rule. It appears the committee is concerned with the impact this rule could have on the economic base of the Medford-Ashland area and they would like to review this rule and all others affecting the Oregon Clean Air Act Implementation Plan before they are submitted to the Environmental Protection Agency.

There are several points the EQC should be aware of in considering this request.

First the adopted emission control rules and proposed offset rule for the AQMA is the bare minimum control strategy that EPA would accept to show attainment and maintenance of primary and secondary national air quality standards . The emission control rules adopted by the EQC would barely achieve compliance with the national secondary standard, which is also the State particulate standard. The proposed stringent offset rule would provide a means of accomodating projected growth without causing air quality to degradate above the State standard once it was achieved. More stringent emission control rules could have been adopted which would have provided significant room for growth and thus obviated the need for an offset rule or at least obviated the need for an offset rule as stringent as proposed. This approach, however, has not been favored by the EQC or AQMA Advisory Committee. It should also be recognized that the present Federal Offset Rule which is less stringent than the proposed Medford offset rule is an interim rule to prevent major degradation of air quality during the time complete control strategies are being developed. It would not be acceptable to EPA to submit such a rule as a permanent strategy to maintain compliance with air quality standards. As pointed out in the Medford area, the growth in sources exempt from the interim Federal Offset Rule could in a very short time (less than 1 year) cause standards to be

violated again. It is true that the EPA would allow an extension until July 1, 1980, to submit a control strategy for attainment and maintenance of secondary standards. Federal Law without an extension provides for strategy submitted by January 1, 1979, and approved (by EPA) by July 1, 1979. DEQ and the CAC have been attempting to submit a complete strategy by July 1, 1979.

Second, the offset rule is generally viewed as a compromise for allowing economic development while maintaining acceptable air quality. The alternatives are simply no growth or air quality exceeding Federal Secondary (and State) Standards, unless additional control requirements are imposed on existing sources to make more room for growth.

Thirdly, the offset rule does provide a marketable product (offset) to a permit holder, but the overall market (airshed capacity) would still be controlled by the State (EQC), since further emission reductions could be required by regulation in order to continue to meet standards, conform to state-of-the-art treatment or other reasons deemed appropriate by the EQC. This may be a questionable concept that needs to be discussed by the legislature, but a precedence has already been set by the Congress at least on an interim basis when it adopted the present Federal Offset Rule.

Fourthly, legislative involvement in review of SIP revising submittals could add another significant time consuming step in the already lengthy and resource intensive process of developing SIP revisions including reviews by local advisory committees, lead transportation planning agencies, A-95 State Clearinghouse, Department of Energy, LCDC, and EQC hearing process -- all of which must go in sequence. The state already has not met the Clean Air Act requirement of submittal by January 1, 1979, and an expected extention to July 1979 would now be in jeopardy of being met if anything more than a 60 day period is used by the legislative committee to review potential SIP revisions.

Fifth, the Clean Air Act does specifically require involvement and consultation with state legislatures with respect to development of carbon monoxide and hydrocarbon plans. This specific involvement appears to be directed to the need for Vehicle Inspection/Maintenance Programs. Act requirements for public involvement on other phases of the SIP revision appears to be more than adequately complied with through the Local Advisory Committee approach DEQ has taken and the EQC hearing process.

Finally and maybe most important, aside from all federal requirements the Department and the CAC has proposed the stringent offset rule as a means of preventing further degradation of the AQMA's particulate air quality. Latest monitoring information shows a continual, accelerated, and substantial deterioration of particulate air quality over the 3 year time in which strategy development has taken place. Figure 1 depicts this degradation. The original strategy was developed on 1975 data and used

a base line air quality value of 72 ug/m^3, and provided for a 13 ug/m^3, reduction of 1 ug below the secondary standard of 60. Particulate air quality has now deteriorated to not only above the health standard of 75, but to a record high of 99 in 1978, all based on annual averages. It is now very questionable that the adopted strategy can even meet primary standards as the degradation does not appear to be a direct result of meteorological changes since background and monitoring has not changed substantially. The degradation appears to be due to increased local emissions. Greatest increases have ocurred near the industrial monitoring areas than at residential type monitoring sites. The particulate air quality situation now faced in Medford appears substantially worse than that faced in the Portland area in 1974, when the EQC adopted an emergency stringent emission ceiling rule which affected sources 10 tons/year and greater. It would appear at least similar action is warranted in the Medford AQMA.

It would be desirable for the legislature to have a clear understanding of the problems, in the Medford airshed as support of all concerned is needed to solve a very serious problem. As the Department does not have to act on any pending permit applications in the next 60 days, it would be reasonable to defer action on the offset rule until the April meeting giving the legislature committee time to review pertinent issues. This short delay would not jeopardize Medford air quality nor totally eliminate the possibility of meeting the current SIP revision schedules. In light of current data trends, the Department would likely submit the existing emission reduction rules as an attainment strategy and request an 18 month extension to develop an adequate maintenance strategy to address not only projected growth but the worsening conditions that have occurred over the last 3 years. In this case the Department would not have to submit a state offset rule as a SIP revision during this interim period but would use the proposed rule, if adopted, as a State Rule to prevent further irreversible degradation.

WILLIAM H. YOUNG
Director

JFKowalczyk:lb
(503) 229-6459
1/25/79
Attachments: 1) January 17, 1979, Resolution of the Legislative Committee on Trade and Economic Development
2) Graph of Medford Air Pollution

ROBERT W. STRAUB
GOVERNOR

Environmental Quality Commission

POST OFFICE BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item P, January 26, 1979, EQC Meeting

Sunrise Village, Bend - Reconsideration of Appeal of Subsurface Sewage Disposal Requirements

Background

At the November 17, 1978, Environmental Quality Commission (EQC) meeting in Eugene, Sunrise Village, Bend, a proposed planned unit development, presented an appeal of a subsurface sewage disposal requirement imposed by the Department. (Staff report for this appeal is Attachment A.) Sunrise Village appealed the Department's requirement that a sewer agreement be entered into with the City of Bend. This requirement was deemed necessary by the staff to assure compliance with Goal 11 of the Statewide Land Use Goals.

The Commission suggested that Sunrise Village request the matter be continued until the next Commission meeting. During this period, Sunrise Village would meet with Department staff to work out an arrangement agreeable to both parties. If an arrangement could not be reached, the matter would be reconsidered by the Commission. Sunrise Village accepted the suggestion.

Since the November Commission meeting, the staff has met with Sunrise Village several times. In addition, Sunrise Village has appealed the Department's interpretation of Goal 11 to the Department of Land Conservation and Development (DLCD). DLCD responded to the appeal (see Attachment B, letter from DLCD dated 12-/9-78) by stating that the Department of Environmental Quality was acting appropriately by requiring a sewer agreement with the city. However, because local planning actions had been completed by Deschutes County, DLCD determined that the matter should be settled by local government. In a follow-up letter dated December 27, 1978 (see Attachment C), DLCD clarified its December 19, 1978, letter by stating that the city must agree to any action taken by the Department in regard to Sunrise Village.

Based upon DLCD's responses, the Department reconsidered its position and, in a January 9, 1979, letter to Sunrise Village (see Attachment D), agreed to approve their proposal if the following requirements were met:

1. Detailed plans and specifications for the proposed sewerage system are approved by this Department.

2. A municipality, as defined by ORS 454.010(3), must control the proposed sewerage system. This may be achieved by an agreement with City of Bend to operate and maintain the system or by formation of a County Service District, or Sanitary District. Frankly, we prefer the agreement with the City, but will accept a County Service District or Sanitary District, preferring the service district.

3. We must have a statement from Deschutes County indicating that they have tested your proposal in regard to the Statewide Land Use Goals and found it compatible. This statement must have the concurrence of the City of Bend. Should the City refuse to concur or otherwise object to either the formation of a special district (if that is your choice of municipality) or the County's Statement of Compatibility, we will be unable to approve your proposal.

Sunrise Village agrees to these conditions except it does not accept the Department's position that allows the City of Bend to have a part in approving their proposal.

Evaluation

The Department feels that our original requirement for a sewer agreement with the City of Bend was generally appropriate as evidenced by letters from DLCD, the first dated July 31, 1978 (see Attachment E), and the second dated December 19, 1978 (Attachment B). However, in considering this requirement as it relates to Sunrise Village, DLCD appears to feel that it may not be appropriate and should be a local decision. DLCD does say that the City of Bend may object to whatever action the Department takes in regard to Sunrise Village (see Attachment C). It should also be noted that the Department's Program for Coordination (Attachment F) with LCDC requires that the Department not take any action that would impact land use unless the appropriate planning jurisdiction(s) provide a Statement of Compatibility with Oregon's Statewide Land Use Goals. The appropriate planning jurisdiction(s) when outside city limits but inside the Urban Growth Boundary includes the city. We, therefore, believe it would be inappropriate for DEQ to approve the Sunrise Village proposal should the City of Bend object either to the formation of a special sewerage district or to Deschutes County's Compatibility Statement.

Summation

Sunrise Village of Bend has submitted a proposal for a community sewage collection and disposal system to serve a planned unit development located inside Bend

Urban Growth Boundary. The development would not be served by the Bend sewer system now under construction, but it could be served when a sewer is extended out to the area.

The Department would approve the proposal if the following conditions are met:

1. The sewage disposal facility would be under the control of a municipality.

   OAR 340-71-030(4) states:

   > "Multiple Service. Where a water-carried subsurface or alternative sewage disposal system will serve more than one (1) lot or parcel, such a system shall be under the control of a municipality as defined in ORS 454.010(3)."

2. The plans and specifications for the proposed sewage disposal facility are submitted to the Department for review and, in the review, the Department finds that:

   a. System is properly designed and meets applicable rules.

   b. Assurance of proper operation and maintenance is evident so that a health hazard and water pollution will not be created.

3. The Department finds that applicable land use planning requirements will not be violated (OAR 340-71-015(6).)

The Department believes that to comply with the third condition, we must have a Statement of Compatibility with Statewide Land Use Goals from Deschutes County. For the Compatibility Statement to be valid it must have City concurrence. This requirement is consistent with the Department's Program for Coordination with LCDC (Attachment F) and is supported by a letter from LCDC (Attachment C).

Director's Recommendation

Based upon the summation, it is recommended that the Environmental Quality Commission direct the Department to not permit a community sewage disposal system for Sunrise Village unless the following conditions are met:

1. Detailed plans and specifications for the proposed sewerage system are approved by this Department.

2. A municipality, as defined by ORS 454.010(3), must control the proposed sewerage system. (This may be achieved by an agreement with the City of Bend to operate and maintain the system or by formation of a county service district, or sanitary district.)

3. We must have a statement from Deschutes County indicating that they have tested your proposal in regard to the Statewide Land Use Goals and found it compatible. This statement must have the concurrence of the City of Bend.

The Commission should also instruct the staff to continue to work with Sunrise Village, the City of Bend, and Deschutes County to achieve these conditions.

Bill

WILLIAM H. YOUNG

Richard J. Nichols:ahe
382-6446
January 11, 1979
Enclosures

Attachment #A

ROBERT W. STRAUB
GOVERNOR

Environmental Quality Commission

POST OFFICE BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. M, November 17, 1978, EQC Meeting

Appeal of Subsurface Disposal Requirement by Sunrise Village - Bend

Background

On May 26, 1978, the Department received a proposal from Sunrise Village for a planned unit development to be located in the southwest corner of the Bend Urban Growth Boundary along Century Drive. The proposal called for a portion of the development (about 120 units) to be served by a community sewage collection and disposal system. The disposal system would consist of a septic tank, dose tank and drainfield.

The Department responded to the proposal by stating we would consider issuance of a permit for the disposal system as long as the system was interim and ultimate connection to the Bend regional sewage system was assured. We requested that Sunrise Village provide the Department with a signed sewer agreement between the City of Bend and the developer stating that the system would be connected to the regional sewer system when available.

The City and Sunrise Village have been unable to come to agreement. The City did not want to enter into a sewer agreement because they were unsure if they would be able to provide a sewer to the area. In addition, if the City provided sewer service, the development would have to annex. The City wanted to be sure that, if they were to annex the development, it would meet City standards.

To satisfy their concerns, the City offered the following terms for a sewer agreement.

1. Sunrise Village would build a sewer interceptor to Phase I of the Bend sewer project.

2. Sunrise Village would annex to the City when requested.

3. Sunrise Village would build their water system to City specification and would turn it over to the City at annexation.

4. The development would comply with all City development standards and would be inspected by the City during construction.

5. The City would operate and maintain the interim sewage disposal system until Phase I of the Bend sewer project was ready for operation.

Sunrise Village was unable to agree to these terms. As a result, they have been unable to satisfy the Department's requirement that their sewage disposal system be ultimately connected to the Bend sewer system.

Recently, the City of Bend has offered a sewer agreement to the C.J. John Shopping Center, another proposed development in the Bend Urban Growth Area. This agreement contained the following major components:

1. The developer would give the City $20,000 to develop a sewer plan for a segment of the UGB. The plan would investigate alternatives for interim disposal systems as well as the location of the final sewers. The plan would take three months to complete.

2. The City would guarantee sewer service to the developer so that construction of the development could start as soon as practicable. The developer would install the interim system designated by the plan. The City would operate and maintain the interim system until ultimate connection to the Bend sewer system occurred. No specific date for ultimate connection would be set.

Evaluation

The Department believes that any community sewage disposal system to be constructed inside the Bend Urban Growth Boundary should be a part of the regional sewerage plan and should be ultimately connected to the Bend regional sewer system. This belief is based on the following:

1. Only the Bend regional sewer system will be able to provide reliable long-term, effective sewer service. We doubt that a homeowner's association as proposed by Sunrise or a sanitary district can provide this assurance of service.

2. We are unsure that large subsurface disposal systems will function reliably over the long term (30 to 40 + years). We, therefore, believe that they should only be considered as interim systems.

3. The state and federal governments have invested many millions of dollars to provide the Bend area with a sewage collection and treatment system. We believe use of the system should be encouraged. We do not believe we should allow small community sewage disposal systems to proliferate in the Bend Urban Growth Area when a more desirable alternative will be available soon.

The Department also believes that the requirement for ultimate connection to the Bend sewer system is not unreasonable. The sewer agreement with C.E. John, recently proposed by the City of Bend, could also be applied to Sunrise Village. The city's agreement should not place an unreasonable burden upon Sunrise Village.

Summation

Sunrise Village of Bend has submitted a proposal for a community sewage collection and disposal system to serve a planned unit development located inside the Bend Urban Growth Boundary. The development would not be served by the Bend sewer system now under construction, but it could be served when a sewer is extended out to the area.

The Department would approve the proposal if the following conditions are met:

1. The sewage disposal facility would be under the control of a municipality.

   OAR 340-71-030(4) states:

   > "Multiple Service. Where a water-carried subsurface or alternative sewage disposal system will serve more than one (1) lot or parcel, such a system shall be under the control of a municipality as defined in ORS 454.010(3)."

2. The plans and specifications for the proposed sewage disposal facility are submitted to the Department for review and, in the review, the Department finds that:

   a. System is properly designed and meets applicable rules.

   b. Assurance of proper operation and maintenance is evident so that a health hazard and water pollution will not be created.

3. The Department finds that applicable land-use planning requirements will not be violated. (OAR 340-71-015(6).)

The Department has required that Sunrise Village enter into a sewer agreement with the City of Bend to assure ultimate connection to the Bend regional system. We believe connection is necessary to assure reliable, long-term, effective sewage disposal. We are not confident that large subsurface disposal systems will perform effectively for the long term. The city has the staff and equipment to assure proper maintenance and operation of city's sewerage facilities. We do not believe Sunrise Village will be able to provide the same level of maintenance and operation.

Currently the Sunrise Village proposal does not meet Goal 11 of Statewide Planning Goals and Guidelines. Goal 11 calls for the coordinated development of public facilities with all other urban facilities and services.

Goal 11, Guideline A, Section 5 states:

> "A public facility or service should not be provided in an urbanizable area unless there is provision for the coordinated development of all the other urban facilities and services appropriate to that area."

By requiring an agreement between proposed developments inside the Urban Growth Boundary and the city, the Department is assured that Statewide Planning Goal 11 will be achieved.

The City of Bend has recently proposed a sewer agreement to C.E. John for sewer service to a development also inside the UGB, but outside the service area of Phase 1 of the Bend sewer project. We believe a similar agreement could be utilized to resolve our concerns with the proposed sewage system for Sunrise Village.

Director's Recommendation

Based upon the summation, it is recommended that the Environmental Quality Commission direct the Department to not permit a community sewage disposal system for Sunrise Village unless such system is a part of the overall regional sewerage plan and would be connected to the Bend regional sewerage system at some future time. The Commission should also direct the Department staff to work with the City of Bend and Sunrise Village to reach agreement for ultimate connection of the sewage system to the regional system.

Bill

WILLIAM H. YOUNG

Richard J. Nichols:dmc
382-6446
November 1, 1978
Enclosures

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
NOV

Sunrise Village
Along the Deschutes River

BEND DISTRICT OFFICE 2151 N. E. FIRST STREET, BEND, OREGON 97701

October 30, 1978

City of Bend
City Hall
P. O. Box 431
Bend, Oregon 97701

RECEIVED
NOV 06 1978
Water Quality Division
Dept. of Environmental Quality

Attention: Mr. Art Johnson

Re: Sunrise Village

Sir:

I am writing you on behalf of the Mammoth Lakes Corporation, developers of Sunrise Village. As you are probably aware, our project has been stymied since June of this year due to the Department of Environmental Quality's insisting we obtain a sewer agreement with the city and our being unable to comply in particular with two of the cities stipulations for said agreement. Specifically, we haven't any water to deed the city as although we have contributed $60,000. in development costs, M.R.S. owns the well and reservoir and is unwilling to relinquish them. It is also prohibitorily expensive for Sunrise Village on its own to construct a dry line sewer collection system and extend an interceptor line to meet the Phase I sewer system.

Two recent events have occured which may offer a solution to our dilemma. We respectfully request you consider their application to our case. They are as follows.

1. The city of Bend, Brooks Resources and C. E. John Construction Company are near to completing a sewer agreement of a kind the Department of Environmental Quality thinks might have application to our case.

2. Our water delivery system is to be built to city standards and M.R.S. has agreed to allow us to disconnect at any time and deed the delivery system to the city.

Please be assured it is our every intention to cooperate to the best of our ability with all concerned to the end that our development is both an asset and source of pride to the Bend community. However, excepting for some help from the city we are faced with deviating from our plan and downgrading the project by putting everything on septic tanks.

Your efforts and concerns are much appreciated. I am at the disposal of you and your staff as the need may be.

Very truly yours,

Tim Ward

Tim Ward
Vice President
Mammoth Lakes Corporation

CC: Richard J. Nichols
Bill Smith

State of Oregon

DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE MEMO

and return

To: Bill Young via Fred Bolton

Date: October 26, 1978

From: Dick Nichols, Central Region

Subject: S - Bend
Deschutes County

The City of Bend made a giant stride towards extension of the Bend sewer project into the Phase II area. The sewer committee at their morning meeting offered the following proposal to C. E. John:

1. C. E. John would provide $20,000 to the City to conduct a sewer study of the northern segment of the Phase II area. This study would determine not only the ultimate plan for sewering the area, but would also determine interim disposal methods to be used until final sewers are installed.

2. So that C. E. John could proceed with their project, the City would agree to provide the company with sewer service when the shopping center was completed and ready for business. This sewer service would consist of an interim disposal system (as determined by the above plan) which would be operated and maintained by the City of Bend until connection is made to the Bend sewerage system. The City would commit to connecting the interim system to the Bend sewer project at some future date. This date would not be specified.

I told the committee that we found this approach acceptable. I based this decision on the following:

1. The interim disposal system will be a part of the over-all sewer plan for the Bend urban growth area.

2. With the City of Bend operating and maintaining the system, we can be assured the interim system will be ultimately connected to the Bend project and that the interim system will be properly constructed, operated and maintained.

I believe this covers our basic concerns with development and sewage disposal in the Bend area.

Though disposal wells could be considered as an interim disposal system, the City of Bend and C. E. John recognize that disposal wells are not an option for the C. E. John site because of the relatively shallow water table in the area. Disposal wells could be considered for those areas in the Northern segment of Phase II, which are not over the shallow water table. The City recognizes that disposal wells are

currently prohibited outside the Bend city limits and that only the EQC could change this. I think the City also recognizes that the EQC would not approve extension of the disposal well boundary into Phase II unless the City showed the wells would be phased out by a scheduled date.

Hopefully, this approach to the sewers in the Phase II area of Bend is acceptable to you. I propose to handle other development projects in a similiar manner.

In C. E. John's case, I intend to follow-up on the City's proposal in the following manner:

1. Upon receipt of a letter from the City of Bend stating that they will provide C. E. John with sewer service, that they will operate and maintain the interim disposal system until it is connected to the Bend System and that the City commits itself to ultimate phase-out of the interim system, I will inform the county that the Department has no objection to issuance of a building permit to C. E. John. We would allow issuance of the building permit conditioned on the following:

   a. Operation of the shopping center would not start until an approved, interim disposal system was installed.

   b. The plans for the interim system shall be approved in writing by DEQ. A copy of the sewer agreement between C. E. John and the City of Bend must be submitted with the plans.

   c. If the interim system is an on-site septic tank and drainfield, the system would have to be owned by the City of Bend and would be operated by a letter permit from DEQ. Any other interim system whether disposal well, package STP, or whatever, would require a WPCF permit issued to the City of Bend.

RJN:sm

cc: Harold Sawyer, Water Quality

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
OCT 25 1978

BEND DISTRICT OFFICE

Sunrise Village
Along the Deschutes River

2151 N. E. FIRST STREET, BEND, OREGON 97701

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
OCT 27 1978

WATER QUALITY CONTROL

October 25, 1978

Department of Environmental Quality
2150 Studio Road
Bend, Oregon 97701

Attention: Richard J. Nichols, Regional D.E.Q. Manager

Dear Mr. Nichols:

On October 12, 1978 you telephonically informed me of your decision to hold to the position of requiring Sunrise Village to obtain an agreement with the city of Bend for a future sewage connection before you would approve our planned community sewer system.

Your stated reasons, as I understood them, were that the Department of Environmental Quality has a large investment in the Bend regional sewer system and Sunrise Village should be a part of it because in being so it would likely induce the orderly development of potential downstream projects and avoid the risks and management problems over the long term with respect to the reliability of a community sewer system. In view of your decision I hereby formally request an appeal at the earliest possible time with the Environmental Quality Commision.

It is our contention as supported by the text of Ross Mathers letter of September 27, 1978 that there is legal, moral, and practical justification for exempting us from the city sewer agreement policy due to the policies being implemented subsequent to our accomplishing in good faith and at considerable expense of time and money, an environmentally sensitive development plan based on and evolving around a sewage disposal method originally recommended by Mr. Borden of your office.

Furthermore, insisting we obtain the city sewer agreement is counter productive in that we are unable to meet the cities requirements of giving them the water system as we don't own it or funding (which the city recognizes would not be justifiable even for them) a sewer interceptor line nearly two miles to the Bend phase one sewer system for a maximum 121 single family residential homes within a 233 acre development. Therefore, we would have no alternatives to abandoning our plan, a high standard community sewer system and to the detriment of the environment and all concerned; put everything on individual septic tanks. We also disagree that Sunrise Villages being on the city system is integral to the systems orderly development in that no one is up-stream from us and as a negative by product, high down-stream density would be encouraged. Lastly, ours is to be a community association with the resources, management and enforcement powers to indefinately operate and maintain a community sewer system or until, which time it was clearly right and feasible for us to be on the city system.

Your earliest attention to this matter is appreciated. Please advise us of any developments as they might concern us.

Sincerely,

Tim Ward

Tim Ward

TW/sb

ROBERT W. STRAUB
GOVERNOR

WQ

Department of Environmental Quality

522 S.W. 5th AVENUE, P.O. BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-

October 17, 1978

Sunrise Village
2151 N. E. First Street
Bend, Oregon 97701

SSSD - Sunrise Village
Deschutes County

Attention: Mr. Ross Mather, President

Gentlemen:

We have reviewed your letter of September 27, 1978. We have also conferred with Mr. Tim Ward of your company.

I believe that our staff understands your position in this matter. However, we still cannot approve your plans for a community sewage disposal system until we can be assured that it will ultimately become part of the regional sewerage system at a scheduled date.

Considerable funds are being invested to supply the Bend area with a regional sewerage system. Large developments in that area must plan to use this method for sewage disposal. The Department feels that a large drainfield is not the best sewage disposal alternative over the long term. We need to be assured that our approvals of disposal methods are not faced with problems in the future. Ultimate connection to regional sewerage system will provide this assurance.

If you need additional assistance on this matter, please call Mr. Dick Nichols (382-6446) in our Bend office.

Sincerely,

William H. Young

William H. Young
Director

hk

cc: Central Region Office, Bend
Water Quality Division, Portland
Deschutes County Planning Dept.
Deschutes County Sanitarian Dept.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
OCT 19 1978
WATER QUALITY CONTROL

Contains Recycled Materials

DEQ-1

ROBERT W. STRAUB
GOVERNOR

Department of Environmental Quality
CENTRAL REGION
2150 N.E. STUDIO ROAD, BEND, OREGON 97701 PHONE (503) 382-6446

October 9, 1978

Deschutes County Planning Commission
Courthouse Annex, Room 102
Bend, OR 97701

S - Bend
Proposed Holiday Inn--
Holidome

Gentlemen:

We have not received notice from Deschutes County on the proposed zone change for the proposed Holiday Inn - Holidome complex on Highway 20 near Cooley Road. However, we have been contacted by interested citizens who have given us some information on the proposed project.

Based on admittedly scant information, we submit the following comments:

1. We have not been informed on how sewage from the complex will be disposed of. We know that the complex is outside the urban growth boundary and, consequently, sewer service to this area by the City of Bend sewerage system is not even being contemplated at this time.

   We believe a large complex, such as this one, should be located to take advantage of the new Bend sewer project. Before we will consider an interim sewage disposal system for the proposed complex, we will have to be shown that the interim system is a part of the overall sewerage plans for the Bend area and that it would be phased out and connected to the Bend system by a known specified date. Because the only area assured to have future sewer service is that contained in the Phase I area of the Bend sewer project, currently we will only approve those interim systems that will be phased out with the completion of Phase I.

2. The complex would be located over a known perched water table that serves as a source of domestic water. Use of disposal wells to dispose of surface runoff from the complex may impact the quality of the water in this perched water table.

3. If the parking lot exceeds 1000 lots, an indirect air contaminant discharge permit must be applied for prior to construction.

Sincerely,

Richard J. Nichols
Regional Manager

RJN:dmc

cc:Water Quality Division
:Fred Bolton

Sunrise Village
Along the Deschutes River
2151 N. E. FIRST STREET, BEND, OREGON 97701

September 27, 1978

State of Oregon
Department of Environmental Quality
522 SW Fifth Street
P. O. Box 1760
Portland, Oregon 97207

Attention: William H. Young, Director
Fred Bolton, Regional Operations Administrator

Re: Sunrise Village
Dechutes County

Gentlemen:

The purpose of this letter is to document certain information relative to the planning, development and environmental preservation of the 233 acres comprising the above referenced project. As the owner of this property I feel that there was a very important sequence of events that transpired prior to the Departments decision to require that developments using community waste treatment facilities have an agreement with the city to accommodate future sewer connection. Following is a documentation of these events that I urge you to consider:

1. In early 1976 I had the opportunity to purchase the subject property located two miles from the Bend city limits and bordered by the Deschutes River. Since I felt it first necessary to evaluate the development possibilities for the property, I then negotiated an option to purchase.

2. In February of 1977 I brought a potential investor, Mr. Martin West, to Bend. We met with Lorin Morgan and Jim Morrison of the Deschutes County Planning Staff. We were informed that the property was located within the growth boundary and was shown as a Development Alternative on the Bend Area General Plan. The Comprehensive Plan did not discourage a Planned Development that would provide the full service facilities required for an urban development. We were further advised that the ultimate authority as to our method of sewage disposal was the Department of Environmental Quality.

3. At the same time (February, 1977) we visited John E. Borden, Regional Manager of the Department of Environmental Quality. I informed him that it was our plan to provide a community waste treatment facility for the project. We discussed various methods and it was Mr. Borden's opinion that the Department would prefer a central common septic tank and drain field system. This type of system has been employed in other Bend urban developments. This concept would also provide a collector system that would facilitate a connection to Century Drive should the City of Bend decide to extend its facilities at some future undetermined date.

4. Through substantial reliance on the above information and advice, Mr West and I decided to purchase the property and proceed with master planning. Upon the recommendation of Mr. Bill Smith, president of Brooks Resources, in April of 1977 we engaged the professional land planning firm of Hall Goodhue and Haisley to develop a Master Plan. George Cook Engineering was also retained as was the legal firm of Gray, Fancher, Holmes and Hurley.

5. On May 11, 1977 the Deschutes County Planning Commission approved our request to change the zoning from A-1 Exclusive Agriculture to PD, Planned Development. The Master Plan indicating a community waste treatment facility was incorporated into the approval.

6. On October 3, 1977 we exercised our option and concluded the land purchase at a price of $524,700.00.

7. On December 13, 1977, Preliminary Plat #389, Phase I of Sunrise Village, was approved at a public hearing before the Deschutes County Hearing Officer. On April 18, 1978, Preliminary Plat #415, Phase II, was approved in a similar manner. On June 22, 1978, Preliminary Plat #444, Phase III, was approved. All three plats, involving approximately 200 residential lots, were engineered and designed according to the approved Master Plan which included a private sewer system to serve the smaller lots.

8. In the winter of 1977-78 site work was commenced and roads were graded according to the approved plan. Work on a joint community water system was started including well drilling and the installation of a 500,000 gallon storage tank. The system is now operational. To date, in addition to the land cost, in excess of $220,000 has been paid out by the developers and an additional $600,000 has been committed. All of this was done in good faith and through complete reliance by the developer that the recommended method of sewage disposal would receive tha approval of the Department of Environmental Quality.

9. In January of 1978 engineering was started on the Final Plat of Phase I, the River Bluff Section. All lot boundaries for the 82 lots were surveyed and monuments were set. In the spring, Mr. Dave Williams of George Cook Engineering accompanied Mr. Bob Free of the Department of Environmental Quality on an inspection of the proposed location of the community sewage treatment facilities. Mr Free concurred that soil conditions were suitable for installation of the proposed system. In July when the Final Plat was ready for recording we were advised that the Department of Environmental Quality would not approve the Final Plat until the development had an agreement with the city to accommodate a future sewage connection.

10. On January 27, 1978 the Final Plat for the River Bluff Section of Sunrise Village was signed by the Deschutes County Board of Commissioners and was recorded. An agreement was executed by the developers and the commissioners in which the developers agreed not to commence construction of the community sewage system until plans for the system have been approved by the Department of Environmental Quality.

11. On July 26, 1978 we received staff recommendations from the Bend City Sewer Committee setting forth certain conditions that would have to be met before the city would grant an agreement. It is estimated that the cost to satisfy these conditions would amount to in excess of $1,500,000. On August 4 I had a lenghty conversation with one of the members of the city sewer committee. It was his opinion that the best solution for all concerned would occur if the Department would alter its position of requiring an agreement with the city.

12. During August and September we have conducted extensive soil tests on the property and have attempted to redesign the plat so that each lot could accomodate an individual septic tank and drain field. The conclusions are not only not feasible for the development but potentially could have a disastrous impact on the natural environment. The removal of thousands of trees would be necessitated to accommodate the drain fields. In contrast, the community drain field was planned for an open, treeless area that was to be converted to a green meadow through the presence of underground drain fields.

In summary, we earnestly request that you consider this appeal and allow Sunrise Village to proceed in its original concept which we have proven has priority over recent Department decisions. We have offered to post any necessary financial

guarantees to assure the continued maintenance and operation of the facility. Not only will the environment be forever preserved but a workable system for central sewage collection would be provided for the future benefit of the community and the Department of Environmental Quality. Untimely duplication costs would be avoided. The city sewer system which apparently does not have sufficient capacity for existing high density areas would not be further burdened by having to provide services to a distant, low density community that lies on the edge of the urban growth boundary and is not an integral part of the city's annexation plans regarding the continuity of sewer services

Very truly yours,

Ross Mather

Ross Mather
President, Sunrise Village

CC: Richard J. Nichols
John E. Borden
Gray, Fancher, Holmes and Hurley

Exhibits attached:

1) Master Plan and Summary as approved with zone change.
2) Notification of zone change approval.
3) Staff recommendations for Phase I.
4) Hearing Officers decision on Phase I.
5) Hearing Officers decision on Phase II.
6) Hearing Officers decision on Phase III.
7) Subdivision Agreement.
8) Agreement with Commissioners.
9) City Sewer Committee Staff Recommendations.
10) August 24 article from Bend Bulletin.

ROBERT W. STRAUB
GOVERNOR

Department of Environmental Quality
CENTRAL REGION
2150 N.E. STUDIO ROAD, BEND, OREGON 97701 PHONE (503) 382-6446

August 9, 1978

Mr. John Glover
Deschutes County Health Department
Courthouse Annex
Bend, OR 97701

S - Bend
S - Bend Phase II

Dear Mr. Glover:

In July 1978, the City of Bend signed a contract for construction of the first segment of the Bend sewerage system. The Department considers this as the start of construction. Therefore, the sewage disposal well boundary for the City of Bend is expanded in accordance with the letter signed by William Y. Young, Director of DEQ, on May 16, 1978.

To assure that proposed developments meet the requirements of our May 16, 1978 letter and to facilitate DEQ county review, the following procedure should be used:

1. For developments with dry sewers that would be served by interim, individual septic tanks and drill holes.

    a. The developer will submit the following information to the Bend office of DEQ:

        1. Proof that the development is inside the current Bend city limits or in the process of annexing;

        2. Proof that the development would be served by Phase I of the Bend sewerage system and would be activated concurrently with the rest of the city system;

        3. Proof that a sewer service agreement has been signed between the developer and the City of Bend;

        4. DEQ would review and approve dry sewer lines prior to construction of sewer. If this has already been done, the developer will submit proof that the plans have been approved by DEQ.

    b. This office will then issue a letter to Deschutes County stating that the development qualifies to be served by disposal well.

c. The county then evaluates each lot to determine if a drainfield (with or without replacement area at county's discretion) can be installed, or whether it must be served by disposal well. Permits would be issued as appropriate. Also, at this same time, the county can sign off on the real estate disclosure and forward to the DEQ Bend office for our sign-off.

II. For developments that would be served by a community septic tank and disposal well.

Our rules (OAR 340-71-020(4)) state that sewage disposal systems for multiple lots must be under the control of a municipality, as defined by ORS 454.010(3). Consequently, since these developments can only qualify for our disposal well agreement by being in the City of Bend or in the process of annexing to Bend, the only way for us to approve a community system is if the City of Bend will assume responsibility. If and when they do this, DEQ, the city and county will work out the details for approving such proposals.

If you have questions or comments on this matter, please call me.

Sincerely,

Richard J. Nichols
Regional Manager

RJN:dmc

cc:City of Bend - John Hossick
:Deschutes County - Bill Monroe
:Water Quality Division
:Fred Bolton, Regional Operations
:Bob Free

ROBERT W. STRAUB
GOVERNOR

Environmental Quality Commission

1234 S.W. MORRISON STREET, PORTLAND, OREGON 97205 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. F, November 18, 1977, EQC Meeting

Public Sewerage Considerations Within Bend Urban Growth Boundary

Background

1. Since the early 1900s, central Oregonians have been disposing septic tank effluent down lava fissures and dry wells (sewage disposal wells) rather than using conventional drainfields. This practice prompted a study of disposal well practices in 1968 by FWPCA. FWPCA (predecessor to the EPA) concluded that continued discharges of septic tank wastes to disposal wells pose a potential threat to groundwater quality. Accordingly, the EQC adopted regulations on May 13, 1969 to phase out disposal wells for inadequately treated wastes. Exhibit A illustrates the general concepts.

2. The concept of the regulations was to phase out existing sewage disposal wells in rural areas by January 1, 1975, but to allow new wells in populated areas where an acceptable sewerage construction program had been approved by DEQ. The latter areas would be classed by DEQ as "permit authorized areas" within which DEQ (or a county Health Department) could issue temporary disposal well permits. After January 1, 1980, no new disposal wells would be permitted in the "authorized" areas, and existing wells at that time would be sealed and abandoned.

3. To qualify as a permit authorized area, applicants had to agree to sewerage construction thus:

a. Hire consulting engineer by July 1, 1969
b. Submit preliminary engineering report by January 1, 1971
c. Start construction by August 1, 1971
d. Complete construction by January 1, 1980
e. Submit annual reports to DEQ which show reasonable progress

4. Madras, Culver, Metolius, Redmond, and Bend were designated permit authorized areas. The status today of each is as follows:

a. Madras--city sewerage system complete in 1976--urban area sewerage planning (Step I) in progress
b. Metolius--system complete 1975
c. Culver--sewerage system complete 1976
d. Redmond--system under construction--about 40% complete
e. Bend--Sewerage Planning (Step I) complete within Urban Growth Boundary (UGB). Final design (Step II) underway within current city limits (Phase 1), but not within the UGB outside the city limits (Phase 2). There is no design or sewerage construction proposal pending for the Phase 2 area at this time.

5. Overall, Bend's sewerage project has been beset with delays since 1969. To date, the following sewerage planning has occurred:

a. Report on a Preliminary Study of a Sewage Collection and Treatment Facilities--CH2M 1967 (sewage treatment plant serving about 10% of Bend constructed in 1970)
b. Report on Cost Updating of a Proposed Sewerage System for Bend, Oregon--Clark & Groff 1972
c. Preliminary Design and Final Plans for East Pilot Butte Interceptor Sewer--Clark & Groff and city staff 1972-1974 (not built)
d. Study of the Feasibility of Accepting Privy Vault Wastes at the Bend Treatment Plant--Clark & Groff 1973 (built)
e. Preliminary Report Sewerage Study (for the City of Bend)--Century West, paid for by Brooks Resources 1974
f. Sewerage Facilities Plan, City of Bend, Oregon--Stevens, Thompson & Runyan, Inc. and Tenneson Engineering Corp. 1976--approved by DEQ and EPA
g. Supplemental Environmental Impact Assessment Draft, 23 September 1977--BECON
h. Step II underway for Phase 1 of ST&R plan

6. All the central Oregon sewerage projects have been complicated by rock excavation and local financing difficulties, but each community has overcome these obstacles. Bend overwhelmingly passed a $9,000,000 bond issue. Bend experienced some additional time delays due to:

a. Analysis of experimental vacuum and pressure sewer systems
b. Excessive cost discussions before accurate cost estimates were actually pinned down.

Indeed, cost estimate inaccuracy is largely responsible for Bend's decision to return to the E-Board for more hardship funding, but that is covered under a separate Commission agenda item.

7. Because Bend's annual reports showed progress towards sewerage construction (although behind schedule) DEQ has renewed their permit authorized status for sewage disposal wells each year through present.

8. Believing sewerage construction to be in the offing, DEQ authorized several dry sewer projects with "interim" drainfield and disposal well facilities. The facilities plan addresses the entire urban area, but due to cost projections it soon became clear that an immediate project was likely only inside the city limits. Unfortunately, most current subdivision activity (and homesite construction) is actually occurring within the Urban Growth Boundary (UGB), but outside Bend city limits. The Phase I sewerage project will not serve construction outside the city limits.

9. DEQ recognized this dilemma as early as 1973, and began tentative negotiations with city and county officials (staffs and commissions) to jointly participate in sewerage planning and construction within the UGB. Although the city and county both endorsed the facilities plan on October 6, 1976. Deschutes County has not implemented any of its recommendations.

The facilities plan includes an adopted Urban Growth Boundary (UGB) which influenced the plan. A quotation from the facilities plan describes the relation of the City of Bend General Plan to sewerage service:

> "Since 1970 rapid population growth in the Bend area has occurred mostly in Deschutes County rather than the City. Population growth within the City has occurred mainly because of annexation policies.
>
> "Flexibility has been a major objective in establishing the plan and it has provided for alternate population densities in outlying areas to accommodate future growth trends which are difficult to anticipate at this time. The major determining factor for higher densities will be the provision for sewering. It is important to recognize that proper land use planning should precede sewerage planning. The plan would provide a north-south center strip of industrial and commercial activities with varying types of residential activities extending from this central core. The greatest population densities would be located in the central area with lower densities toward the outer edges of the urban area."

10. Much of the growth outside the city, but inside the UGB (i.e. the Phase 2 area) actually has occurred with little or no regard for how sewerage connections would be made except as inadvertantly regulated by DEQ by "indirect" planning strategies. Examples are shown in Exhibit B. The City of Bend is powerless to implement planning decisions outside their city limits.

11. By 1976, the interface conflict and Phase 2 growth without sewers was obviously serious. DEQ continued meetings with city and county officials. The city was becoming conspicuously concerned about their possible "inheritance." Thus on June 1, 1977 and July 5, 1977, DEQ was successful in conducting joint sewerage policy planning sessions among City-County-DEQ.

At the July 5, 1977 meeting, it seemed appropriate to turn initiative for further meetings over to local officials since planning is a local function. Deschutes County requested a follow-up meeting on September 12, 1977. At that meeting with the County Commission DEQ volunteered that it was unable to justify continued sewerage "concessions" in the Phase 2 area, since no sewerage implementing authority, such as a County Service District, was operational there. The concept of a septic tank moratorium to halt conflicts with the sewerage plan was discussed.

A joint City-County urban planning commission concept was proposed (Exhibit C), but Deschutes County felt that to be a premature move. Instead, a joint committee to study differing building standards between city and county was extablished (Exhibit D). Intensive development continued in the Phase 2 area without sewerage services, except for Choctaw Village Sanitary District.

Bend changed its annexation policy after forming a citizens' group to study subdivision standards (Exhibit E).

12. Unlike many urban growth areas, Deschutes County planning ordinances permit development at low (up to 5 acre lot sizes) as well as high densities within the UGB. This aggravates sewerage construction by permitting "leap-frogging" densities. For example, on a given radius from Bend you might encounter 1000 feet of 1/3 acre lots, then 1000 feet of 2-1/2 acre lots, then 2000 feet of 1/2 acre lots, etc. The net result is expensive ultimate sewerage service to urban densities not immediately adjacent to Bend's existing urban densities.

13. The key item lacking is local coordination such as a City Utility Board, a County Service District, or some form of equivalent control.

Evaluation

1. Sewerage construction in Bend proper (Phase I) will not likely be complete and available at the city limits until at least 1981.

2. At least 230 sewage disposal wells exist in the Phase 2 area which are not now scheduled for phase out by a sewerage system although the facilities plan shows how that could be done.

3. There are not many alternatives for sewage disposal in the Phase 2 area other than dry or wet community sewers due to:

a. Unavailability of a municipal sewerage system
b. Disposal wells not permitted per Oregon Administrative Rules (OAR) 340-44-005 through 44-045
c. Shallow soils often prevent drainfield construction
d. Package sewage treatment plants are not viable unless they have a large number of service connections

e. Experimental septic systems are costly, and encourage low density
f. Alternate systems usually turn out to be big and costly drainfields

Thus, through Geographic Region Rule A which allows drainfield construction in shallower soils in central Oregon, DEQ has actually aggravated the planning and sewerage construction costs by allowing these systems which, in turn, encourage low density development.

4. DEQ has documented 28 surfacing sewage failures in the Craven Road-Cessna Drive area adjacent to Bend, which generally have no alternative for repair other than a regional sewerage system. The city is unwilling to annex because the water system does not meet city specifications, and the county has discussed an LID. But nothing has happened. DEQ attended several local meetings to develop interest in annexation, LID's or a County Service District with no success. The sewage continues to surface.

5. DEQ is pressured daily for sewage disposal well repair permits within the UGB. Short of vacation of the premises, drillhole repairs are the only immediate option (although illegal), since a regional sewerage system is not available and drainfields are usually not possible due to small lot sizes and/or shallow soils. Authorization of such repairs actually undermines support for regional sewerage construction since the problem is moved out of sight but not solved by such repairs.

6. DEQ is pressured daily to approve compromise subsurface systems within the UGB for many subdivisions. In so far as has been possible, DEQ has agreed to complex terms to facilitate sewerage planning, allow interim facilities, not aggravate densities, and to prevent high denial rates. Unfortunately, lacking regional sewerage systems, the "interim" facilities become "permanent"--they are not designed to function permanently, and usually do not.

7. Since federal construction grants were projected based on regional sewerage facilities, there is risk of losing such funding if the Phase 2 area is developed without a sewerage system.

Summation

1. The UGB was adopted by the City of Bend and the Deschutes County Commission on June 2, 1976. The facilities plan was adopted by City of Bend and Deschutes County Commission on October 6, 1976, and is the approved sewerage services component within the UGB. The Oregon Department of Land Conservation and Development has not yet adopted the UGB.

2. Since there is no implementing mechanism or authority for sewerage services within the UGB and outside the Bend city limits, DEQ has been unable to develop guidelines consistent with the facilities plan which do not aggravate sewerage construction in that area.

3. Thus a question exists as to whether DEQ and its contract agent, Deschutes County Health Department, can continue septic tank approvals in the Phase 2 area when such approvals are or may be in conflict with local plan elements. To what extent are DEQ actions controlled by planning laws is a key question.

4. Possible DEQ alternatives range as follows:

a. No action--continue septic tank and drainfield approvals/denials without regard to local planning.

b. Obtain a written program from the Deschutes County Commission which shows how DEQ and the Commission can work together to insure that Phase 2 sewerage construction occurs in accordance with the approved facilities plan and its amendments, which show proposed trunk sewer locations. The program shall diagram an implementation strategy which addresses:

1) Who will plan collector sewers;
2) When sewerage facilities will be constructed;
3) How sewerage facilities will be financed;
4) Who will implement planning, design and construction;
5) How development will be handled in the interim to insure that it does not impair implementation.

c. Restrict subsurface sewage disposal systems in the Phase 2 area until at least one of the following occurs:

1) Deschutes County forms a County Service District to design and construct sewerage facilities in the Phase 2 area to accommodate any county approvals in the UGB; or
2) An equivalent public body is formed to regulate these activities in accordance with regional sewerage planning.

Director's Recommendation

1. The Director recommends that the Commission direct the staff to work with the Deschutes County Commission to obtain a written agreement outlining how DEQ and the County Commission can work together to solve the problems discussed in this report, and further direct the staff to schedule a public hearing on November 29, 1977 in Bend to take testimony on the proposed working agreement between DEQ and the County and on other alternative causes of action the EQC could pursue.

2. The Director recommends no further action at this time, but suggests that the Commission consider findings from the November 29 hearing at its next meeting.

Bill

WILLIAM H. YOUNG

John E. Borden
382-6446
11/2/77

Attachments: A through F

Attachment B

ROBERT W STRAUB
GOVERNOR

Department of Land Conservation and Development

1175 COURT STREET N.E., SALEM, OREGON 97310 PHONE (503) 378-4926

December 19, 1978

Tim Ward, Vice President
Sunrise Village
2151 N.E. First
Bend, OR 97701

Dear Mr. Ward:

This letter is in response to your letter of December 5, 1978 about Sunrise Village.

It is my understanding that you want the Department of Land Conservation and Development's opinion on whether or not there is anything the Land Conservation and Development Commission (LCDC) can do to assist you in receiving final approval from DEQ for the sewage system for your development that is located just west of Bend.

As I have explained to you in conversations with you and with Mr. Richard Nichols, Regional Manager with the Department of Environmental Quality (DEQ), there are two problems that need to be discussed. Is the method that DEQ is using for permitting sewage treatment facilities inside an Urban Growth Boundary consistent with Statewide Planning Goals?; and, is there anything LCDC can do regarding the development of Sunrise Village?

With regard to the first question, I believe that DEQ is properly interpreting the Statewide Planning Goals when they require developments inside an Urban Growth Boundary to have an agreement with the City to connect to their sewer system. The basis for this interpretation is that Goal 11 states that public facilities are required to serve urban and urbanizable areas. Urbanizable lands are defined as those lands within an Urban Growth Boundary (UGB). When a UGB is delineated, such as the one around Bend, then the City is committing itself to provide public facilities services to the area at some point in the future. In a case, such as that of Bend, where a regional facility is being developed, it is logical that developments be required at some point to connect to the facility. Otherwise, there could be a regional facility surrounded by a large number of private systems inside a UGB, which would not only be illogical but costly to all of the taxpayers of the area.

Specifically regarding Sunrise Village, I believe that since all local and statewide planning actions have been completed by Deschutes County, this matter is a local decision. As you are aware, one of the conditions placed upon your development by Deschutes County was "that plans for those lots to be served by a community sewage system shall be submitted to DEQ and approved prior to commencing construction." Because of this condition and the actions of the County, I feel this matter should be settled by local government.

In the last paragraph of your December 5 letter, you stated that your letter was to be considered an appeal to the Commission. ORS 197.300 sets out what can be appealed to the Commission and the time frame for doing so. The matter you raised needed to be appealed 60 days after the Deschutes County action on your development.

I will forward copies of the letters you have sent to me along with this letter to the Director of the Department of Land Conservation and Development recommending that he send copies to the Commission.

If I can be of any assistance to you, please feel free to contact me at any time.

Sincerely,

Brent L. Lake
Field Representative

BLL:cm

cc: Richard Nichols
W. J. Kvarsten
John Hossick
William Monroe

Attachment C cc: Fred Bolton

ROBERT W. STRAUB
GOVERNOR

Department of Land Conservation and Development

1175 COURT STREET N.E., SALEM, OREGON 97310 PHONE (503) 378-4926

Brent L. Lake, Field Representative
1012 N.W. Wall, Suite 203
Bend, Oregon 97701

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
DEC 29 1978
BEND DISTRICT OFFICE

December 27, 1978

Tim Ward, Vice-President
Sunrise Village
2151 N.E. First Street
Bend, Oregon 97701

Dear Tim:

I am concerned with the way you interpreted my letter of December 19, 1978 when you wrote to William Young of D.E.Q. on December 22, 1978.

In my letter I stated that I believe the D.E.Q. is proper in requiring developments inside an Urban Growth Boundary (UGB) to have an agreement with city for a sewage facility. Even if D.E.Q. allowed Sunrise Village to develop a private sewer district, I feel the city must agree to that approach for sewage disposal.

In your letter of December 22, you went on to say the L.C.D.C. would not challenge your development. This is correct for I believe that if L.C.D.C. or its Department was to contest your development it would have been when the county gave its approval. However this does not preclude a governmental body from filing an appeal under ORS 197.300 (1)(c) to L.C.D.C. For example, if D.E.Q. approved a private sewer district for your development, it would be possible for a governmental unit to file an appeal to L.C.D.C. within sixty days appealing the action taken by D.E.Q.

I hope this clarifies my position on this matter. If I can be of any assistance please feel free to contact me.

Sincerely,ORIGINAL SIGNED BY

BRENT LAKE
Brent L. Lake
Field Representative

BLL/ldg

cc: William Young
W. J. Kvarsten
Richard Nichols
John Hossick

Attachment D

ROBERT W. STRAUB
GOVERNOR

Department of Environmental Quality

522 S.W. 5th AVENUE, P.O. BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229- 5395

January 9, 1979

Sunrise Village
2151 N. E. First St.
Bend, OR 97701

Re: SSSD - Sunrise Village
Deschutes County

Gentlemen:

We have reviewed your letter of December 22, 1978 and related letters from Mr. Brent Lake, LCDC, concerning your proposed Sunrise Village Development. Based in part on LCDC's comment that the local and statewide planning actions have been completed and the matter should be settled by local government, we will approve your proposal, provided the following requirements are met:

1. Detailed plans and specifications for the proposed sewerage system are approved by this Department. (Note: I believe our staff completed review of the plans and has forwarded them to our Bend office for final approval.)

2. A municipality, as defined by ORS 454.010(3), must control the proposed sewerage system. This may be achieved by an agreement with the City of Bend to operate and maintain the system or by formation of a county service district, or sanitary district. Frankly, we prefer the agreement with the City, but will accept a county service district or sanitary district, preferring the service district.

3. We must have a statement from Deschutes County indicating that they have tested your proposal in regard to the Statewide Land Use Goals and found it compatible. This statement must have the concurrence of the City of Bend. Should the City refuse to concur or otherwise object to either the formation of a special district (if that is your choice of municipality) or the County's statement of compatibility, we will be unable to approve your proposal.

For the record, we need to note that the Department believes its requirement for an understanding with the City of Bend is appropriate. We believe that such agreement is necessary to assure compliance with Goal 11 of the Statewide Land Use Goals. We also believe that we have preeminence concerning Goal 11 as it relates to the adequacy of sewerage facilities and are not obligated to approve any system if we feel it is in conflict with our interpretation of Goal 11. In this

case, the statement of compatibility from the County, concurred in by the City, adequately addresses our concern, when coupled with our review and approval for on-site sewage treatment.

Any other similar proposals inside the Urban Growth Boundary will require concurrence of both the County and the City. In addition, the Department will test other proposals in regard to Goals 6 and 11. If a proposal, in our opinion, does not comply with Goals 6 or 11, we will not accept the proposal.

We wish to stress that a sewer agreement with the City of Bend is most desirable from our point of view. We intend to encourage the County not to form a sanitary district until all reasonable attempts to reach agreement with the City have been exhausted.

We presume that, based upon this letter, you do not wish to reappear before the Environmental Quality Commission. If this is true, please inform us promptly. You may continue the matter to a later Commission meeting, if you desire.

If you have questions, please contact Mr. Dick Nichols in Bend at 382-6446.

Sincerely,

William H. Young

WILLIAM H. YOUNG
Director

RJN:ak

cc: Mr. Clay Shepard, Deschutes County
Mr. Art Johnson, City of Bend
Mr. Brent Lake, LCDC
Central Region Office - DEQ
Regional Operations - DEQ

Attachment E

File
LQ- LCDC
cc: SB-Sunrise Village
cc: S-Bend phase II

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
DEC 14 1978
BEND DISTRICT OFFICE

July 31, 1978

Richard J. Nichols
Regional Manager, Central Region
Department of Environmental Quality
2150 NE Studio Road
Bend, OR 97701

Dear Dick,

As you know, Brent forwarded your June 29 letter to me for response. I appreciate your raising the issues expressed in your letter and commend you for your concern about applying Goal 11.

Although DEQ's state agency coordination program has not yet been approved, the reasons are not related to Goal 11 application. We believe DEQ's draft program adequately addresses Goal 11. Therefore, we support your efforts to implement that policy prior to program approval. At this time it appears that the program will be approved at the September Commission meeting in Bend.

A recent Attorney General's decision on the relationship of school facilities and Goal 11 support your viewpoint. In essence, the Attorney General states that provision of the service must be jointly agreed to before the land use action can be approved. While the schools don't have to be built prior to approval, a joint city/county/school district agreement must be in effect. We believe that the school case is analogous to the sewer situation you have described.

In summary, Dick, when you review specific actions it is important to evaluate them for consistency with future urban development within the Bend UGB. We believe that the city sign-off is warranted, as you suggested.

If you have any questions, please don't hesitate to contact me. Again, we appreciate your efforts to apply Goal 11 and the other statewide planning goals during your project reviews.

Sincerely,

Nancy R. Tuor
Program Division Manager

NRT:db

cc: Bob Jackman, DEQ
Brent Lake, DLCD

Attachment F

REVISED September 28, 1978
APPROVED October 20, 1978, by LCDC
(with no further revisions)

DEPARTMENT OF ENVIRONMENTAL QUALITY
PROGRAM FOR COORDINATION WITH
LAND CONSERVATION AND DEVELOPMENT COMMISSION

1.0 Introduction

The Department of Environmental Quality's (DEQ) program for coordination with the Land Conservation and Development Commission (LCDC) has been prepared to meet the requirements of ORS Chapter 197, particularly ORS 197.180 (2), and the LCDC Administrative Rule on state agency coordination programs adopted December 9, 1977.

These requirements, termed Key Elements in the rule, are titled:

1. List of agency rules and programs affecting land use.
2. Program for cooperation with and technical assistance to local governments.
3. Program for assuring conformance with the goals and compatibility with comprehensive plans.
4. Program for coordination with other governmental agencies and bodies.

The Department's program presented here includes a "How to Handbook." The Department of Land Conservation and Development (DLCD) previously agreed with this concept of a coordination program complemented by a handbook as meeting the intend of LCDC requirements.

The handbook has been prepared to guide both writers and reviewers of local comprehensive land use plans in how to incorporate the Department's pollution control programs into the local plan. The handbook includes an introduction and sections for air quality, water quality, solid waste management, and noise control. Section formats vary somewhat depending upon the writers' perspective on program needs and the best way to communicate with writers and reviewers of local plans. Items relating to all four LCDC "key elements" are included.

The Department's program for coordination addresses the four key elements in the sequence of LCDC's rule. Some information is presented in appendices, including major portions in DEQ's handbook for local government.

2.0 The Key Elements of DEQ's Coordination Program

2.1 List of Agency Rules and Programs Affecting Land use.

The Department's handbook lists and summarizes DEQ statutes, rules, programs and actions affecting land use, and those not affecting land use.

2.2 Program for Cooperation with and Technical Assistance to Local Governments.

2.2.A Participation in Development of Comprehensive Plans: Compliance Schedules.

Department resources are clearly insufficient to adequately participate in development of all local comprehensive plans. The Department will work with local governments to do the following things by way of participation. This participation will be undertaken to the extent current resources can safely be diverted from other basic agency responsibilities:

1) DEQ has identified and included in its 1979-81 biennial budget request the additional manpower and support costs needed to provide an adequate level of local coordination as described in this program.

2) The Department developed and forwarded a copy to DLCD of a list of cities, counties, and appropriate special districts in whose area DEQ has problems with air or water quality, solid waste, or noise conditions.

3) DEQ headquarters has written each city, county, and special district listed in 2) advising them that DEQ has problems with noise, solid waste, or air or water quality conditions in their area. They were advised that these should be addressed, if not already done so, in their local comprehensive plan and supporting documents before they submit these items for LCDC Acknowledgment of Compliance. They were also told:

a) To expect a follow-up call from DEQ's region or branch office;

b) If they don't hear from DEQ by the time they need our input, they

should call our region or branch office first;

c) They may request through the region or branch office technical data DEQ has available.

4) The appropriate region or branch has been asked to initiate contact, through the local DLCD coordinator, with the local jurisdictions listed in 2), starting with those scheduled first for LCDC Acknowledge of Compliance. Arrangements will be made by DEQ regions and branches to review the draft plan, supporting documents and compliance schedule, and talk with local planners, if not already done. Needed compliance schedule revisions will be negotiated. Copies of local compliance schedules have been distributed to DEQ regional offices. We intend to review each local schedule, as they become available, for conflicts between when they expect help and when we can give help. Appropriate changes will be proposed.

If DEQ needs a "take home" copy of the plan during the review, we will tell local officials that DLCD considers this a necessary cost under the LCDC planning assistance grant to local government. This is discussed in more detail below under 6).

We will check for adequate reference to the problem, its correction if known, and then DEQ's other programs. This is to prevent any "surprises" from DEQ to the city or county at Acknowledgment of Compliance time.

If DEQ has time to contact the other "non-problem" jurisdictions to schedule plan document review for adequacy of reference to DEQ programs prior to their planned request for LCDC Acknowledgment, we will do so.

The priority of our working with local jurisdictions will be determined by the following:

a) DEQ's list of local problems;

b) The scheduled local request for LCDC Acknowledgment of Compliance;

c) The LCDC approved comprehensive planning compliance schedule.

5) During local plan development , the Department expects local planners to initiate requests with DEQ regions and branches for assistance and review of preliminary plan drafts with as much advance notice as possible. Once agreement between DEQ and local planners is reached on the tasks and timing for DEQ involvement under the local compliance schedule, the Department will commit to that time. We will appreciate the assistance of the local coordinators and field representatives in scheduling our visits to neighboring jurisdictions, particularly in areas remote from our offices. We would prefer to schedule some of these sessions in our own offices.

In pursuing the process of negotiating our involvement under the local compliance schedule, we will attempt to coincide timing of our work with neighboring jurisdictions to facilitate trip planning and workload management.

6) The following program by which DEQ reviews and comments on local comprehensive plans and ordinances will continue to be implemented. This is to assure that the Department programs affecting land use have been considered and accommodated in these local documents as they are developed.

a) DEQ region and branch liaisons review and comment on how completely the plans address DEQ programs affecting land use. They frequently request the assistance of the local planner, local coordinator, and field representative in finding the appropriate references in the plans.

b) DEQ region comments are then forwarded to headquarters where program

division liaisons review them to assure consistency with DEQ policy.

c) Region and headquarters remarks are compiled and adjusted for consistency by the Management Services Division, which then routes the official DEQ response to the local jurisdiction or DLCD, depending on whether the review was initiated directly by the local jurisdiction or DLCD. We use the same process for both.

The DEQ staff listed in Appendix 1 are designated as land use liaisons to assist development and review of local comprehensive plans.

With present manpower, DEQ needs at least six (6) weeks for internal review of local comprehensive plans. The complexity of DEQ programs prevents us from authorizing direct region comment to local governments without headquarters' concurrence.

We need a copy of the local plan for internal review during the review period if we are to do our job with current staff in less than the six to eight week period. If provided a plan copy with the review request we will attempt to reduce review time to under four weeks.

Since July, DLCD has forwarded the local comprehensive plan and implementing ordinances with each pre-Acknowledgment review request. This has really helped and is greatly appreciated. However, for other reviews, plans are often not available except in Salem or the particular city or county. This poses a real hardship for DEQ's larger regions encompassing eastern Oregon's 18 counties. The one or two region land use liaisons have real problems seeing, let alone reviewing local plans during local business hours due to long travel

times between jurisdictions.

2.2.B Provision of Technical Assistance to Local Governments.

The following, in addition to that covered under 2.2.A above, comprises DEQ's program for provision of technical assistance (information and services) to local governments to aid development of comprehensive plans.

1) Information from DEQ:

a) The handbook lists information which is available upon request.

b) The Department can provide other information on request on specific items not contained in the publications referred to in the handbook.

c) Informational reports and other items such as those listed in the handbook will routinely be mailed as soon as they are available to those on our mailing lists including each DLCD field representative, the DLCD Director, the DLCD coordinator for DEQ, and each local planning coordinator. The Department expects the local coordinator to advise the cities and counties he has a copy for review. Additional copies may be requested from DEQ headquarters or regions, but budget constraints preclude us from routinely sending a copy to each city and county in Oregon.

d) Other items will be provided upon request, insofar as is possible, or may be examined at DEQ offices.

e) Prior to DEQ adoption, notice of proposed non-site specific items such as area-wide plans, grants, programs, criteria, rules, and other appropriate items affecting local comprehensive plans, including those scheduled for hearing, will be sent by the appropriate headquarters division or public affairs office to all affected local governments,

state, and federal agencies as much in advance as possible, but with at least the minimum notice required by law. Local governing bodies, planning, public works, environmental health agencies, local coordinators, the appropriate LCDC recognized city and county committees for citizen involvement, DLCD field representatives and Director, and other on our lists will be routinely advised.

2) DEQ assistance:

a) Requests for technical assistance should be made to the land use liaisons identified in Appendix 1.

b) DEQ program, region, and public affairs staff are available on a limited basis to brief or hold discussions with local planners and citizen groups. Where appropriate, local officials will be invited to accompany DEQ staff on field investigations to promote mutual understanding.

c) Requests for DEQ assistance should be initiated by local government or citizens' groups or committees, 45 days before it is needed. This will facilitate efficient workload planning, whether or not agreement has previously been reached between DEQ and a local government on the tasks involving DEQ and the timing under a local compliance schedule. The Department hopes that local coordinators will help us centralize in location and time, any requested briefings or work with neighboring local planners and citizen groups, as much as is possible and feasible.

The Department will keep local government regularly and promptly informed of any pertinent local situations which we find may require DEQ assistance.

2.3 Program for Assuring Conformance with the Goals and Compatibility with Comprehensive Plans.

DEQ has identified and included in its 1979-81 biennial budget request the additional manpower and support costs needed to provide an adequate level of coordination as described in this program.

2.3.A Review of Current DEQ Programs and Rules.

1) The Department has initially reviewed its programs listed in the handbook for conformance and potential conflicts with LCDC's Statewide Planning Goals.

2) By January 1, 1979, DEQ will review its rules listed in the handbook for goal conformance.

Upon a finding by DEQ that any program or rule is not in conformance, revision consideration will promptly begin. The Department is apt to sometimes need DLCD's mediation of differences between state agencies regarding conformance of DEQ programs and rules with LCDC goals.

2.3.B Review of DEQ Actions Affecting Land Use.

The Department is responsible for programs and actions related primarily to LCDC Goals 6 (Air, Water and Land Resources Quality) and 11 (Public Facilities and Services) to the limit of our statutory authority in serving as the Oregon environmental quality agency. Department implementation of environmental quality programs may from time to time present apparent conflicts with other LCDC goals. DEQ understands that all 19 LCDC goals must be considered by local governments and overall goal conformance and comprehensive plan compatibility assessment developed by the appropriate local government in considering any proposed project or program. It is clearly beyond DEQ's authority and expertise

to make such overall assessment.

The Department will always be available to assist local governments with information they may need on matters under DEQ's authority and will join with other state agencies, including DLCD, and federal and local agencies in any necessary mediations.

The following states the Department's proposed processes to assure that its actions conform with the Statewide Planning Goals and are compatible with local comprehensive plans. As presented here they propose to apply to all DEQ actions affecting land use.

The Department feels that the processes described below are consistent with the intent of the statewide planning statutes (SB 10, SB 100, and SB 570) to place the responsibility for coordinated comprehensive planning at the local level. These processes help to accomplish that by putting the determinations of compatibility with local plans and conformance with Statewide Planning Goals at the local level.

1) Site Specific Actions:

The Department intends to develop administrative rules for all site specific actions on new or expansion projects affecting land use. These rules will require a "statement of compatibility" with the acknowledged local comprehensive plan and zoning requirements or the LCDC goals from the appropriate jurisdiction. This statement would have to accompany applications for DEQ permits and construction or funding approvals on new or expansion projects.

a) The process would work as follows: when an applicant submits an application to DEQ it either will be accompanied by a "statement of compatibility," or evidence from the appropriate local jurisdic-

tion that the applicant has applied for such a statement before we accept the application as complete for processing. The local statement must indicate the compatibility of the proposed project under ORS, Chapter 197 with the Statewide Planning Goals or LCDC acknowledged local comprehensive plan and ordinances. The notification will include the date when the statement is due, within the time limits set by Administrative Rule or other authority for processing that category of action, unless an extension is granted.

(1) If we receive an affirmative local statement of compatibility, DEQ will rely on it as evidence that there has been a determination of compatibility with the statewide goals or LCDC acknowledged local comprehensive plan and ordinances. If the Department determines it should take the action, the local statement of compatibility will be referenced in the public notice and draft permit for review, in the approved final permit, or in the appropriate document issued by DEQ for other actions, depending upon when the statement was received. The Department will indicate that it has tested the proposed action for conformance with Department statutes, regulations & policies, and the relevant provisions of LCDC Goals 6 and 11 (in which the Department declares preeminence in judgment for DEQ programs) and finds it compatible. DEQ will also state that its action does <u>not</u> convey a finding on compatibility with the Statewide Planning Goals or the acknowledged comprehensive plan and implementing ordinances, including the applicable zoning classification. It is the Department's position that those findings are the responsibility of

the local government(s) having comprehensive planning and implementing jurisdiction.

(2) If we do not receive a local statement within the time specified, and the Department has determined it should take the action then it shall do so while informing the applicant and the local government of jurisdiction that:[1]

(a) DEQ's action (e.g., issuance of a permit) is not a finding of compatibility with the statewide planning goals or the acknowledged comprehensive plan; and

(b) the applicant must receive a land use approval from the affected local government.

However, if the applicant is the jurisdiction responsible for the local statement the application will not be processed until the statement of compatibility is received.

(3) If we receive a negative statement of compatibility from the appropriate local government indicating that the project is currently not compatible with the acknowledged plan and ordinances or the goals because it needs a zone change or variance or other modification, we will notify the applicant that the action applied for cannot be taken or be allowed to stand by DEQ. If the action is a permit it cannot issue or if already issued conditionally, it will be suspended or revoked. The notification will state that DEQ expects the applicant to work with the local jurisdiction

[1]Experience with this rule may indicate that a substantial number of "conditional" permits are issued. If management of the resource base is affected, further rule-making may be needed.

to obtain such modifications and return to DEQ when the issues are resolved and the local jurisdiction has made a statement of compatibility.

b) For any site specific action on new or expansion projects affecting land use:

(1) Where more than one local jurisdiction has planning authority over a specific site, we will expect statements of compatibility from each of these jurisdictions (e.g., city, county, and regional planning jurisdictions).

(2) The Department recognizes its right to petition LCDC for a compatibility determination and statement where:

(a) a city or county negative compatibility determination and statement or no statement at all has been issued on a proposal needed to meet DEQ program requirements (e.g., sewage treatment plant modifications) or where a negative determination by a local jurisdiction is in a goal area under DEQ jurisdiction by statute;

(b) a proposal appears to have major impact requiring a state determination of compatibility in addition to the local statement.

2) Non-Site Specific Actions

a) The Department has implemented the following process for assuring that DEQ non-site specific actions conform with LCDC goals and are compatible with the local comprehensive plan.

Prior to DEQ action, notice of proposed non-site specific items such as area-wide plans, grants, programs, criteria, rules, and

other appropriate items affecting local comprehensive plans, including those scheduled for hearing, will be sent by the appropriate headquarters division to affected local governments, state and federal agencies as much in advance as possible, but with at least the minimum notice required by law. Local governing bodies, planning, public works, environmental health agencies, local coordinators, the appropriate LCDC recognized city and county committees for citizen involvement, DLCD field representatives and Director, and others on our lists will routinely be advised essentially as they are now.

The notice will indicate that the Department:

(1) Has found that the proposed action appears to conform to LCDC Goals 6 and 11 (in which the Department declares preeminence in judgment for DEQ programs) and upon consideration does not appear to conflict with the other goals, which are beyond DEQ's expertise;

(2) Invites public comment;

(3) Requests that local, state and federal agencies review the proposed action and comment on possible conflicts with their programs and LCDC goals within their expertise and jurisdiction;

(4) Intends to ask DLCD to mediate apparent goal conflicts resulting from (2) and (3);

(5) Intends to take the proposed action in a specified period after due consideration of all comments absent apparent conflicts resulting from (2) and (3) or upon the conclusion of mediation discussed in (4).

b) From time to time DEQ will initiate incorporation of new and developing programs into the local planning process. New and developing

Department programs include noise control, non-point source water quality ("208"), prevention of significant deterioration of air quality ("PSD"), and increased emphasis on local resource recovery of solid wastes.

Usually, we will work (in coordination with DLCD) with local planners to develop needed amendments to local plans with plenty of lead time. If there is insufficient time to work in these elements with a particular local government prior to LCDC acknowledgment, DEQ will target toward the two year local revision cycle.

Once the Department's program is sufficiently developed to incorporate locally, we will attempt to answer local requests for work sessions. On occasion we may initiate a request for local plan revision if local conditions necessitate such action.

2.4 Program for Coordination with Other Governmental Agencies and Bodies.

The Department's program for coordination of DEQ actions with affected state and federal agencies and special districts includes the following:

a) Provision of information and call for comment on DEQ plans, programs, and actions affecting land use as described above in 2.2.B 1) e) and in 2.3.

b) DEQ reaction to information and calls for comment from other agencies, including notices from the Executive Department, Intergovernmental Relations Division's "A-95" state clearinghouse and "One-Stop Permit" coordination center.

The Department in its program rule development, framework planning and site specific actions, such as permits, routinely works with the state and federal agencies listed in Appendix 2. DEQ also has a close ongoing relationship with

the special local/regional districts listed in Appendix 3. These provide air pollution control and sewage & solid waste disposal and management under Department permits and overall DEQ regulatory responsibility.

3.0 Implementation

Once approved by LCDC, the Department suggests that to help implement this program, one or more workshops be held jointly by DLCD and DEQ, preferably regionally. These would be to inform, promote discussion, and develop understanding on proper interpretation of this program with DEQ and DLCD staff, local coordinators, and perhaps other interested agencies and officials.

Attachments

Appendix 1

Appendix 2

Appendix 3

DEQ Handbook

List and Summary of DEQ Programs, Actions, Rules & Statutes Affecting Land Use

Pages C-4, C-5; D-2 through D-7; E-2, E-3; F-2, F-3, F-4

DEQ Information Available

Pages C-54, C-55; D-27; E-10, E-11; F-13

ROBERT W. STRAUB
GOVERNOR

Environmental Quality Commission

POST OFFICE BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

from: Director

Subject: Agenda Item No. Q, January 26, 1979, EQC Meeting

Proposed Modification of the Chem-Nuclear License for Operation of the Arlington Hazardous Waste Disposal Site

Background

On August 25, 1978, the Department received Commission approval to conduct public hearings on its proposal to modify the Chem-Nuclear license. The present license was issued March 2, 1976, but it has since become evident that certain license modifications were necessary for better oversight of the disposal operation.

Public hearings were held in Arlington on October 16, 1978 (attendance: 1) and in Portland on October 24, 1978 (attendance: 5). The only testimony offered was by a Chem-Nuclear representative at the latter hearing who concurred with the propose modifications.

The modifications were submitted for Commission approval on November 17, 1978 and again on December 15, 1978. At both times the Commission expressed dissatisfaction with the specific wording of several license conditions dealing with the possible transfer of the site to State ownership. However, wording satisfactory to both Chem-Nuclear and the Department was agreed upon after the December meeting and has been incorporated into the license.

The authority for the license modifications is OAR 340-62-040(2). Public hearings were not required but were felt to be advantageous in view of the general public interest in hazardous waste disposal sites.

Evaluation

The major license modifications are listed below in the order that they appear in the license. The license conditions that were of specific Commission concern are A8, A10, B24, and C7.

1. Condition A8 changed. The cost to the State (should we desire to purchase the property) is based upon a calculated "present value" rather than the book value; i.e., inflation is considered. A calculation (attached) shows the present value to be about $714,000 compared to a book value (excluding depreciation) of about $571,000.

2. A9 added; deleted old Section F.
3. A10 added.
4. B7 and B12 changed.
5. B13 added.
6. B15 (old B14) changed. Note that incinerator need not be on-site.
7. B17 (old B16) changed.
8. B19-B24 added.
9. C3 changed. The annual license fee has been changed to reflect current monitoring costs. The $4,324 fixed fee will be raised to $7,175 for FY 1980 with subsequent increases to adjust for inflation.
10. C4 changed.
11. C5 changed. Note last statement on pollution insurance.
12. C7 changed. Part (c) has been modified so that the finding of default leading to State ownership of the site is determined by arbitration rather than the Department.
13. D1 changed. Old D2 included in D1.
14. New D2 added and old D4 included in Section E.
15. Section E changed to provide the Department flexibility to design a monitoring program pertinent to the wastes being disposed.

A copy of the present license is attached for reference.

Summation

The proposed license modifications more closely reflect the current site operation which has evolved over the past 2 1/2 years. Most of the changes involve only a clarification of language or licensee responsiblity; but there is a significant change in the manner of calculating the site value should the State desire to purchase it.

The only applicable public comment received was Chem-Nuclear's concurrence in the proposed modifications.

Director's Recommendation

Based upon the Summation, it is recommended that the Commission issue the modified Chem-Nuclear license.

Bill

WILLIAM H. YOUNG

Fred Bromfeld:mt
229-5913
January 3, 1979
Attachments: (4) Proposed license
Present license
Site "present value" calculation
Hearing Officer Report

ROBERT W. STRAUB
GOVERNOR

Department of Environmental Quality

522 S.W. 5th AVENUE, P.O. BOX 1760, PORTLAND, OREGON 97207

October 30, 1978

To: Environmental Quality Commission

From: Hearing Officer

Subject: Hearings Report: Public Hearings to Consider Modifications to the Chem-Nuclear License for Operation of the Arlington Hazardous Waste Disposal Site

Summary

Pursuant to public notice, hearings were held before the undersigned at 2:00 p.m. on October 16, 1978 in the cafetorium of Arlington Elementary School, Arlington, and at 1:00 p.m. on October 24, 1978 in the Department's conference room 511, Portland.

Over 100 hearings notices were mailed with a special effort made to include all Gilliam County people who had previously expressed interest in the site.

One person, a representative of Chem-Nuclear, was present at the Arlington hearing. No testimony was offered.

Five people were present at the Portland hearing: two from Chem-Nuclear, two from Chempro (a Portland waste recovery outfit), and one from the Oregon Department of Geology and Mineral Industries.

Summary of Testimony

The only testimony was offered by Mr. Patrick Wicks of Chem-Nuclear. He concurred with the proposed modifications and noted that the lack of attendance at the hearings indicated that the public has no fear of the site operation and is generally satisfied with it. He pledged that Chem-Nuclear would remain a good neighbor and operate in a responsible manner.

Recommendation

Based upon the hearings testimony, it is recommended that the Commission issue the modified Chem-Nuclear license.

Respectfully submitted

Fred S. Bromfeld
Hearing Officer

FSB:mm

HAZARDOUS WASTE DISPOSAL SITE LICENSE

Department of Environmental Quality
522 S.W. 5th Ave. P.O. Box 1760
Portland, Oregon 97207
Telephone: (503) 229-5913

Issued in Accordance with the Provisions of

ORS CHAPTER 459

ISSUED TO:

(licensee)
Chem-Nuclear Systems, Inc.
P.O. Box 1866
Bellevue, Washington 98009

LOCATION: (PROPERTY DESCRIPTION)
S1/2 of NE1/4, SE1/4, of Section 25 and N1/2 of NE1/4 of Section 36, T2N, R20E, W.M.

ISSUED BY THE ENVIRONMENTAL QUALITY COMMISSION

WILLIAM H. YOUNG

Director, Department of Environmental Quality

Effective Date

REFERENCE INFORMATION

Facility Name: Oregon Pollution Control Center and Hazardous Waste Repository

County: Gilliam

Operator: Chem-Nuclear Systems, Inc.
P. O. Box 1866
Bellevue, Washington 98009

Until such time as this license expires or is modified or revoked, Chem-Nuclear Systems, Inc. is herewith authorized to establish and operate a site for the treatment, storage, and disposal of hazardous wastes as now or hereafter defined by ORS 459.410 and rules of the Department of Environmental Quality. Such activities must be carried out in conformance with the conditions which follow. This license is personal to the licensee and non-transferable.

LICENSE CONDITIONS

A. GENERAL CONDITIONS

A1. Authorized representatives of the Department of Environmental Quality (hereinafter referred to as the Department) shall have access to the site at all reasonable times for the purpose of inspecting the site and its facilities, the records which are required by this license, or environmental monitoring.

A2. The Department, its officers, agents and employees shall not have any liability on account of the issuance of this license or on account of the construction, operation or maintenance of facilities permitted by this license.

A3. The issuance of this license does not convey any property right or exclusive privilege, except pursuant to the lease for the State owned portion of the site, nor does it authorize any injury to private property or any invasion of personal rights, nor any violation of Federal, State or local laws or regulations.

A4. The Department may revise any of the conditions of this license or may amend the license on its own motion in accordance with applicable rules of the Department.

A5. Transportation of wastes to the site by or for the licensee shall comply with rules of the Public Utility Commissioner of Oregon, the State Health Division and any other local, State or Federal agency having jurisdiction.

A6. A complete copy of this license and approved plans and procedures shall be maintained at the site at all times.

A7. The licensee shall not conduct, or allow to be conducted, any activities that are not directly associated with the construction, operation or maintenance of the waste management facilities at the site as authorized by this license, without prior written approval from the Department for such other activities.

A8. The licensee shall not mortgage, sell or otherwise dispose of any portion of the site without prior written approval from the Department. This condition shall survive the expiration, revocation, suspension or termination of the license for any reason other than those specified in condition C7 for a period of two years during which time the Department shall have exclusive right and option to purchase all of the site and improvements thereon, not theretofor deeded to the State. Purchase from licensee shall be in accordance with Appendix I to this license which sets forth the basis and conditions for such purchase.

A9. The plans and procedures approved under Section F of the superseded license (dated March 2, 1976) are hereby approved.

A10. Within 30 days of the issuance of this license, the licensee shall have a memo of this license recorded in the deed records of Gilliam County.

LICENSE CONDITIONS

B. SPECIAL CONDITIONS

Management of the site, including all activities related to treatment, storage and disposal of wastes at the site, construction and maintenance of facilities at the site, and monitoring and maintenance of records concerning operation of the site shall conform with the following conditions:

B1. No construction activities related to waste management at the site may be undertaken by the licensee until the Department has approved in writing final plans for facilities proposed by the licensee.

B2. Following written approval by the Department of final detailed engineering plans, the licensee shall proceed expeditiously with construction of the approved facilities.

B3. No waste management facility may be used by the licensee until the Department has inspected the site and certified in writing that the facility is satisfactory and complies with the approved final detailed engineering plans.

B4. Operation of the site shall not be discontinued without the approval of the Department, except for temporary work suspension caused by conditions beyond the control of the licensee such as, but not limited to, labor disputes, weather conditions, equipment failure, shortages of materials or unavailability of qualified personnel. In the case of a temporary discontinuance of disposal activities which exceed 5 working days, the licensee will notify the Department in writing, giving the reason for the shut down and the estimated duration of the temporary closure. During any temporary discontinuance of disposal activities, the licensee shall maintain the security and integrity of the site.

B5. Conditions B1, B2, B3, and B4 and other conditions of this license shall apply to present facilities and operations and to any subsequent facilities and operations proposed by the licensee.

B6. Waste handling, storage, disposal, treatment, monitoring and other waste management activities at the site shall comply with procedures and plans approved by the Department and other conditions of this license.

B7. The licensee shall assume all liability for containment, clean-up, and rectification of the conditions caused by any spill, fire, accident, emergency or other unusual condition that may occur:
(a) At the site;
(b) During the transportation of waste by the licensee to the site;
(c) During the authorized transportation of waste by others to the site, if:
    (1) The licensee is made aware of the incident; and,
    (2) The incident occurs on the following access routes to the site:
        (i) State 19 from Olex to its junction with I-80 (including all of Arlington South of I-80 but excluding the flood diversion canal or the Columbia River.)
        (ii) Blalock Canyon Road
        (iii) Cedar Spring Road from Rock Creek to its Junction with State 19.

LICENSE CONDITIONS

B8. Before use of the site for disposal is terminated, the licensee shall restore the site to its original condition, to the extent reasonably practicable. No less than one year prior to intended closure of the site the licensee shall submit detailed plans for the Department's approval indicating steps to be taken to properly close and restore the site. No action toward closure shall be taken without prior written approval from the Department.

B9. Upon completion of each burial trench, a granite or concrete marker shall be erected at the end of the trench. To such trench markers shall be attached a bronze or stainless steel plate which shall contain the following information: a trench identification number; dimension of the trench and its location relative to the marker; volume of waste buried; and dates of beginning and completion of burial operations.

B10. The licensee may at any time propose in writing for the Department's consideration changes in previously approved facilities or procedures, or the addition of new facilities or procedures.

B9. Upon completion of each burial trench, a granite or concrete marker shall be erected at the end of the trench. To such trench markers shall be attached a bronze or stainless steel plate which shall contain the following information: a trench identification number; dimension of the trench and its location relative to the marker; volume of waste buried; and dates of beginning and completion of burial operations.

B10. The licensee may at any time propose in writing for the Department's consideration changes in previously approved facilities or procedures, or the addition of new facilities or procedures.

B11. The licensee is authorized to accept and dispose at the site only those wastes for which specific treatment and disposal procedures or research programs have received prior approval by the Department. This authorization may be revoked if the Department finds the acceptance or disposal of such wastes to constitute a threat to the public health or welfare or the environment. The storage, treatment or disposal of wastes at the site shall be conducted only in facilities approved by the Department.

B12. Except as provided in Condition B13, the licensee shall submit a Disposal Request, and received approval of same, for all wastes proposed to be brought to the site. This Disposal Request must be submitted in writing to the Department and include the following information (if applicable):

(a) Name, location and business of the waste generator and contact person at the generator.
(b) Process in which waste was generated and/or marketable products arising from that process.
(c) Volume, chemical and physical nature of the waste.
(d) Manner in which waste is packaged for shipment.
(e) Proposed treatment and/or disposal procedure.

The Department may require written confirmation of (a) to (d) from the waste generator. A separate request must be made for each waste source and for each waste whose annual volume increases by more than 50 percent over that receiving prior approval from the Department. The Department will submit a written response to the licensee no later than 14 days following receipt of a request, however, a request is not complete until the Department has received all information necessary to arrive at an informed decision.

LICENSE CONDITIONS

B13. The Department may give verbal approval for the treatment, storage or disposal of certain wastes including, but not limited to, the following:
(a) Wastes generated within the Pacific Northwest that do not exceed 2000 lbs./250 gallons from a single source within a single year.
(b) Wastes resulting from an accident or spill for which storage may not be feasible or may pose an unusual hazard.
(c) Wastes that have been given prior approval, but are received in a different form or package or for which a different but equivalent disposal procedure is requested.

B14. If the Department determines that any specific waste originating in Oregon should be disposed at the site, based on unavailability or infeasibility of alternative disposal methods or other factors, the licensee shall provide disposal for such waste under treatment or disposal procedures directed by the Department utilizing existing site facilities and equipment. In the event that treatment or disposal procedures directed by the Department require additional facilities or equipment, the obligation of the licensee shall depend upon financial commitments by the waste generator satisfactory to licensee.

B15. By March 1, 1979, the licensee shall submit a report to the Department which outlines the feasibility of adding incineration facilities to its operation. This report shall include an analysis of: the types and volumes of organic wastes that would be amenable to incineration; volumes of such wastes that have been disposed at the site by other means; conceptual design for appropriate incineration facilities including capital and operating costs, method of feed, hourly feed rate, and hours of operation; quantity and character of air contaminants to be emitted and proposed monitoring equipment, if any; and other information pertinent to the incineration facilities.

B16. The licensee shall designate a site superintendent and shall advise the Department of the name and qualifications of the superintendent. The superintendent shall be in charge of all activities at the site within his qualifications. The licensee shall also advise the Department of the individual to be contacted on any problem not within the site superintendent's qualifications. The licensee shall immediately notify the Department if any change is made in these designated individuals.

B17. The licensee shall not open burn any wastes or materials at the site, except for uncontaminated refuse and scrap and in compliance with State and local open burning rules, without prior written approval by the Department.

B18. As provided in agreements or contract between the licensee, the Department, and other persons, ownership may be retained by other persons over certain wastes disposed at the site by the licensee. Such agreeements shall further provide that the Department shall not be liable for any expenses associated with future recovery or re-disposal of such wastes and that following any future recovery or re-disposal operations, the site shall be returned to a condition satisfactory to the Department.

LICENSE CONDITIONS

B19. Wastes shall be managed on the site in a manner so as to prevent the reaction of incompatible materials which may cause a fire or explosion, the release of noxious gases, or otherwise endangering public health or the environment.

B20. Wastes shall be consigned to treatment or disposal as rapidly as practicable.

B21. The licensee shall designate a specific area(s) for the storage of wastes. Wastes shall not be stored in other than a storage area.

B22. All containers of waste on site shall be identified sufficiently to assure rapid positive identification of their contents.

B23. The licensee shall participate in the manifest system when it is implemented.

B24. Whenever, in the judgment of the Department from the results of monitoring or surveillance of the site operation, there is reasonable cause to believe that a clear and immediate danger to the public health and safety exists from the continued operation of the site, without hearing or prior notice, the Department may order the operation of the site halted by service of the order on the site superintendent. The licensee shall be obliged to rectify the dangerous conditions immediately, subject to such direction as the Department may give.
If the licensee fails to act when directed, the Department may immediately come on the premises and take action as is necessary to rectify the dangerous conditions. The licensee shall be responsible for all expenses incurred in carrying out the action including reasonable charges for services performed and equipment and materials used.

LICENSE CONDITIONS

C. FINANCIAL

C1. On March 15, 1976, the licensee posted a surety bond executed in favor of the State of Oregon in the amount of $75,000 and for a term ending April 15, 1977. Each year thereafter, for 11 years on or before April 15, the surety bond shall be renewed or a new surety bond filed with the State of Oregon in the amount of $75,000 less the amount of the cash bond posted with the Department (condition C2). Each such surety bond shall be posted concurrently with the cash bond.
The surety bond shall be forfeited to the State of Oregon by a failure of the licensee to perform as required by this license, to the extent necessary to secure compliance with the requirements of this license, and shall indemnify the State of Oregon for any cost of closing the site and monitoring it and providing for its security after closure.

C2. On June 27, 1977, the licensee posted a cash bond, as provided by ORS 459.590(2)(f), with the Department in the amount of $18,750. Thereafter, annual additions to the cash bond shall be posted by the licensee in the amount of $5,625, for 10 years on or before April 15. Bills, certificates, notes, bonds or other obligations of the United States or its agencies shall be eligible securities deemed equivalent to cash. The cash value at the time of posting shall not be less than the required bond amount. Interest earnings on the cash bond shall be paid annually to the licensee, except for the amount necessary to offset inflationary increase in monitoring, security and other costs to be funded by the cash bond. Such inflation is to be measured by changes in the consumer price index with 1977 as the base year, and is to be computed upon the entire amount deposited in the cash bond.

C3. The licensee shall pay the Department an annual license fee within 30 days after July 1 each year. The amount of such fee shall be adequate for the Department to maintain an adequate monitoring and surveillance program for the disposal site; and will be determined by the Department as part of its biennial budgeting process.

C4. Prior to disposal, treatment or permanent storage of any wastes thereon, the licensee shall deed land used specifically for such purpose to the State. Within 60 days after completion of any new on-site roads, the licensee shall deed such roads to the State.
Within 30 days after deeding of these properties to the State, a lease between the licensee and the Department for these properties shall be executed. The lease shall be maintained for the duration of this license.

LICENSE CONDITIONS

C5. The licensee shall maintain ordinary liability insurance for operation of the site, with respect to all types of wastes, in the amount of not less than $1,000,000. Such insurance shall also be maintained by the licensee in the amount of not less than $1,000,000 to cover transportation by the licensee of all types of wastes to the site. The licensee shall notify the Department by a Certificate of Insurance within 7 days of any new policy or policy change and shall provide a certified copy of such policy or change within 90 days. All such insurance policies shall provide that such insurance shall not be cancelled or released except upon 30 days prior written notice to the Department. Environmental impairment liability insurance in a like amount shall be required when the Department determines that it is practicably available.

C6. The licensee shall submit copies of audited annual reports, Form 10-K reports to the S.E.C., and unaudited quarterly management reports for the Arlington operation, within 30 days after completion by the licensee. These reports and, except as specifically provided in this license, other reports required by the license or requested by the Department shall be treated as confidential to the extent permitted by Oregon laws and rules.

C7. The licensee shall convey title for the entire site to the State, in unencumbered fee title without compensation, except for those portions previously owned by the State, in the event of any one of the following circumstances:

(a) Expiration of the license due to failure of the licensee to seek renewal.
(b) Termination or expiration of the license due to utilization of the site to its full capacity, as determined by the Department.
(c) Default by the licensee of any provision of this license that remains uncorrected after 30 days written notice.

If, at the end of said 30 days, the Department determines that such fault remains uncorrected, it shall notify the licensee of the continued default and of its intent to enforce this license condition.

If the licensee contests the enforcement action, within 10 days after the notification both parties shall appoint an arbitrator and the two arbitrators so appointed shall, within 5 days after their appointment, choose a third arbitrator. The written decision of a majority of the arbitrators shall be final and binding upon both parties, except that, in the event of a decision favorable to the Department, the licensee shall have an additional 30 days to correct the fault. (The Department or the arbitrators may extend this period if the fault cannot be reasonably corrected within 30 days). At the end of this period, the Department may accept the licensee's efforts or again remand the dispute to arbitration. The written decision of a majority of the arbitrators at this second arbitration shall be final and binding upon both parties.

In the event that either party shall fail to choose an arbitrator within said 10 day period, or the two arbitrators shall fail to choose a third arbitrator within the 5 day period allotted to them, then either party may request the presiding judge of the Circuit Court of the State of Oregon for Multnomah County to choose the required arbitrator.

The arbitrators, at their discretion, shall assess either or both parties for payment of the cost of arbitration.

This condition shall survive the expiration or termination of the license.

LICENSE CONDITIONS

D. RECORDKEEPING AND REPORTING

D1. The licensee shall maintain records and submit monthly reports to the Department including but not limited to: quantity and type of waste received; generator; request number; date of waste receipt; name of carrier; fee collected; and the applicable of: storage location; date of waste treatment; date of placing in pond and pond number; date of burial, burial trench number, and location coordinates in trench.
Every shipment of waste received must be clearly traceable from its time of receipt to its placement in a pond or a burial trench.
The licensee shall also submit a monthly public information report on a form approved by the Department which will be available for public inspection.

D2. All site records pertaining to the receipt, treatment, storage, and disposal of wastes are to be kept for at least 3 years and turned over to the Department at (or before) the termination of site operation. Such records shall be treated as confidential to the extent permitted by Oregon laws and rules.

D3. The licensee shall maintain survey records for each burial trench, referenced to the nearest U. S. Coast Guard bench mark, to define the exact location and boundaries of each trench. Within 60 days after completion of a trench, the licensee shall forward the required marker information and a copy of the survey records to the Department.

LICENSE CONDITIONS

E. ENVIRONMENTAL MONITORING

The licensee shall conduct chemical and biological environmental monitoring in accordance with a program designed jointly with the Department. This program will be reviewed annually by both parties and is to include at least the following:

E1. On-site deep wells (Nos. B-1, B-2, B-3, B-4, B-5, and B-6) will be checked for the presence of water annually about May 1. A water sample will be obtained by a mutually agreed procedure from each well in which water is observed.

E2. Monitoring wells in the pond and burial area will be checked monthly (or as otherwise determined by the Department) for the presence of water. A water sample will be obtained by a mutually agreed procedure from each well in which water is observed.

E3. A sampling of the resident vertebrate population and of vegetation will be performed annually.

E4. All samples required above will be analyzed in accordance with the jointly designed program and for wastes relative to those that were disposed. Such analysis may include but not be limited to total organic carbon, pH, specific conductance, heavy metals, chlorinated hydrocarbons, phenolics, cyanide, or other chemical species.

E5. The monitoring program in effect at any time preceding or during the period of this license shall remain in effect until a new program has been jointly agreed upon.

E6. All findings and results from the licensee's environmental monitoring program shall be reported to the Department within 15 days of their availability.

E7. The Department may require special monitoring when it is deemed that conditions may exist to threaten the public health or welfare or the environment. The cost of such monitoring will be determined by both parties on a case-by-case basis.

LICENSE HW-1

APPENDIX 1

CONDITIONS FOR PURCHASE OF

CHEM-NUCLEAR POLLUTION CONTROL CENTER

Pursuant to License HW-1 condition A8, the following specifies the basis and conditions under which the Department may purchase the Chem-Nuclear Pollution Control Center:

1. In the event of expiration, revocation, suspension or termination of License HW-1 issued by the Department for Chem-Nuclear's Pollution Control Center (site) near Arlington, Oregon, except for reason specified in license condition C7, the Department shall have exclusive right and option to purchase from Chem-Nuclear all of the site and improvements thereon not theretofor deeded to the State.

2. "Site", hereunder shall include all real property within the legal description noted on License HW-1.

3. "Improvements", hereunder shall include trenches, ponds, fencing, signs, roads, water supply, monitoring wells and devices, and any other items specially designated in Exhibit A attached hereto and hereby made a part hereof. Improvments shall not include any rented or leased equipment, furniture, tools, mobile firefighting equipment, vehicles, tractors, graders, dozers, loaders, forklift trucks, trucks and other mobile equipment and their accessories.

4. Purchase of said site and improvements shall be at the adjusted price shown in Exhibit A attached hereto. Full cash payment shall be due on closing. Closing costs shall be shared equally, except that Chem-Nuclear shall not pay in excess of $2000 of such costs.

5. If the Department determines that it will not purchase the site and improvements, it shall advise Chem-Nuclear in writing as soon as possible of such determination and shall release Chem-Nuclear from the Department's exclusive right and option under License HW-1 condition A8.

6. Additions to, or deletions from, the foregoing and Exhibit A attached hereto may be made at any time for the purpose of adding new facilities or deleting obsolete or retired facilities or for other mutually agreeable purpose. Said addition or deletion shall be executed by submission of a written response from the other party agreeing to the requested change. Said additions or deletions may be executed only by the President of Chem-Nuclear and the Director of the Department.

7. The foregoing provisions and conditions shall survive the expiration, revocation, suspension, or termination of License HW-1 for a period of two years.

EXHIBIT A to APPENDIX 1 of LICENSE HW-1

Category	Item	Base Cost(C),$	Base Year	Adjusted Price,$
Site	Site Real Property	1,800	1970	C x F1 x F3
		63,924	1972	C x F1 x F3
	Site Development	93,080	1970	C x F1 x F3
		81,943	1971	C x F1 x F3
		65,348	1972	C x F1 x F3
		10,953	1973	C x F1 x F3
		13,291	1974	C x F1 x F3
		6,628	1976	C x F1 x F3
Improvements	Burial Trenches	112,616	1976	C x F1 x F2a x F3
	Evaporation Ponds	8,500	1976	C x F1 x F2b x F3
	Evaporation Ponds Liners	16,374	1976	C x F1 x F2c x F3
	Fencing, Signs & Roads	3,721	1970	C x F1 x F3
		4,430	1972	C x F1 x F3
		2,844	1973	C x F1 x F3
		60,854	1976	C x F1 x F3
		7,528	1978	C x F1 x F3
	Water Wells & Systems	1,693	1972	C x F1 x F2b x F3
		2,622	1975	C x F1 x F2b x F3
		4,908	1976	C x F1 x F2b x F3
	Septic Systems	1,320	1975	C x F1 x F2d x F3
		1,068	1976	C x F1 x F2d x F3
	Monitoring Devices	299	1976	C x F1 x F2d x F3
		1,026	1977	C x F1 x F2d x F3
	Miscellaneous	388	1975	C x F1 x F3
		3,665	1976	C x F1 x F3

Adjustment Factor

F1 = The consumer price index for the purchase agreement month divided by the consumer price index for the base year. Consumer price indexes to be used are those for urban wage earners and clerical workers in Portland, Oregon.

F2 = A variable factor as follows:
F2a = Fraction of capacity unused
F2b = 1 if serviceable; 0 if not
F2c = 1-(years in use ÷ 5) if serviceable; 0 if not
F2d = 1-(years in use ÷ 10) if serviceable; 0 if not

F3 = Fraction of land not deeded to Oregon

ENVIRONMENTALLY HAZARDOUS WASTE DISPOSAL SITE LICENSE

Department of Environmental Quality
1234 S.W. Morrison Street
Portland, Oregon 97205
Telephone: (503) 229-5913

Issued in Accordance with the Provisions of

ORS CHAPTER 459

ISSUED TO:

(Licensee)
Chem-Nuclear System, Inc.
P.O. Box 1866
13401 Bellevue-Redmond Road
Bellevue, Washington 98009

LOCATION:
S 1/2 of NE 1/4 of Section 25 and
N 1/2 of NE 1/4 of Section 36, T2N, R20E, W.M.

ISSUED BY THE ENVIRONMENTAL QUALITY COMMISSION

LOREN KRAMER
Director, Department of Environmental Quality

MAR 2 1976
Effective Date

REFERENCE INFORMATION

Facility Name: Oregon Pollution Control Center and Hazardous Waste Repository

County: Gilliam

Operator: Chem-Nuclear Systems, Inc.
P.O. Box 1866
Bellevue, Washington 98009

Until such time as this license expires or is modified or revoked, Chem-Nuclear Systems, Inc. is herewith authorized to establish, operate and maintain a site for the disposal and handling of environmentally hazardous wastes as defined by ORS 459.410 and rules of the Department of Environmental Quality, except any radioactive material. Such activities must be carried out in conformance with the requirements, limitations, and conditions which follow This license is personal to the licensee and non-transferable.

LICENSE CONDITIONS

A. GENERAL CONDITIONS

A1. Authorized representatives of the Department of Environmental Quality (hereinafter referred to as the Department) shall have access to the site at all reasonable times for the purpose of inspecting the site and its facilities and the records which are required by this license.

A2. The Department, its officers, agents and employees shall not have any liability on account of the issuance of this license or on account of the construction, operation or maintenance of facilities permitted by this license.

A3. The issuance of this license does not convey any property right or exclusive privilege, except pursuant to the lease for the State owned portion of the site, nor does it authorize any injury to private property or any invasion of personal rights, nor any violation of Federal, State or local laws or regulations.

A4. The Department may revise any of the conditions of this license or may amend the license on its own motion in accordance with applicable rules of the Department.

A5. Transportation of wastes to the site by or for the licensee shall comply with rules of the Public Utility Commissioner of Oregon, the State Health Division and any other local, State or Federal Agency having jurisdiction.

A6. A complete copy of this license and approved plans and procedures shall be maintained at the site at all times.

A7. The licensee shall not conduct, or allow to be conducted, any activities that are not directly associated with the construction, operation or maintenance of the disposal facilities at the site as authorized by this license, without written approval from the Department for such other activities.

A8. The licensee shall not sell or otherwise dispose of any portion of the site without prior written approval from the Department. This condition shall survive the expiration, revocation, suspension or termination of the license for any reason other than those specified in condition C7 for a period of two years during which time the Department shall have exclusive right and option to purchase all of the site and improvements thereon not theretofor deeded to the State at book value of the site and improvements on the books of the licensee, net of depreciation and depletion.

LICENSE CONDITIONS

B. SPECIAL CONDITIONS

Management of the site, including all activities related to processing, treatment handling of storage and disposal of wastes at the site, construction and maintenance of facilities at the site, and monitoring and maintenance of records concerning operation of the site shall conform with the following conditions, limitations and provisions:

B1. No construction activities related to waste disposal facilities at the site may be undertaken by the licensee until the Department has approved in writing final plans for facilities proposed by the licensee.

B2. Following written approval by the Department of final detailed engineering plans, the licensee shall proceed expeditiously with construction of the approved facilities.

B3. No disposal activity may be undertaken by the licensee until the Department has inspected the site and certified in writing that the facilities provided for disposal activities are satisfactory and comply with approved final detailed engineering plans.

B4. Following certification of the site and facilities (condition B3), the licensee shall commence operation of the site and facilities as soon as possible thereafter. Operation shall not be discountinued without the approval of the Department, except for temporary work suspension caused by conditions beyond the control of the licensee such as, but not limited to, labor disputes, weather conditions, equipment failure, shortages of materials or unavailabilty of qualified personnel. In the case of a temporary discontinuance of disposal activities which exceed 5 working days, the licensee will notify the Department in writing, giving the reason for the shut down and the estimated time of the temporary closure. During any temporary discontinuance of disposal activities, the licensee shall maintain the security and integrity of the site.

B5. Conditions B1, B2, B3, and B4 and other conditions of this license shall apply to initial facilities and operations and to any subsequent facilities and operations proposed by the licensee.

B6. Transportation, handling, disposal, treatment, monitoring and other activities at the site shall comply with procedures and plans approved by the Department and other conditions of this license.

B7. In the event of fires, accidents or emergencies that occur at the site, or during transportation of wastes to the site, the licensee shall employ emergency procedures approved by the Department. The occurrence of any fires, accidents, emergencies or other unusual conditions at the site, or in connection with transportation of wastes to the site, shall be reported, to the Department as soon as possible such that the Department can monitor or direct clean up or other activities necessary to rectify conditions resulting from the incident. If deemed necessary, the Department may require special precautions to be taken during or as the result of fires, accidents or emergencies.

LICENSE CONDITIONS

B8. Before use of the site for disposal is terminated, the licensee shall restore the site to its original conditions, to the extent reasonably practicable. No less than one year prior to intended closure of the site the licensee shall submit detailed plans for the Department's approval indicating steps to be taken to properly close and restore the site.

B9. Upon completion of each burial trench, a granite or concrete marker shall be erected at the end of the trench. To such trench markers shall be attached a bronze or stainless steel plate which shall contain the following information: a trench identification number; dimension of the trench and its location relative to the marker; volume of waste buried; and dates of beginning and completion of burial operations.

B10. The licensee may at any time propose in writing for the Department's consideration changes in previously approved facilities or procedures, or the addition of new facilities or procedures.

B11. The licensee is authorized to accept and dispose at the site only those chemical wastes for which specific treatment and disposal procedures or research programs have been approved by the Department. Treatment and disposal of chemical wastes at the site shall be conducted only in facilities approved by the Department.

B12. Within 14 days after receipt of a written request for service from a waste generator or source specifying the volumes and chemical and physical composition of wastes requiring disposal, if treatment and diposal procedures have not been previously approved by the Department, the licensee shall forward a copy of such request to the Department together with either:

A. Proposed treatment and disposal procedures; or

B. A proposed research program for development of disposal procedures and the time required for completion; or

C. A determination that the wastes should not be accepted at the site and the reasons therefor.

The Department shall review such requests in a timely fashion and shall submit a written response to the licensee no later than 14 days following receipt of a request.

Any treatment or disposal procedures or research programs which are approved by the Department pursuant to such requests shall be undertaken by the licensee as soon as practicable.

LICENSE CONDITIONS

B13. Notwithstanding the provisions of condition B12., item c., if the Department determines that any specific waste, other than radioactive waste, originating in Oregon should be disposed at the site, based on unavailability or unfeasibility of alternative disposal methods or other factors, the licensee shall provide disposal for such waste under treatment or disposal procedures directed by the Department utilizing existing site facilities and equipment. In the event the treatment or disposal procedures directed by the Department require additional facilities or equipment, the obligation of licensee shall depend upon financial commitments by the waste generators satisfactory to licensee.

B14. No less than 24 months and no more than 36 months after the effective date of this license, the licensee shall submit a report to the Department which outlines the feasibility of adding incineration facilities at the site. This report shall include an analysis of: the types and volumes of organic wastes that would be amenable to incineration; volumes of such wastes that have been disposed at the site by other means; conceptual design for appropriate incineration facilities including capital and operating costs; method of feed, hourly feed rate, hours of operation, quantity and character of air contaminants to be emitted and proposed monitoring equipment, if any; and other information pertinent to incineration.

B15. The licensee shall designate a site superintendent. The licensee shall advise the Department of the name and qualifications of the superintendent. The superintendent shall be in charge of all activities at the site within his qualifications. The licensee shall also advise the Department of the individual to be contacted on any problem not within the site superintendent's qualifications. The licensee shall immediately notify the Department if any change is made in these designated individuals.

B16. The licensee shall not open burn any wastes or materials at the site, without prior written approval by the Department.

B17. The licensee shall not receive, store or dispose of any radioactive wastes at the site.

B18. As provided in agreements or contract between the licensee, the Department and other persons, ownership may be retained by other persons over certain wastes disposed at the site by the licensee. Such agreements shall further provide that the Department shall not be liable for any expenses associated with future recovery or re-disposal of such wastes and that following any future recovery or re-disposal operations, the site shall be returned to a condition satisfactory to the Department.

C. BONDING, FEE, LEASE AND INSURANCE CONDITIONS

C1. On or before April 15, 1976, the licensee shall file a surety bond executed in favor of the State of Oregon in the amount of $75,000 and for a term no longer than April 15, 1977. Each year thereafter on or before April 15, for eleven years, the surety bond shall be renewed or a new surety bond filed with the State of Oregon, in the amount of $75,000 less the amount of cash bond posted with the Department, in accordance with condition C2 of this license, as of the date of renewal or filing of such surety bond. Each such surety bond shall be approved in writing by the Department prior to its execution. Such surety bond shall be forfeited to the State of Oregon by a failure of licensee to perform as required by this license, to the extent necessary to secure compliance with the requirements of this license, and shall indemnify the State of Oregon for any cost of closing the site and monitoring it and providing for its security after closure.

C2. On or before April 15, 1977, the licensee shall post a cash bond, as provided by ORS 459.590(2)(f), with the Department in the amount of $18,750. Thereafter, annual additions to the cash bond shall be posted by the licensee in the amount of $5,625, for each of the next 10 years, on or before April 15. The following shall be eligible securities deemed equivalent to cash: bills, certificates, notes, bonds or other obligations of the United States or its agencies. The cash value at the time of posting shall not be less than the required bond amount.

Interest earnings on the cash bond shall be paid annually by the Department to the licensee, except for the amount necessary to offset inflationary increases in monitoring, security and other costs to be funded by the cash bond.

C3. The licensee shall pay a license fee to the Department in the amount of $1,081 within 30 days after the effective date of this license. Thereafter, the licensee shall pay the Department an annual license fee of $4,324 within 30 days after July 1 each year.

C4. Within 30 days after the effective date of the license, and prior to disposing any wastes thereon, the licensee shall deed the following properties at the site to the State: chemical disposal area, potliner resource recovery area and chemical evaporation ponds. Within 60 days after completion of on-site roads, the licensee shall deed such roads to the State.

Within 30 days after deeding of these properties to the State, a lease between the licensee and the Department for these properties shall be executed. The lease shall be maintained for the duration of this license.

LICENSE CONDITIONS

C5. The licensee shall maintain liability insurance for operation of the site, with respect to all types of wastes, in the amount of not less than $1,000,000. Liability insurance shall also be maintained by the licensee in the amount of not less than $1,000,000 to cover transportation of all types of wastes to the site. The licensee shall provide the Department with certified copies of such insurance policies within 30 days after the effective date of this license and of all policy changes within 30 days after each such change. All such insurance policies shall provide that such insurance shall not be cancelled or released except upon 30 days prior written notice to the Department.

C6. The licensee shall submit copies of: Audited Annual Report, Form I0-K Report to the S.E.C., and unaudited quarterly management reports for the Arlington operation. Any reports shall be treated as confidential to the extent permitted by Oregon laws and rules. These reports shall be submitted to the Department within 30 days after completion by the licensee.

C7. The licensee shall convey title for the entire site to the State, except for those portions previously owned by the State, in the event of any one of the following circumstances:

a. Expiration of the license due to failure of the licensee to seek renewal.

b. Termination or expiration of the license due to utilization of the site to its full capacity, as determined by the Department.

c. Default by the licensee of any provision of this license that remains uncorrected after 30 days written notice.

This condition shall survive the expiration or termination of the license.

D. RECORDS AND REPORTING CONDITIONS

D1. The licensee shall maintain records and submit monthly reports to the Department indicating quantities and types of wastes received, stored and disposed at the site and fees collected therefor. Such reports shall be on forms approved by the Department.

D2. The licensee shall maintain records, on forms approved by the Department, indicating the type, quantity and location of wastes which have been buried in burial trenches at the site. Such records shall be submitted to the Department biannually.

D3. The licensee shall maintain survey records for each burial trench, referenced to the nearest U.S.G.S. bench mark to define the exact location and boundaries of each trench. Within 60 days after completion of trenches, the licensee shall forward the required marker information and a copy of survey records to the Department.

D4. All findings and results from the licensee's environmental monitoring program shall be recorded on appropriate forms and shall be reported to the Department quarterly.

E. ENVIRONMENTAL MONITORING CONDITIONS

The licensee shall conduct a chemical and biological environmental monitoring program approved by the Department, including but not limited to:

E1. On-site dry test wells (wells number B-1, B-2, B-3, B-4, B-5, and B-6) will be checked annually when the water table in the area is at its highest level. Water samples will be obtained from each well in which water is observed.

E2. Monitoring wells in each chemical burial trench will be checked quarterly for the presence of water. If water is observed, a water sample will be taken and the Department will be notified immediately. If no water is observed, a sample of sediment (soil) from the monitoring well will be obtained biannually. Once per year, a sample of soil from trench monitoring wells will be sent to the Department.

E3. All water and soil samples required by items a. and b. above will be analyzed for zinc, copper, arsenic, cadmium, chromium, lead, mercury, cynaides, chemical oxygen demand, total organic carbon, chlorides, specific conductance, chlorinated hydrocarbons and phenols using procedures approved by the Department.

E4. A sample of the resident vertebrate population and of vegetation will be obtained annually. These samples will be analyzed for zinc, copper, arsenic, cadmium, chromium, lead, mercury, cyanides, chlorinated hydrocarbons and phenols.

F. APPROVED PLANS AND PROCEDURES

As referred to in conditions F1., F2. and F3., the licensee's management plans shall mean the licensee's June 14, 1974 Program for Management of Hazardous Materials and revisions and additions thereto submitted to the Department by letters of September 24, 1974, December 31, 1975 and January 8, 1976.

F1. The following general plans and procedures are approved:

a. Location of facilities at the site as described on Licensee's Plot Plan (Drawing No. 1), dated December 29, 1975.

b. Security plans as described on pages 4 and 5 of the licensee's management plans, except that a three strand barb wire fence shall be maintained around the perimeter of the site.

c. Firefighting procedures as described on pages 6 and 7 of the licensee's management plans, except that the requirements of condition B7 shall also apply.

d. Fire and water systems as described on page 2 and Figure G-5 of the licensee's management plans as amended January 8, 1976.

e. Operations center as described on page 2 and Figure G-4 of the licensee's management plans.

f. Machine and storage building as described on page 1 and Figure G-2 of the licensee's management plans.

F2. The following plans and procedures for transportation, handling, disposal and treatment of chemical wastes are approved:

a. Chemical staging area (drum storage pad) and tank farm as described on pages 2 and 3 and Figure C-1 of the licensee's managment plans.

b. Chemical process building as described on page 1 and Figures G-3 and C-4 of the licensee's management plan, except that only facilities for office, laboratory, sanitary facilities and emergency shower are approved.

c. Evaporation ponds, 3 only, as described on page 17 item 1, and Figure C-5 of the licensee's management plans.

d. Chemical burial trench, 3 only, as described on page 14, item 1, and Figure C-2 of the licensee's management plans, with the following additions and exceptions:

(1) Trench floor and gravel ditch to be sloped at 1 foot per 100 feet toward trench entrance. Trench floor also to be sloped toward gravel ditch at 1 foot per 100 feet and gravel ditch to be placed at trench edge rather than trench center.

(2) 3 sample pipes (monitoring wells) shall be placed in each trench. Location and design of such wells shall be approved by the Department and shall be in place before disposal of wastes in trench is begun.

(3) An earthern berm of 2 feet minimum height or ditch of 2 feet minimum depth, shall be maintained along the uphill edge of an active trench (stockpiling of excavated soil along the uphill edge will satisfy this requirement). A drainage ditch of 2 feet minimum depth shall be maintained adjacent to each end of the trench.

(4) Equipment operating in a trench shall not travel on or across the gravel ditch.

(5) Final mounding of completed trenches is to extend 2 feet beyond the trench edge. Suitable vegetation is to be established and maintained on completed and mounded trenches.

e. Procedures for the pickup and transportation of chemical wastes as described on pages 55 and 56 of the licensee's management plans.

SITE PRESENT VALUE CALCULATION

The following calculations show the present site purchase cost according to Appendix I. They are based on the May 1978, consumer price index and the assumption that all the site improvements are serviceable.

Item	Base Cost(C), $	Base Year	Adjusted Price,$		EST 7/78 COST
Site Real Property	1,800	1970	C x F1 x F3	(1800)(1.732)(.9169) =	2859
	63,924	1972	C x F1 x F3	(63924)(1.641)(.9169) =	96182
Site Development	93,080	1970	C x F1 x F3	(93080)(1.732)(.9169) =	147818
	81,943	1971	C x F1 x F3	(81943)(1.659)(.9169) =	126901
	65,348	1972	C x F1 x F3	(65348)(1.641)(.9169) =	98325
	10,953	1973	C x F1 x F3	(10953)(1.540)(.9169) =	15466
	13,291	1974	C x F1 x F3	(13291)(1.373)(.9169) =	16732
	6,628	1976	C x F1 x F3	(6628)(1.174)(.9169) =	7135
Burial Trenches	112,616	1976	C x F1 x F2a x F3	(112616)(1.174)(.625)(.9169) =	75765
Evaporation Ponds	8,500	1976	C x F1 x F2b x F3	(8500)(1.174)(1)(.9169) =	9150
Evaporation Ponds Liners	16,374	1976	C x F1 x F2c x F3	(16374)(1.174)(.6)(.9169) =	10575
Fencing, Signs & Roads	3,721	1970	C x F1 x F3	(3721)(1.732)(.9169) =	5909
	4,430	1972	C x F1 x F3	(4430)(1.641)(.9169) =	6666
	2,844	1973	C x F1 x F3	(2844)(1.540)(.9169) =	4016
	60,954	1976	C x F1 x F3	(60854)(1.174)(.9169) =	65506
	7,528	1978	C x F1 x F3	(7528)(1.000)(.9169) =	6902
Water Wells	1,693	1972	C x F1 x F2b x F3	(1693)(1.641)(1)(.9169) =	2547
Septic Systems	2,622	1975	C x F1 x F2b x F3	(2622)(1.253)(1)(.9169) =	3012
	4,903	1976	C x F1 x F2b x F3	(4908)(1.174)(1)(.9169) =	5283
	1,320	1975	C x F1 x F2d x F3	(1320)(1.253)(.7)(.9169) =	1061
	1,068	1976	C x F1 x F2d x F3	(1068)(1.174)(.8)(.9169) =	920
Monitoring Devices	299	1976	C x F1 x F2d x F3	(299)(1.174)(.8)(.9169) =	258
	1,026	1977	C x F1 x F2d x F3	(1026)(1.088)(.9)(.9169) =	921
Miscellaneous	388	1975	C x F1 x F3	(388)(1.253)(.9169) =	446
	3,665	1976	C x F1 x F3	(3665)(1.174)(.9169) =	3945
	$ 570,823				$ 714,300

EST 7/78

ROBERT W. STRAUB
GOVERNOR

Environmental Quality Commission

POST OFFICE BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

MEMORANDUM

TO: Environmental Quality Commission

FROM: Director

SUBJECT: Agenda Item No. R-1, January 26 , 1979 EQC Meeting

Certain Territory Contiguous to City of Monroe - Certification of plans for sewerage system as adequate to alleviate health hazard, ORS 222.898

Background

The Administrator of the State Health Division on September 1, 1978, after following all due process required by ORS 222.850 to ORS 222.915, issued an order adopting the 'Findings of Fact and Recommendations by Hearings Officer' dated July 7, 1978 in this matter. A certified copy of same was filed with the City of Monroe on September 1st. The order, finding that a danger to public health exists, covers the area northwesterly of the City of Monroe. The area was surveyed during February 1978, and a 70% sub-surface sewage disposal system failure rate was documented.

The City has 90 days after receipt of the certified copy of the Findings to prepare preliminary plans and specifications together with a time schedule for removing or alleviating the health hazard.

The Environmental Quality Commission has 60 days from time of receipt of preliminary plans and other documents to determine them either adequate or inadequate to remove or alleviate the dangerous conditions and to certify same to the City.

Upon receipt of EQC certification, the City must adopt an ordinance in accordance with ORS 222.900 which includes annexation of the territory. The City is then required to cause the necessary facilities to be constructed.

Evaluation

The preliminary plan and specifications together with a schedule for the removal of the health hazard by the construction of gravity sewers in the proposed annexation area were prepared by the City of Monroe and submitted to DEQ on December 7, 1978 through the State Health Division.

The sewage collection system proposed will consist of 4155 lineal feet of 8 inch and 810 feet of 6 inch gravity sewer pipe with manholes in public right-of-ways. Connection will be made at an existing City manhole.

Treatment and disposal will be through the existing City treatment lagoon with final disposal into the Long Tom river.

The City is just completing a Step I Facility Plan Report (FPR). This report has identified lagoon expansion and collection system rehabilitation as a necessity to serve additional growth including the health hazard area.

Therefore, the time schedule for construction of the proposed system to alleviate the health hazard will coincide with lagoon expansion and sewer system rehabilitation and commencement of all work will coincide with receipt of at least an EPA grant. We have received a request for a state hardship grant to assist in this work which is currently being evaluated.

The preliminary plan and specifications with time schedule appear to be sufficient to satisfy the law.

The conditions dangerous to public health within the territory proposed to be annexed can be removed or alleviated within the time schedule as proposed by the construction of sanitary sewers.

Summation

1. Pursuant to the provisions of ORS 222.850 to 222.915, the State Health Division issued an order adopting Findings and certified a copy of Division's findings to the City of Monroe.

2. The City has submitted preliminary plans and specifications together with a time schedule to the DEQ for review.

3. ORS 222.898(1) requires the Commission to review the preliminary plans and other documents submitted by the City within 60 days of receipt.

4. The sanitary facilities proposed by said plans and specifications will remove the conditions dangerous to public health within the area to be annexed and the proposed time schedule is reasonable.

5. ORS 222.898(2) requires the Commission to certify to the City its approval if it considers the proposed facilities and time schedule adequate to remove or alleviate the dangerous conditions.

Director's Recommendation

Based upon the findings in the Summation, it is recommended that the Commission approve the proposal of the City of Monroe and certify said approval to the City.

Bill

WILLIAM H. YOUNG

James L. Van Domelen:ak/em
229-5310
January 2, 1979

ROBERT W. STRAUB
GOVERNOR

Environmental Quality Commission

POST OFFICE BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

MEMORANDUM

TO: Environmental Quality Commission

FROM: Director

SUBJECT: Agenda Item No. R-2, January 26, 1979 EQC Meeting

Certain Territory Contiguous to City of Corvallis-Certification of plans for sewerage system as adequate to alleviate health hazard, ORS 222.898

Background

The Administrator of the State Health Division on October 6, 1978, after following all due process required by ORS 222.850 to ORS 222.915, issued an order adopting the 'Findings of Fact and Recommendations by Hearings Officer' dated July 6, 1978 in this matter. A certified copy of same was was filed with the City of Corvallis on October 10, 1978. The order, finding that a danger to public health exists, covers an area southwesterly of the City of Corvallis. The area was surveyed between February 27 and March 2, 1978. Of 180 developed properties depending upon surface sewage disposal systems, 54 were documented to be inadequate.

The City has 90 days after receipt of the certified copy of the Findings to prepare preliminary plans and specifications together with a time schedule for removing or alleviating the health hazard.

The Environmental Quality Commission has 60 days from time of receipt of preliminary plans and other documents to determine them either adequate or inadequate to remove or alleviate the dangerous conditions and to certify same to the City.

Upon receipt of EQC certification, the City must adopt an ordinance in accordance with ORS 222.900 which includes annexation of the territory. The City is then required to cause the necessary facilities to be constructed.

Evaluation

The preliminary plan and specifications together with a schedule for the removal of the health hazard by the construction of gravity sewers in the proposed annexation area were prepared by the City of Corvallis and submitted to DEQ on December 27, 1978 through the State Health Division.

The proposed construction is shown on Exhibit 8 of the City's submittal. The health annexation area consists of two drainage basins and will have two service areas (sewer subsystems) for sewage collection, the

Country Club and the Squaw Creek service areas. Sewage collection and transportation will be accomplished through conventional 8 through 21 inch gravity sewer lines. Each sewer subsystem will convey sewage outside the annexation area, along City rights-of-way to an existing 21 inch City sanitary sewer near existing City limits. As part of this project, the existing Brooklane pump station at 26th Street and Highway 20-34 will be expanded to accommodate the increased flow from the health hazard area. Treatment and disposal will be through the existing City sewage treatment plant which is of sufficient capacity for the increased flow.

The time schedule envisions these facilities to be in-place by 1981. Work is contingent upon Step I through Step 3, EPA grants. Exhibit II of the City submittal shows a 36-month implementation schedule which is adequate and reasonable at this point in time.

The documents submitted appear to be sufficient to satisfy the law.

The conditions dangerous to public health within the territory proposed to be annexed can be removed or alleviated within the time schedule, as proposed by the construction of the sewer system described.

Summation

1. Pursuant to the provisions of ORS 222.850 to 222.915, the State Health Division issued an order adopting Findings and certified a copy of Division's findings to the City of Corvallis.

2. The City has submitted preliminary plans and specifications together with a time schedule to the DEQ for review.

3. ORS 222.898(1) requires the Commission to review the preliminary plans and other documents submitted by the City within 60 days of receipt.

4. The sanitary facilities proposed by said plans and specifications will remove the conditions dangerous to public health within the area to be annexed and the proposed time schedule is reasonable.

5. ORS 222.898(2) requires the Commission to certify to the City its approval if it considers the proposed facilities and time schedule adequate to remove or alleviate the dangerous conditions.

Director's Recommendation

Based upon the findings in the Summation, I recommend that the Commission approve the proposal of the City of Corvallis and certify said approval to the City.

Bill

WILLIAM H. YOUNG

James L. Van Domelen:ak/em
229-5310
January 3, 1979

ROBERT W. STRAUB
GOVERNOR

Environmental Quality Commission

POST OFFICE BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

MEMORANDUM

TO: Environmental Quality Commission

FROM: Director

SUBJECT: Agenda Item No. R-3, January 26, 1979 EQC Meeting

Certain Territory known as the Stewart-Lenox area within the West Side Sanitary District, Klamath Falls, Klamath County - Certification of plans for sewerage system as adequate to alleviate health hazard, ORS 222.898

Background

The Administrator of the State Health Division on October 10, 1978, after following all due process required by ORS 222.850 to ORS 222.915, issued an order adopting the 'Findings of Fact and Recommendations by Hearings Officer' dated July 6, 1978 in this matter. A certified copy of same was filed with the City of Klamath Falls on October 10th. The order, finding that a danger to public health exists, covers an area known as Stewart-Lenox within the Westside Sanitary District next to the City of Klamath Falls. The area was surveyed from December 1977 through April 1978. Of one hundred-eleven properties surveyed, 63 had inadequate sybsurface sewage disposal systems. There are approximately 285 developed properties within the area on individual systems.

The City has 90 days after receipt of the certified copy of the Findings to prepare preliminary plans and specifications together with a time schedule for removing or alleviating the health hazard.

The Environmental Quality Commission has 60 days from time of receipt of preliminary plans and other documents to determine them either adequate or inadequate to remove or alleviate the dangerous conditions and to certify same to the City.

Upon receipt of EQC certification, the City must adopt an ordinance in accordance with ORS 222.900 which includes annexation of the territory. The City is then required to cause the necessary facilities to be constructed.

On December 8, 1978, Westside Sanitary District filed with LCDC a petition for review, naming the Health Division, EQC and City of Klamath Falls as respondents, and seeking nullification of the proposed involuntary annexation based on failure to consider LCDC goals. An amended petition was filed December 26, 1978. The respondents filed a motion to dismiss on December 26, 1978. LCDC is expected to make a decision on the question of jurisdiction at its meeting on February 8, 1979.

Evaluation

The preliminary plan and specifications together with a schedule for the removal of the health hazard by the construction of gravity sewers in the proposed annexation area were prepared by the City of Klamath Falls and submitted to DEQ on December 18, 1978 through the State Health Division.

The proposed collection system within the Stewart-Lenox area will consist of about 28,500 lineal feet of 6 through 12 inch gravity sewer pipe and one pump station. From the Stewart-Lenox area, sewage will be conveyed by another pump station; a 6450 foot long, eigh inch force main; and 7700 feet of 18 inch gravity sewer pipe across private City property and public rights-of-way to an existing 21 inch gravity sewer line of the City of Klamath Falls. This line (recently rehabilitated) will transport sewage to the City's sewage treatment plant via an existing City (Link River) pump station. The City treatment plant has adequate design capacity to accommodate the increased flows.

This proposed system coincides with alternate 6 A for the Westside Sanitary District presented in the Facility Plan Report which is nearly complete (Regional Sewage Plan).

Implementation will be contingent upon receipt of EPA grant assistance. The detailed design would start upon receipt of a Step 2 EPA grant. Usable facilities would then be available according to the City's time schedule - within two years.

The documents submitted appear to be sufficient to satisfy the law.

The conditions dangerous to public health within the territory proposed to be annexed can be removed or alleviated within the time schedule, by the construction of sanitary sewers, as proposed.

Summation

1. Pursuant to the provisions of ORS 222.850 to 222.915, the State Health Division issued an order adopting Findings and certified a copy of Division's findings to the City of Klamath Falls.

2. The City has submitted preliminary plans and specifications together with a time schedule to the DEQ for review.

3. ORS 222.898(1) requires the Commission to review the preliminary plans and other documents submitted by the City within 60 days of receipt.

4. The sanitary facilities proposed by said plans and specifications will remove the conditions dangerous to public health within the area to be annexed and the proposed time schedule is reasonable.

5. ORS 222.898(2) requires the Commission to certify to the City its approval if it considers the proposed facilities and time schedule adequate to remove or alleviate the dangerous conditions.

Director's Recommendation

Based upon the findings in the Summation, it is recommended that the Commission approve the proposal of the City of Klamath Falls and certify said approval to the City.

Bill

WILLIAM H. YOUNG

James L. Van Domelen:ak/em
229-5310
January 3, 1979

STATE OF OREGON

INTEROFFICE MEMO

DEQ (DEPT.) 229-5696 (TELEPHONE)

TO: Environmental Quality Commission DATE: 1/10/79

FROM: Director

SUBJECT: General Background on Westside Sanitary District - Klamath County

1. Regional Sewerage Planning for the Klamath Falls Urbanizing area was recognized as essential in 1973. NPDES Permits issued in 1974 to the City of Klamath Falls and South Suburban Sanitary District required completion of such a plan. That plan, now essentially complete, presents a number of alternatives with consideration narrowed to two:

   Plan A will intertie the existing Klamath Falls and South Suburban facilities into single regional facility.

   Plan B would involve two separate treatment facilities -- (1) elimination of Infiltration in the Klamath Falls system to extend life and capacity of the existing sewage treatment plant and (2) reconstruction of the South Suburban treatment facilities.

   Both plans call for the Westside Sanitary District to be served by the Klamath Falls system. Plan B has essentially been accepted by the entities in area except that Klamath Falls will not connect the Airport to the South Suburban system and South Suburban opposes connection of Westside Sanitary District to the City.

2. Westside Sanitary District was formed in September 1975 to address obvious subsurface sewage disposal problems in the Stewart-Lennox area from a local rather than a regional perspective. They employed a consultant to accelerate the completion of facility planning for their area. This plan component (development of alternatives) was essentially completed in early January 1977. DEQ commented on the draft on January 20, 1977. Three alternatives considered separate treatment facilities, one considered connection to the City of Klamath Falls.

   EPA has determined (November 3, 1978) that it is cost effective to transport sewage from Westside Sanitary District to the City of Klamath Falls for treatment. As a result that is the only option that would qualify for EPA Grant Funding.

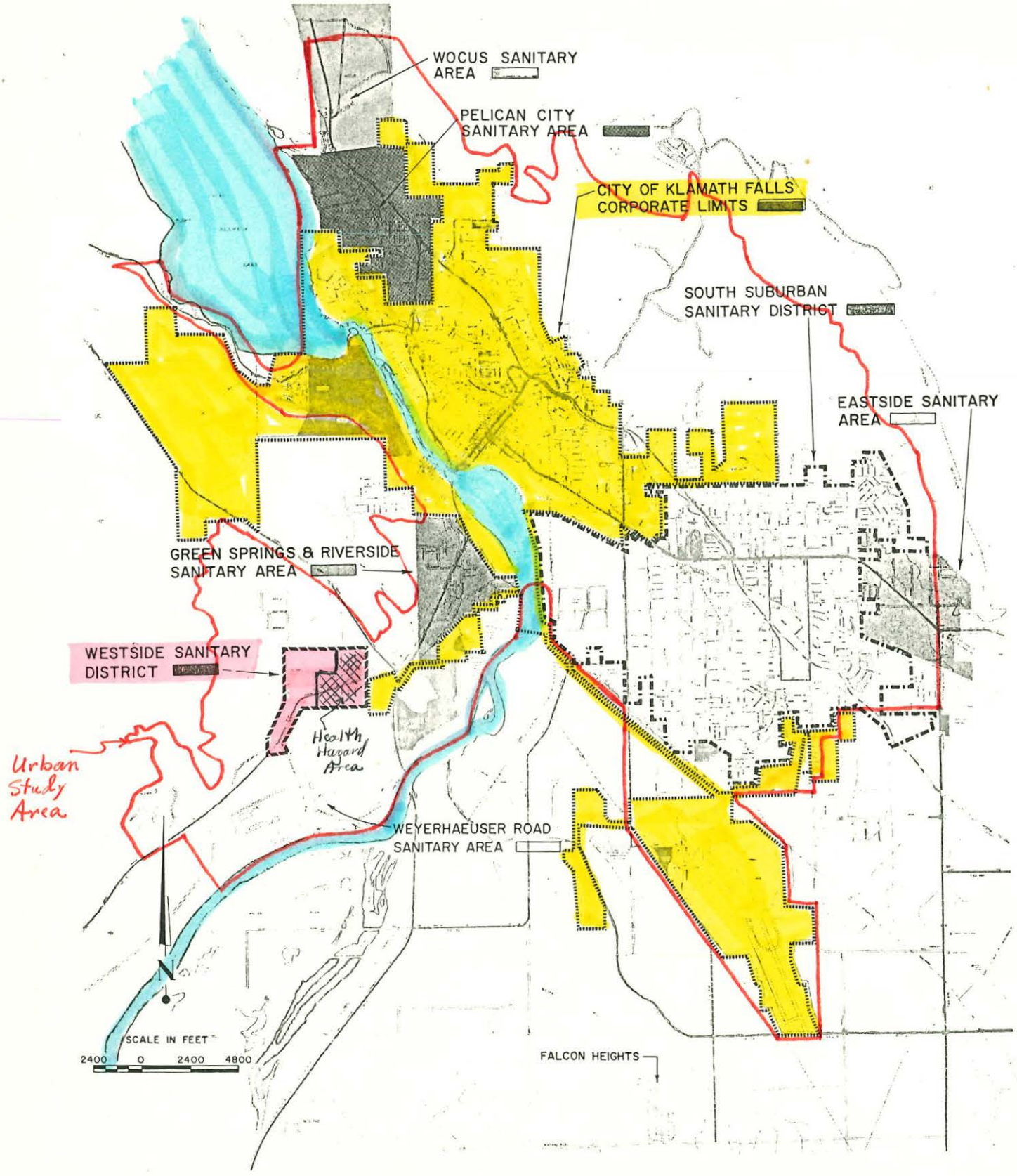
3. By letter dated April 12, 1977 (attached) the Department advised Westside Sanitary District that separate treatment facilities were not an acceptable long range solution to the problem and should not be supported by public funds. Since it appeared to the Department that local share costs of any alternative would exceed local funding capability, DEQ proposed to increase potential federal grant levels by modifying priority and eligibility criteria to increase grant participation to include collection systems where a health hazard is certified but resolved by contract with the City rather than mandatory annexation. (Criteria were accordingly revised.)

4. From April 1977 until October 1977 the DEQ worked intensively to encourage a contract for sewer service between Westside Sanitary District and the City. When Westside terminated negotiations in October 1977, the health hazard annexation process appeared to be the only remaining way to solve the health hazard problems. The health hazard petitions were circulated in November 1977 and accepted by the Klamath County Board of Health in December 1977. The Klamath County Health Department and DEQ had previously compiled septic tank failure data in Stewart Lennox which showed that a danger to public health existed.

5. In late October 1978, Westside Sanitary District presented to the Health Division, petitions seeking approval of an alternate plan for solving the health hazard (an alternate to services through annexation to Klamath Falls). ORS 222.885 requires signature of not less than 51% of the registered voters in the territory proposed for annexation. It is our understanding that the petitions did not contain sufficient valid signatures, therefore the plan was not formally forwarded by the Health Division to DEQ for evaluation. Thus, Department review and EQC certification is limited to consideration of the plan submitted by Klamath Falls. (The alternate plan included essentially all of the facilities proposed in the City plan plus additional interceptor length, an additional pump station, an underwater line across Lake Ewauna and treatment in the South Suburban Facility.)

6. On December 8, 1978, Westside Sanitary District filed with LCDC a petition for review, naming the Health Division, EQC and City of Klamath Falls as respondents, and seeking nullification of the proposed involuntary annexation based on failure to consider LCDC goals. An amended petition was filed December 26, 1978. The respondents filed a motion to dismiss on December 26, 1978 (copy attached). LCDC is expected to make a decision on the question of jurisdiction at its meeting on February 8, 1979.

HLS:em
Attachment



POLITICAL SUBDIVISIONS KLAMATH BASIN REGIONAL SEWERAGE STUDY

HGE INC ENGINEERS & PLANNERS
405 N FIFTH/COOS BAY, OR 97420
19 N W 5TH/PORTLAND, OR 97209

PLATE 2

Nancy Chicoine

ROBERT W. STRAUB
GOVERNOR

Department of Environmental Quality

1234 S.W. MORRISON STREET, PORTLAND. OREGON 97205 Telephone (503) 229- 5395

April 12, 1977

Westside Sanitary District
Rt. 3, Box 217
Klamath Falls, OR. 97601

Gentlemen:

As a followup to our meeting on March 17, 1977 I have reviewed the information we have available relative to sewerage service for Westside Sanitary District.

The following points are significant in my evaluation:

1. A health hazard exists in the Westside Sanitary District area as a result of substantial failures of subsurface sewage disposal systems. DEQ and the County Health Department acknowledge the health hazard but the State Health Division has not yet reviewed available data or certified the existence of a health hazard. Construction of facilities to collect and treat sewage is the only solution to this problem.

2. Capital costs and operation and maintenance costs for a number of collection and treatment alternatives have been estimated by the District's consultant and the Department Staff. The Department estimates are generally higher for each alternative than the District's estimate. However, the difference between alternatives is not significant considering the level of detail and hence accuracy of the estimates. Therefore, selection of an alternative should be largely based on factors other than these cost estimates.

3. Other factors to be considered include:

   a. Environmental factors.

      Utilization of the established Klamath Falls sewage treatment plant (which has existing unused dry weather capacity) will have less environmental impact than will any alternative which establishes a new treatment facility.

b. Service to adjacent areas of need.

Staff advises me that sewer service is needed in an area northeast of Westside Sanitary District and adjacent to the city limits of Klamath Falls. Any alternative which facilitates eventual service to this area is preferred.

c. Reliability of facilities.

Adequately staffed larger treatment facilities are generally more reliable from an operation and maintenance standpoint than smaller facilities. Comparable mechanical reliability can be achieved in small facilities by proper design and duplication of units, however, this increases costs. In addition, maintenance of an adequately trained operating staff for small plants is difficult and more costly on a per capita basis than for a larger regional facility.

4. The apparent funding capability of Westside Sanitary District for any alternative is severely limited. A combination of grants from state and federal sources may well be necessary in addition to maximum legal funding from sources within the District. Present funding criteria of DEQ pertaining to the use and priority of EPA funds, restrict grant participation to 75% of eligible interceptor and treatment works costs except in the case where annexation to a city is ordered by the State Health Division to correct a health hazard. Under this exception, 75% grant eligibility for collection systems is allowed. Assuming a 75% grant for the total system (health hazard annexation approach) local funding capability may still be insufficient.

Based on these considerations, I have concluded that separate treatment facilities for Westside Sanitary District are not an acceptable long-range solution to the problem and should not be supported by public funds. Connection to the Klamath Falls plant, either by contractual agreement or by annexation is the best alternative.

Further, it is my intent to pursue correction of the health hazard in Westside Sanitary District with maximum grant funding potential by pressing for initiation of the mandatory annexation proceeding. We will also propose to the Environmental Quality Commission that our grant eligibility/priority criteria be modified slightly to permit 75% funding of a collection system in the event that a contractual agreement is reached following certification of a health hazard by the health division (in lieu of annexation as the final solution).

I wish to reiterate -- we are trying to secure maximum funding for you of the best alternative solution to the health hazard problem, without necessity for ultimate annexation.

Your cooperation is requested. Please advise us of your intended action.

Sincerely,

William H. Young

WILLIAM H. YOUNG
Director

HLS:ak

cc: Senator Fred W. Heard
Senator Lenn L. Hannon
Representative Ben Lombard, Jr.
Representative Gary Wilhelms
Mayor George C. Flitcraft, City of Klamath Falls
Marge Balziger, Klamath County Commission
Klamath County Health Board
Mr. Dave Hammond, Hammond Engineering

RU

ALLEN L. JOHNSON
LCDC HEARINGS OFFICER
915 OAK STREET SUITE 200
EUGENE, OREGON 97401
TELEPHONE (503) 687-9001

December 21, 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Steven Couch
Attorney at Law
220 Main Street
Klamath Falls, OR 97601

E. R. Bashaw
Attorney at Law
P.O. Box 1262
Medford, OR 97501

B. J. Matzen
Klamath Falls
City Attorney
P.O. Box 237
Klamath Falls, OR 97601

Leonard Pearlman
Attorney at Law
500 Pacific Building
520 SW Yamhill
Portland, OR 97204

Ray Underwood ✓
Attorney at Law
500 Pacific Building
520 SW Yamhill
Portland, OR 97204

Re: LCDC Case No. 78-035
Scheduling

Dear Gentlemen:

This will confirm our conference call today in which we arrived at the following decisions concerning scheduling of this case:

1. Today will be deemed to be the date of receipt of notice by all parties, so that the answers will be due 30 days from today.

2. Petitioners are granted leave to file an amended petition, provided that the petition is filed and copies are mailed to other parties by no later than December 28, 1978.

3. Respondents' motions to dismiss and supporting briefs or statements of points and authorities are due January 5, 1979.

4. Petitioner's response to any such motions is to be filed no later than Friday, January 19, 1979.

5. My opinion and recommendation on jurisdiction is to be delivered to the parties no later than January 29, 1979.

6. The Commission will make a determination on the question of jurisdiction at its Thursday, February 8, 1979 meeting.

The above schedule is subjection to one contingency:

The Commission must approve a request~~ion~~ for an extension of time in which to determine jurisdiction from its January 25, 1979 to its February 8, 1979 meeting.

I don't foresee any problem with this. I am enclosing for each of you a copy of my letter to the Commission requesting such an extension and representing that all parties join in the request.

Thank you for your cooperation and have a Merry Christmas.

Yours very truly,

Allen L. Johnson
Hearings Officer

ALJ:jm
Enclosure
cc: Ed Rochette, Appeals Coordinator

BEFORE THE LAND CONSERVATION AND DEVELOPMENT COMMISSION

OF THE STATE OF OREGON

WEST SIDE SANITARY DISTRICT, a special district in Klamath County, Oregon, Petitioner, vs. HEALTH DIVISION OF THE DEPARTMENT OF HUMAN RESOURCES OF THE STATE OF OREGON; KRISTINE GEBBIE, ASSISTANT DIRECTOR FOR HEALTH THEREOF; ENVIRONMENTAL QUALITY COMMISSION OF THE STATE OF OREGON; AND THE CITY OF KLAMATH FALLS, an incorporated city in Klamath County, Oregon, Respondents.	LCDC Case No. 78-035 REQUEST FOR EXTENSION

CERTIFIED TO BE A TRUE COPY

The parties to this case have agreed that in order for them to properly prepare for and brief the jurisdictional issues in this case, it will be necessary to have an extension of time for making a jurisdictional determination from the Commission's January 25, 1979 meeting to its February 8, 1979 meeting.

I concur in the request. I have discussed this matter in a conference call with attorneys for all parties. I am advised that the motion for dismiss will involve a substantial issue of legislative history and therefore will require some additional preparation.

DATED this 2nd day of December, 1978.

Allen L. Johnson
HEARINGS OFFICER

Request for Extension.

ALLEN L. JOHNSON
LCDC HEARINGS OFFICER
915 OAK STREET
EUGENE, OREGON 97401
(503) 687-9001

Ray Underwood

JAMES A. REDDEN
ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

PORTLAND DIVISION
500 Pacific Building
520 S.W. Yamhill
Portland, Oregon 97204
Telephone: (503) 229-5725

December 26, 1978

Mr. Allen L. Johnson
LCDC Hearings Officer
915 Oak Street, Suite 200
Eugene, OR 97401

Re: West Side Sanitary District v.
Health Division, et al

Dear Mr. Johnson:

Enclosed for filing in the above-entitled matter is an original and two copies of Motion to Dismiss and Memorandum of Points and Authorities in Support of Respondents Health Division; Kristine Gebbie, Assistant Director; and Environmental Quality Commission's Motion to Dismiss.

Sincerely,

Leonard W. Pearlman
Assistant Attorney General
and Counsel

pm
Enclosures

cc/enc: Steven P. Couch, Attorney
B.J. Matzen, City Attorney
E.R. Bashaw, Attorney

BEFORE THE LAND CONSERVATION AND

DEVELOPMENT COMMISSION OF THE STATE OF OREGON

WEST SIDE SANITARY DISTRICT, a special district in Klamath County, Oregon, Petitioner, v. HEALTH DIVISION OF THE DEPARTMENT OF HUMAN RESOURCES OF THE STATE OF OREGON; KRISTINE GEBBIE, ASSISTANT DIRECTOR FOR HEALTH THEREOF; ENVIRONMENTAL QUALITY COMMISSION OF THE STATE OF OREGON; and THE CITY OF KLAMATH FALLS, an incorporated city in Klamath County, Oregon, Respondents.	No. MOTION TO DISMISS

Respondents Health Division of the Department of Human Resources; Kristine Gebbie, Assistant Director for Health and Environmental Quality Commission, move to dismiss the Petition for Review herein on the grounds that the Commission has no jurisdiction to review the matters complained of in the Petition.

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Attorney General
500 Pacific Building
Portland, Oregon 97204
Telephone 229-5725

As support for the above stated Motion, respondents will rely on the points and authorities presented in the Memorandum attached hereto and by this reference made a part hereof.

DATED this 26th day of December, 1978.

JAMES A. REDDEN
Attorney General

/s/ Leonard W. Pearlman
LEONARD W. PEARLMAN
Assistant Attorney General
and Counsel
Of Attorneys for Respondents
Health Divison and Kristine
Gebbie, Assistant Director

/s/ Raymond P. Underwood
RAYMOND P. UNDERWOOD
Assistant Attorney General
and Counsel
Of Attorneys for Respondent
Environmental Quality Commission

Attorney General
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Telephone 229-5725

BEFORE THE LAND CONSERVATION AND

DEVELOPMENT COMMISSION OF THE STATE OF OREGON

WEST SIDE SANITARY DISTRICT, a special district in Klamath County, Oregon, Petitioner, vs. HEALTH DIVISION OF THE DEPARTMENT OF HUMAN RESOURCES OF THE STATE OF OREGON; KRISTINE GEBBIE, ASSISTANT DIRECTOR FOR HEALTH THEREOF; ENVIRONMENTAL QUALITY COMMISSION OF THE STATE OF OREGON; and THE CITY OF KLAMATH FALLS, an incorporated city in Klamath County, Oregon, Respondents.	No. 78-035 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RESPONDENTS HEALTH DIVISION; KRISTINE GEBBIE, ASSISTANT DIRECTOR; and ENVIRONMENTAL QUALITY COMMISSION'S MOTION TO DISMISS

I

The petitioners seek to have the Commission review the findings of respondent Assistant Director pursuant to ORS 222.850 to 222.915, that a danger to public health exists within territory contiguous to the City of Klamath Falls, Oregon. The ultimate finding adopted by the Administrator, paragraph VI states:

> "A danger to public health exists in that conditions exist in the territory legally described in the aforementioned resolution of the Klamath County Board of Health which are conducive to the propagation of communicable or contagious disease producing organisms and which present a reasonably clear possibility that the public generally is being exposed to disease caused suffering or illness and specifically, conditions caused by inadequate installations of the disposal and treatment of sewage in the territory."

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II

ORS 222.850 to 222.915, the so-called health hazard annexation law, provides a procedure where upon receipt of a resolution of a city, or County Board of Health proposing annexation of territory to a city on alleged conditions causing a danger to public health (ORS 222.860 and 222.905), the Health Division is required to investigate the alleged conditions in the territory proposed to be annexed. (ORS 222.870). If the Division finds substantial evidence that a danger to public health exists in the territory, it is required to conduct a hearing (ORS 222.870), the "sole purpose" of which is to determine whether a danger to public health exists due to conditions within the territory (ORS 222.875 and 222.850(4)). If after hearing the Assistant Director finds a danger to public health exists, a certified copy of the findings are to be filed with the City. If plans for removal or alleviation of the conditions presenting a danger are certified approved to the City, the City is to annex the area by ordinance. (ORS 222.897, 222.898 and 222.900). No discretion is vested in the Health Division to determine whether or not an annexation will take place. The statute dictates that result. The function of the Health Division is solely to determine whether conditions defined under ORS 222.850(4) exist in the territory.[1]

III

The respondents Health Division and Assistant Director did not "fail", as is alleged by petitioner, to consider LCDC

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goals. That is not a function of the Health Division under the health hazard annexation law. ORS 222.875 as stated previously, specifically limits these respondents to a singular function:

> "The hearing shall be for the sole purpose of determining whether a danger to public health exists due to conditions in the territory. . ." (Emphasis supplied).

The reason for this legislative policy is clear. The need for ORS 222.850 to 222.915 grew out of the unplanned urbanization of areas lacking adequate public facilities and services. The legislative history behind that Act, Chapter 624 Oregon Laws 1967, informs us that notwithstanding the health hazard problems that had been generated by such inadequate facilities, resident voters had in many instances refused to support city annexation propositions. In the face of the health dangers generated by inadequate sewage disposal, water supplies and the like, the legislature considered curing the dangerous conditions paramount and all other policy considerations irrelevant. The scheme of the statute therefore provides solely that the conditions be identified and that they be remedied by the most readily available means; adjacent city facilities.[2]

IV

Petitioner's position appears to be that ORS ch 197 embroiders the health hazard annexation process with further considerations. The objective of the Land Planning and Development Act is to avoid the uncoordinated uses of land through the process of comprehensive

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conservation and development planning. (ORS 197.005 and 197.010). Threats to public health are among those listed as sought to be avoided. ORS ch 197 is a preventive scheme. It seeks to prospectively avoid a result through planning. ORS 222.850 to 222.915 seek to retroactively correct a result arising through a lack of planning. The two Acts are compatible in the sense of an objective sought. But each must operate exclusively of the other. To engraft one upon the other would be redundant and could lead to irreconcilable results. Were the proceedings under the health hazard law to be extended by interpretation to require, in addition to whether a danger to public health were present, whether annexation would be consistent with land-use goals, what would be the result of facts showing a proposed annexation to be inconsistent with some of the goals? Would this mean that a danger to health would be required to continue? Or in that instance, after all the money and manpower had been expended and the evidence adduced, would the task be to rationalize why the goals should be deemed not relevant or outweighed by the danger to health? The answers to these questions suggest why the legislature in its wisdom has specifically limited considerations in health hazard annexation matters to a singular issue.

V

Finally it is noted that the legislature under ORS 197.175(1) has excluded health hazard annexations under ORS 222.850 to 222.915 from the annexations to which cities must apply state-wide planning goals. The findings of respondent Assistant Director

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are only incidental to the act of city annexation. No logical reason appears for a conclusion that the legislature, rather than meaning by this to exclude such annexations from compliance with the goals altogether, intended to shift such considerations to a remote state agency, non-expert in planning matters. See also ORS 197.005(3) and Petersen v. Mayor and Counsel of the City of Klamath Falls, 279 Or 249 (1977).

VI

ORS ch 197 is inapplicable to the matters recited in the petition, and the Commission should dismiss the petition for lack of jurisdiction.[3]

DATED this 26th day of December, 1978.

JAMES A. REDDEN
Attorney General

/s/ Leonard W. Pearlman
LEONARD W. PEARLMAN
Assistant Attorney General
and Counsel
Of Attorneys for Respondents
Health Division and Kristine
Gebbie, Assistant Director

/s/ Raymond P. Underwood
RAYMOND P. UNDERWOOD
Assistant Attorney General
and Counsel
Of Attorneys for Respondent
Environmental Quality Commission

Attorney General
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Portland, Oregon 97204
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FOOTNOTES

1. Petitioners allege that respondents "ordered" respondent City of Klamath Falls to institute proceedings for annexation of the area to the City. This is incorrect, as the order only finds that a danger to public health exists within the territory.

2. An alternative to city annexation; annexation to an existing special district authorized to provide the necessary facilities is possible under an alternative plan petition. ORS 222.885 and 222.890.

3. Though not within the issues raised in the proceeding under consideration, it is noted that ORS 222.880(3)(4) and (5) provide a narrow area in which by petition and hearing, an area within proposed territory to be annexed to a city may be excluded upon certain conditions if that area itself does not evidence a health hazard. The conditions under which such exclusions are allowed and upon which the Assistant Director may exercise discretion are identifiable with planning considerations. The Division has proposed a rule (December 1, Secretary of State's Bulletin) requiring that consistency of the proposal with state-wide planning goals be pleaded and proved in such an ancilliary proceeding.

Attorney General
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Portland, Oregon 97204
Telephone 229-5725

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Motion to Dismiss and Memorandum of Points and Authorities in Support of Respondents Health Division; Kristine Gebbie, Assistant Directo; and Environmental Quality Commission's Motion to Dismiss on the following:

Steven P. Couch
Attorney at Law
220 Main Street
Klamath Falls, OR 97601

E.R. Bashaw
Attorney at Law
P.O. Box 1262
Medford, OR 97501

B.J. Matzen
City Attorney
City of Klamath Falls
Klamath Falls, OR 97601

by mailing to each a true and correct copy thereof, certified by me as such.

I further certify that such copies were placed in sealed envelopes and deposited in the United States Mail at Portland, Oregon on the 26th day of December, 1978, with the postage thereon fully prepaid.

/s/ Leonard W. Pearlman
LEONARD W. PEARLMAN
Assistant Attorney General
and Counsel
of Attorneys for Respondents
Health Division and Kristine
Gebbie, Assistant Director

/s/ ~~Leonard W. Pearlman~~ RAYMOND P. UNDERWOOD
RAYMOND P. UNDERWOOD
Assistant Attorney General
and Counsel
of Attorneys for Respondent
Environmental Quality Commission

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Portland, Oregon 97204
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ROBERT W. STRAUB
GOVERNOR

Environmental Quality Commission

POST OFFICE BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. S, January 26, 1979, EQC Meeting

NPDES July 1, 1977 Compliance Date - Request for Approval of Stipulated Consent Order Addendum for the City of Amity

Background

The City of Amity was unable to comply with Condition A(1)b of Stipulation and Final Order No. WQ-SNCR-77-266 (Attachment 1), and has requested a time extension by letter dated November 13, 1978 (Exhibit A of Attachment 2).

Summation

1. Stipulation and Final Order WQ-SNCR-77-266, Condition A(1)b, required the City of Amity to begin construction of expanded sewage treatment facilities within four (4) months of Step III grant offer. Condition A(1)c requires construction to be completed within ten (10) months of Step III grant offer. Condition A(1)d requires the City of Amity to demonstrate compliance with the final effluent limitations specified in Schedule A of NPDES Permit No. 2671-J within thirty (30) days of completing construction.

2. The Environmental Protection Agency (EPA) made a Step III grant offer to the City of Amity of April 24, 1978. Therefore, the applicable compliance dates are as follows:

   Condition A(1)b - August 24, 1978
   Condition A(1)c - February 24, 1979
   Condition A(1)d - March 24, 1979

3. The City was unable to commence construction by August 24, 1978 because:

   A. The initial bids for the construction project, opened on June 19, 1978, exceeded the engineer's estimate, and left the City short of the necessary local share for funding the project.

B. The construction documents were modified, and the project successfully rebid on September 5, 1978.

C. EPA reviewed the submitted bids and authorized the City to proceed with construction on October 11, 1978.

D. The executed construction documents specify a completion date of July 1, 1979. Contractors began some sewer rehabilitation work in mid-November, but the private contractor has now been delayed by adverse weather.

E. The City expects to complete construction by July 1, 1979, and attain operational level by August 1, 1979. However, an additional month respectively seems appropriate due to the recent adverse weather conditions.

DIRECTOR'S RECOMMENDATION

Based upon the Summation, it is recommended that the Commission approve the Final Order (Attachment 2) amending Stipulation and Final Order No. WQ-SNCR-77-266, DEQ v. City of Amity, Yamhill County, Oregon.

Bill

WILLIAM H. YOUNG

John E. Borden:cs
378-8240
1/11/78

Attachments (3)
1. Stipulation and Final Order No. WQ-SNCR-77-266
2. Final Order (Addendum)

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY, of the STATE OF OREGON, Department, v. CITY OF AMITY, Respondent.	)	STIPULATION AND FINAL ORDER WQ-SNCR-77-266 YAMHILL COUNTY

WHEREAS

1. The Department of Environmental Quality ("Department") will soon issue National Pollutant Discharge Elimination System Waste Discharge Permit ("Permit") Number 2691-J (to be assigned upon issuance of the Permit) to CITY OF AMITY ("Respondent") pursuant to Oregon Revised Statutes ("ORS") 468.740 and the Federal Water Pollution Control Act Amendments of 1972, P.L. 92-500. The Permit authorizes the Respondent to construct, install, modify or operate waste water treatment, control and disposal facilities and discharge adequately treated waste waters into waters of the State in conformance with the requirements, limitations and conditions set forth in the Permit. The Permit expires on June 30, 1982.

2. Condition 1 of Schedule A of the Permit does not allow Respondent to exceed the following waste discahrge limitations after the Permit issuance date:

	Average Effluent Concentrations		Effluent Loadings Monthly Average		Weekly Average		Daily Maximum	
Parameter	Monthly	Weekly	kg/day	(lb/day)	kg/day	(lb/day)	kg	(lbs)
Jun 1 - Oct 31: NO DISCHARGE TO PUBLIC WATERS PERMITTED.								
Nov 1 - May 31:								
BOD	30mg/l	45mg/l	23	(50)	34	(75)	45	(100)
TSS	50mg/l	75mg/l	38	(83)	57	(125)	76	(166)

///

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
DEC 7 1977

3. Respondent proposes to comply with all the above effluent limitations of its Permit by constructing and operating a new or modified waste water treatment facility. Respondent has not completed construction and has not commenced operation thereof.

4. Respondent presently is capable of treating its effluent so as to meet the following effluent limitations, measured as specified in the Permit:

Parameter	Average Effluent Concentrations Monthly	Weekly	Effluent Loadings Monthly Average kg/day (lb/day)		Weekly Average kg/day (lb/day)		Daily Maximum kg	(lbs)
Jun 1 - Oct 31:	NO DISCHARGE TO PUBLIC WATERS PERMITTED.							
Nov 1 - May 31:								
BOD	60mg/l	75mg/l	45	(100)	57	(125)	68	(150)
TSS	90mg/l	120mg/l	68	(150)	91	(200)	114	(250)

5. The Department and Respondent recognize and admit that:

a. Until the proposed new or modified waste water treatment facility is completed and put into full operation, Respondent will violate the effluent limitations set forth in Paragraph 2 above the vast majority, if not all, of the time any effluent is discharged.

b. Respondent has committed violations of its NPDES Waste Discharge Permit No. 2481-J and related statutes and regulations.

1) Effluent violations have been disclosed in Respondent's waste discharge monitoring reports to the Department, covering the period from September 20, 1976 through the date which the order below is issued by the Environmental Quality Commission.

2) Respondent did not submit final plans by June 1, 1977, as required by Condition 1 of Schedule C.

///

6. The Department and Respondent also recognize that the Environmental Quality Commission has the power to impose a civil penalty and to issue an abatement order for any such violation. Therefore, pursuant to ORS 183.415(4), the Department and Respondent wish to resolve those violations in advance by stipulated final order requiring certain action, and waiving certain legal rights to notices, answers, hearings and judicial review on these matters.

7. The Department and Respondent intend to limit the violations which this stipulated final order will settle to all those violations specified in Paragraph 5 above, occurring through (a) the date that compliance with all effluent limitations is required, as specified in Paragraph A(1) below, or (b) the date upon which the Permit is presently scheduled to expire, whichever first occurs.

8. This stipulated final order is not intended to settle any violation of any effluent limitations set forth in Paragraph 4 above. Furthermore, this stipulated final order is not intended to limit, in any way, the Department's right to proceed against Respondent in any forum for any past or future violation not expressly settled herein.

NOW THEREFORE, it is stipulated and agreed that:

A. The Environmental Quality Commission shall issue a final order:

(1) Requiring Respondent to comply with the following schedule:

a. Submit complete and biddable final plans and specifications and a proper and complete Step III grant application by January 31, 1978.

b. Begin construction within four (4) months of Step III grant offer.

c. Complete construction within ten (10) months of Step III grant offer.

d. Demonstrate compliance with the final effluent limitations specified in Schedule A of the Permit within thirty (30) days of completing construction.

(2) Requiring Respondent to meet the interim effluent limitations set forth in Paragraph 4 above until the date set in the schedule in Paragraph A(1) above for achieving compliance with the final effluent limitations.

(3) Requiring Respondent to comply with all the terms, schedules and conditions of the Permit, except those modified by Paragraphs A(1) and (2) above.

B. Regarding the violations set forth in Paragraph 5 above, which are expressly settled herein, the parties hereby waive any and all of their rights under United States and Oregon Constitutions, statutes and administrative rules and regulations to any and all notices, hearings, judicial review, and to service of a copy of the final order herein.

C. Respondent acknowledges that it has actual notice of the contents and requirements of this stipulated and final order and that failure to fulfill any of the requirements hereof would constitute a violation of this stipulated final order. Therefore, should Respondent commit any violation of this stipulated final order, Respondent hereby waives any rights it might then have to any and all ORS 468.125(1) advance notices prior to the assessment of civil penalties for any and all such violations. However, Respondent does not waive its rights to any and all ORS 468.135 (1) notices of assessment of civil penalty for any and all violations of this stipulated final order.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Date: DEC 4 1984

By William H. Young
WILLIAM H. YOUNG
Director

RESPONDENT

Date: 8 Nov 77

By William F. Hinkle
Name
Title MAYOR

FINAL ORDER

IT IS SO ORDERED:

ENVIRONMENTAL QUALITY COMMISSION

Date:

By William H. Young
WILLIAM H. YOUNG, Director
Department of Environmental Quality
Pursuant to OAR 340-11-136(1)

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

Department of Environmental Quality of the State of Oregon, Department, v. City of Amity, Respondent.	Amendment to Stipulation and Final Order No. WQ-SNCR-77-266

WHEREAS the Commission finds the facts to be as follows:

1. The City of Amity ("Respondent") did not begin construction on or before August 24, 1978 (within four months of a Step III grant offer), in violation of Stipulation and Final Order No. WQ-SNCR-77-266.

2. Respondent has requested an extension of time (Exhibit A) to comply with the Commission's Order and has acted in good faith in trying to comply with that Order.

NOW THEREFORE, it is hereby ordered that Paragraph A(1) of Stipulation and Final Order No. WQ-SNCR-77-266 is amended as follows:

b. Begin construction by February 1, 1979

c. Complete construction by August 1, 1979

d. Demonstrate compliance with the final effluent limitations specified in Schedule A of the permit by September 1, 1979.

IT IS SO ORDERED:

ENVIRONMENTAL QUALITY COMMISSION

Date _____

by _____
William H. Young, Director
Department of Environmental Quality
Pursuant to OAR 340-11-136(1)

EXHIBIT A

CITY OF AMITY

AMITY, OREGON 97101

November 13, 1978

Dept. of Environmental Quality
Steve Downs
796 Winter St. N.E.
Salem, Oregon 97310

Mr. Downs:

The City of Amity is requesting a change in the schedule for the enlargement of the lagoon. When this job was first bid, the bids were too high and everything had to be done a 2nd time, which threw everything off schedule.

We are requesting a starting date of January 1, 1979, completion date of July 1, 1979, to reach operational capability August 1, 1979.

Sincerely,

Gayle C. Shepherd

Gayle C. Shepherd
City Recorder

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
NOV 17 1978

ROBERT W. STRAUB
GOVERNOR

Environmental Quality Commission

POST OFFICE BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. T January 26, 1979 Meeting

Request by Curry County for Extension of Date for Submission of an Adopted Solid Waste Plan

Background

At the September 22, 1978 EQC meeting staff presented a variance request from Curry County to continue open burning at two solid waste disposal sites (Brookings and Nesika Beach). (Agenda Item I attached)

The Commission approved the variance, requiring adoption of a Solid Waste Plan and location of a suitable disposal site by January 1, 1979.

A suitable disposal site has been located by a private operator and approved by the County. In addition the County has hired a solid waste planner, identified property in the Port of Brookings for an energy recovery facility and begun negotiations for purchase of energy recovery facilities.

Curry County has failed to adopt a solid waste management plan by January 1, 1979. They have requested an extension of this date to April 1, 1979.

Evaluation

The County has made a conscientious effort leading toward closure of the two open burning dumps by the variance expiration date (August 1, 1979). In the opinion of the staff moving the date for submission of the solid waste plan will not adversely affect progress toward final closure of the sites under variance.

Summation

1. Curry County has progressed toward a final closure of the two open burning disposal sites. A new disposal site has been located, property for an energy recovery facility has been identified, negotiations for energy recovery equipment are underway and permanent staff has been hired.

2. A formal written solid waste plan has not been adopted. However it is the opinion of staff that a later submission of the plan will not impede progress of implementation.

Director's Recommendation

Based upon the Summation, it is recommended that:

1. The County be required to adopt a solid waste management plan by April 1, 1979 and notify the Department of such adoption by April 15, 1979.

2. All other dates required in granting of the variance on September 22, 1978 be maintained.

Bill

WILLIAM H. YOUNG

Robert L. Brown:mm
229-5157
January 9, 1979
Attachment (1) Agenda Item 1, September 22, 1978 EQC Meeting

ATTACHMENT I

ROBERT W. STRAUB
GOVERNOR

Environmental Quality Commission

POST OFFICE BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. I, September 22, 1978 Meeting

Request by Curry County for Extension of Variance from Rules Prohibiting Open Burning Dumps OAR 340-61-040(2)(c).

Background

At the September 23, 1977 EQC meeting staff presented a variance request from Curry County to allow continued open burning at two solid waste disposal sites (Brookings and Nesika Beach). At the time of the request, it was the opinion of the staff and county that one year would be sufficient time to find suitable alternatives for these open burning dumps.

The county has contracted with a consultant and has worked closely with the staff in evaluating several alternatives. To date, however, these evaluations have not been completed and the county cannot meet the October 1, 1978 variance expiration date. At a meeting with the staff on September 8, 1978, Curry County Commission Chairman Jack Waldie requested another extension of the variance.

Evaluation

As stated above, the county has made a good faith effort to establish an acceptable solid waste management program. A private consultant was hired to evaluate alternative landfill sites and the feasibility of baling solid waste. The county has also been exploring the possibility of utilizing an incineration system. Recently, a private site operator has approached the county with a proposal to establish a new incineration and landfill site.

In the opinion of the staff, the county is making good progress and a solution to its solid waste disposal problems is forthcoming. Extending the open burning variance will provide for the necessary interim operation of the existing disposal sites while a suitable alternative system is selected and implemented. The existing disposal sites at Brookings and Nesika Beach cannot operate without open burning.

Summation

1. Curry County has diligently pursued an alternative to its present open burning dumps during the current variance period.

2. The County appears to be close to selecting and implementing an alternative, but cannot do so before the current variance expires.

3. The County has requested an extension of the variance to provide for interim solid waste disposal until a suitable alternative is available. The existing disposal sites cannot operate without burning.

4. To approve the variance request the EQC must make a finding that strict compliance would result in closing of the facilities and no alternative facility or alternative method is yet available.

Director's Recommendation

Having found the foregoing facts to be true, I recommend that:

1. Variances for the Brookings Disposal Site and Nesika Beach Disposal Site in Curry County be extended until August 1, 1979. This date will allow for continued open burning through the winter and spring when heavy rains would hinder construction of an alternative facility.

2. The County be required to adopt a solid waste management plan and obtain a suitable alternative disposal site by January 1, 1979. The Department shall be notified in writing by not later than January 15, 1979 that these requirements have been met.

3. The Brooking's Disposal Site and Nesika Beach Disposal Site be closed prior to the expiration date of the variance if a suitable alternative becomes available.

4. The EQC find that the variance request meets the intent of ORS 459.225 (3)(c) in that strict compliance would result in closing of the disposal sites and no alternative facility or alternative method of solid waste management is available.

Bill

William H. Young

William H. Dana:mm
229-5913
September 12, 1978

ROBERT W. STRAUB
GOVERNOR

Environmental Quality Commission

522 S.W. 5th AVENUE, P.O. BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

MEMORANDUM

TO: Environmental Quality Commission

FROM: Director

SUBJECT: Agenda Item No. U, Portland, Oregon, 1979, Environmental Quality Commission Meeting

Variance Request, Louis Dreyfus Corporation and Bunge Corporation from OAR 340-28-070, regarding the loading of ships with grain.

Background

Louis Dreyfus Corporation and Bunge Corporation operate terminal grain elevators adjacent to the Willamette River in downtown Portland, Oregon. These facilities are within the Portland AQMA which is a non-attainment area for particulate. Grain is received by truck, train and barge and delivered to ships.

Through previous compliance efforts the facilities have installed air pollution control equipment on all emission points. However, as a result of the grain elevator explosions of late 1977 and early 1978 the use of the ship loading control equipment (hatch tent covers and baghouse) has been curtailed. Uncontrolled particulate emissions from ship loading could amount to approximately 550 tons per year. Although the explosions which occurred did not involve the ship loading phase, OSHA took the position in Oregon that the use of hatch tents when loading grain constituted an explosion potential.

To determine if an explosion hazard existed, EPA reviewed available literature on the subject and conducted emission tests in Portland and Tacoma. The results of these studies confirmed that there has never been a ship explosion associated with the loading of grain and that the measured dust levels do not constitute a hazard. In fact, the measured dust concentration is one percent of the level required for an explosion to occur. OSHA concurred with the finding and agreed to allow the use of hatch covers.

On 11/17/78 Bunge and Dreyfus were issued notices of violation warning that any future opacity violations from ship loading operations would be subject to civil penalties. In response to these notices, the companies instructed the stevedoring companies to utilize the control equipment. The longshoremen contended the conditions were unsafe, refused to load grain and the matter went to arbitration.

The Pacific Maritime Association hearings officer concluded that the systems were unsafe. It should be pointed out that the hearings officer did not possess the latest source test data.

Following the arbitration hearing, DEQ, EPA and OSHA met on 12/1/78 with the elevator operators, stevedoring companies and longshoremen to hopefully resolve the problem. Being unsuccessful, DEQ in a letter dated 12/17/78 reaffirmed its intent to impose civil penalties and advised the companies of their rights to request a variance.

On January 5, 1979 Bunge Corporation and Louis Dreyfus Corporation submitted "Request for Variance" and "Memorandum In Support of Request for Variance" (attachments 1 and 2 respectively).

Evaluation

Louis Dreyfus Corporation and Bunge Corporation have installed equipment to control particulate from the ship loading of grain. However, the longshoremen's concern about the alledged explosion hazard associated with the use of the control equipment has resulted in their refusal to operate these systems.

EPA studies and tests have confirmed the explosion potential is negligible. OSHA has concurred that the systems are safe from an explosion standpoint. Similar systems are currently used in California and the Puget Sound area.

DEQ has issued civil penalty warnings to the two elevator companies.

The subject variance request from the opacity standard, Oregon Adm. Rule, 340-28-070 for the period 9/1/78 to 3/1/79 is to allow the companies time to resolve the longshoremen's concern without incurring civil penalties. If unsuccessful, the two companies are faced with receiving civil penalties, shutting down, or submitting a compliance schedule for an alternative system. Such an alternative is available, however, it would involve a major facility modification and may not be viable from an economic standpoint.

Oregon Revised Statutes (ORS), Chapter 468.345, 1977 Replacement Part, Variances from air contaminant rules and regulations, paragraph (1) states that:

> The Environmental Quality Commission may grant specific variances which may be limited in time from the particular requirements of any rule, regulation or order. . . if it finds that conditions exist that are beyond the control of persons granted such variance; or if special circumstances render strict compliance unreasonable, burdensome, or impractical due to special physical conditions or causes; or strict compliance would result in substantial curtailment or closing down of a business, plant or operation.

Summation

1. Louis Dreyfus Corporation and Bunge Corporation operate terminal grain elevators in the Portland AQMA, a non-attainment area for particulate. Uncontrolled particulate emissions from the ship loading operation could amount to approximately 550 T/yr.

2. Although each company has established the equipment necessary to control emissions from ship loading; and EPA (with OSHA's concurrance) has verified the negligible explosion hazard of said equipment; the longshoremen refuse to use the equipment.

3. Failure to comply confronts the companies with the possibilities of receiving civil penalties, shutting down or installation of an alternative system.

4. Louis Dreyfus Corporation and Bunge Corporation have requested a variance from September 1, 1978 to March 1, 1979 to relieve them of any liabilities resulting from the November 17, 1978 notice of violation and allow a short time period to resolve the impasse with the longshoremen's union.

5. Should negotiation with the longshoremen fail, the companies are prepared to again force the matter to arbitration and hopefully with DEQ, EPA and OSHA input, the arbitration process will reverse the earlier decision.

6. The granting of this variance by the Environmental Quality Commission would be allowable in accordance with ORS 468.345.

Director's Recommendation

Based upon the findings in the summation it is recommended that the Environmental Quality Commission:

1. Enter a finding that strict compliance is inappropriate at this time due to special circumstances which are considered unreasonable, burdensome, and impractical due to special physical conditions, would result in substantial curtailment or closing down of a significant portion of a business, and conditions exist which are beyond the control of the operators.

2. Grant the variance to Louis Dreyfus Corporation and Bunge Corporation to operate in excess of the emissions standard described in OAR 340-28-070 until March 1, 1979 subject to the following conditions:

   a. By not later than March 1, 1979, Louis Dreyfus Corporation and Bunge Corporation will meet with representatives of ILWU Local 8 regarding the use of the ship loading dust control equipment and take the issue to arbitration if such should prove necessary.

b. The Department reserves the right to impose civil penalties for any violations recorded during the variance period should it become evident that a good faith effort is not being made.

Bill

WILLIAM YOUNG

Tom Bispham
229-5342
January 11, 1979

Attachments:

1. Louis Dreyfus Corporation, Request for Variance and Memorandum in Support of Request for Variance

2. Bunge Corporation, Request for Variance and Memorandum in Support of Request for Variance

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DONALD G. KRAUSE, RETIRED
GUNTHER F. KRAUSE 1895-1967
CARMIE R. DAFOE 1920-1975
CABLE ADDRESS: "CARRIAGE"

January 2, 1979

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. William Young, Director
Department of Environmental Quality
State of Oregon
522 SW Fifth Avenue
Portland, Oregon 97204

Re: Bunge Corporation

Dear Mr. Young:

On behalf of Bunge Corporation, I enclose for filing a Request for Variance and a supporting Memorandum. If you need any further information, please call me.

Pending consideration of the variance, we request that the DEQ not impose any civil penalties against Bunge Corporation for violations of the standards from which a variance is sought.

Very truly yours,

Carol A. Hewitt

CAH:a
Enclosures

cc: Mr. Norman Edmisten,
Portland Regional Office EPA

Mr. R. C. Berger
Manager, Pacific Northwest Region
Bunge Corporation

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY of the State of Oregon, Department, vs. BUNGE CORPORATION, Respondent.	)	REQUEST FOR VARIANCE

Pursuant to ORS 468.345, Bunge Corporation hereby requests a variance from the requirements and standards imposed by Paragraph 3 of its Air Contaminant Discharge Permit No. 26-2003, and OAR 340-28-070.

Strict compliance with these standards is inappropriate because:

(a) Conditions exist that are beyond the control of Bunge Corporation;

(b) Special circumstances render strict compliance unreasonable, burdensome, or impractical due to special physical conditions or cause; and

(c) Strict compliance would result in substantial curtailment or closing down of a significant portion of Bunge Corporation's shiploading operations in Oregon.

The variance should be effective from September 1, 1978 to March 1, 1979, and should provide that during this time Bunge Corporation is exempt from complying with these standards at the

shiploading portion of its grain handling storage facility in Portland, Oregon.

In support of this Request, Bunge Corporation relies on the Memorandum in Support of Request for Variance submitted herewith.

DATED this 2nd day of January, 1979.

LINDSAY, NAHSTOLL, HART,
NEIL & WEIGLER

By _____
Carol A. Hewitt
Of Attorneys for Bunge Corporation

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY of the State of Oregon,	)	
Department,	)	MEMORANDUM IN SUPPORT OF REQUEST FOR VARIANCE
vs.	)	
BUNGE CORPORATION,	)	
Respondent.	)	

FACTUAL BACKGROUND

Bunge Corporation operates a grain handling and storage facility (the "facility") at 800 N. River Street, Portland, Oregon, which discharges grain dust into the air during shiploading operations. The facility is operated pursuant to Air Contaminant Discharge Permit No. 26-2003 (the "permit") issued by the State of Oregon, Department of Environmental Quality. The permit allows Bunge Corporation to discharge air contaminants from the facility, on condition that it complies with all requirements of the permit and the rules and laws administered by the DEQ.

Paragraph 3 of the permit limits emission of any visible air contaminant into the atmosphere from any source to a period aggregating no more than 30 seconds in any one hour if the emission is equal to or greater than 20 percent opacity. OAR 340-28-070 imposes the same requirement. Bunge Corporation has developed and installed control technology at the facility which has been approved by the DEQ and which achieves compliance with

this standard. The technology consists of aspirated hatch tents.

In late 1977 and early 1978, grain dust explosions occurred at several elevators in other parts of the country, resulting in loss of lives. Shortly thereafter, OSHA took the position that hatch tents endanger the health and safety of longshoremen performing shiploading services. The longshoremen who work at the facility concurred and refused to continue using them. Consequently, Bunge stopped using the hatch tents at the facility. A short time later, OSHA changed its position and concluded that the hatch tents were safe. Based on this change, the DEQ requested Bunge to reinstate its use of hatch tents, and Bunge conveyed the request to the stevedoring companies who supply the longshoremen for the facility.

On November 17, 1978, the DEQ issued Bunge a Notice of Violation and Intent to Assess Civil Penalty for opacity violations occurring on September 18, 1978, and October 20, 1978, during shiploading operations conducted at the facility without hatch tents.

On November 24, 1978, representatives of Local 8 of the ILWU obtained an arbitration determination that a safety hazard was present in the use of hatch tents in a shiploading operation at the Louis Dreyfus facility.

On December 19, 1978, the DEQ reiterated its request that Bunge use hatch tents, expresed its intention to impose civil penalties for violations, and notified the company of its right to request a variance.

As of the present time, the longshoremen still refuse to work with the hatch tents. Without the longshoremen, the facility cannot operate. Unless a variance is granted, Bunge will be faced with the immediate choice of operating the facility without hatch tents and incurring civil penalties, or closing down the facility.

PLANS FOR ACHIEVING COMPLIANCE

Bunge concurs in plans for achieving compliance set forth in Louis Dreyfus' Memorandum in Support of Request for Variance, a copy of which is attached.

APPROPRIATENESS OF VARIANCE

ORS 468.345(1)(a), (b), and (c) set forth three criteria for a variance, any one of which justifies its grant. Bunge meets all three criteria.

Conditions Exist Which Are Beyond the Control of Bunge Corporation.

Bunge Corporation has at all times made a good-faith effort to comply with all applicable emissions standards. It has succeeded in all respects, except for its current problems with its shiploading operations. The company formerly achieved compliance in this area but has been unable to maintain it solely because of to the longshoremen's refusal to work with hatch tents, which is a circumstance beyond Bunge's control. The company has done everything in its power to change the attitude of the longshoremen and will continue to do so.

Special Circumstances Render Strict Compliance Unreasonable, Burdensome, or Impractical Due to Special Physical Conditions or Causes.

Control technology other than hatch tents is available

for installation on newly constructed shiploading facilities. There is none which can be readily fitted to the existing equipment at the facility. Assuming that technology can be developed which could achieve compliance at the facility without hatch tents, the cost of such technology would likely be such that continued operation of the facility would be economically unfeasible. In addition, the development and installation would delay compliance for a lengthy period of time.

The emissions sought to be controlled at the ship loading portion of the facility consist entirely of grain dust, which is simply small particles of grain. This dust contains no chemicals, corrosives, or other harmful components. There is no evidence that dispersion of grain dust into the air, at least in the quantities involved in the ship loading, is harmful to anyone or anything.

The 20 percent opacity standard applies uniformly and arbitrarily to all emissions, whether they consist of grain dust or toxic chemicals. In view of the difficulties and hardships experienced by Bunge in complying with the opacity standard at the present time, and the relative insignificance of its emissions, strict compliance at this time would be unreasonable, burdensome, and impractical.

<u>Strict Compliance Would Result in Substantial Curtailment or Closing Down of a Significant Portion of Bunge's Shiploading Operation</u>.

Bunge cannot load grain ships without longshoremen. The longshoremen will not work with hatch tents, and without hatch

tents, Bunge cannot comply with its permit. Strict enforcement of the permit conditions would therefore result in closure of the shiploading portion of the operation at the facility and loss of substantial revenues for both the company and the Portland economy.

SCOPE OF VARIANCE

Bunge's variance request asks that the variance be for the period September 1, 1978 to March 1, 1979. Retroactive application to September 1, 1978 would relieve the company from liability for the violation referred to in the DEQ's November 17, 1978 Notice of Violation and any subsequent violations which have occurred during the longshoremen's refusal to work with the tents.

For all of the reasons set forth above, it would be unjust and reasonable to impose penalties for violations occurring during this time. The proposed variance expiration date is Bunge's best estimate of the date by which it will be able to persuade Local 8 of the ILWU to resume use of the hatch tents.

CONCLUSION

Bunge realizes that it must ultimately achieve compliance with the opacity standard, regardless of whether hatch tents prove to be usable. However, circumstances beyond its control make it impossible to do so at this time. The granting of a temporary variance will have no adverse effect on the environment, whereas the strict enforcement of compliance standards would have a substantial detrimental effect on Bunge and the Portland

community. The company has met the criteria for a variance, and its request should be granted.

DATED this 2nd day of January, 1979.

Respectfully submitted,

LINDSAY, NAHSTOLL, HART,
NEIL & WEIGLER

By _____
Carol A. Hewitt
Of Attorneys for Bunge Corporation

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CABLE ADDRESS: "CARRIAGE"

January 2, 1979

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. William Young, Director
Department of Environmental Quality
State of Oregon
522 SW Fifth Avenue
Portland, Oregon 97204

Re: Louis Dreyfus Corporation

Dear Mr. Young:

On behalf of Louis Dreyfus Corporation, I enclose for filing a Request for Variance and a supporting Memorandum. If you need any further information, please call me.

Pending consideration of the variance, we request that the DEQ not impose any civil penalties against Louis Dreyfus Corporation for violations of the standards from which a variance is sought.

Very truly yours,

Carol A. Hewitt

CAH:a
Enclosures

cc: Mr. Norm Edmisten,
Portland Regional Office EPA

Mr. Jan Mauritz, Vice President
Louis Dreyfus Corporation

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY of the State of Oregon, Department, vs. LOUIS DREYFUS CORPORATION, Respondent.	)	REQUEST FOR VARIANCE

Pursuant to ORS 468.345, Louis Dreyfus Corporation hereby requests a variance from the requirements and standards imposed by Condition 4(b) of its Air Contaminant Discharge Permit No. 26-2000, and OAR 340-28-070.

Strict compliance with these standards is inappropriate because:

(a) Conditions exist that are beyond the control of Louis Dreyfus Corporation;

(b) Special circumstances render strict compliance unreasonable, burdensome, or impractical due to special physical conditions or cause; and

(c) Strict compliance would result in substantial curtailment or closing down of a significant portion of Louis Dreyfus Corporation's shiploading operations in Oregon.

The variance should be effective from September 1, 1978 to March 1, 1979, and should provide that during this time Louis Dreyfus Corporation is exempt from complying with these standards

at the shiploading portion of its grain handling storage facility in Portland, Oregon.

In support of this Request, Louis Dreyfus Corporation relies on the Memorandum in Support of Request for Variance submitted herewith.

DATED this 2nd day of January, 1979.

LINDSAY, NAHSTOLL, HART,
NEIL & WEIGLER

By _____
Carol A. Hewitt
Of Attorneys for
Louis Dreyfus Corporation

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY of the State of Oregon, Department, vs. LOUIS DREYFUS CORPORATION, Respondent.	)	MEMORANDUM IN SUPPORT OF REQUEST FOR VARIANCE

FACTUAL BACKGROUND

Louis Dreyfus Corporation operates a grain handling and storage facility (the "facility") at the foot of N. Holladay Street in Portland which discharges grain dust into the air during shiploading operations. The facility is operated pursuant to Air Contaminant Discharge Permit No. 26-2000 (the "permit") issued by the State of Oregon, Department of Environmental Quality. The permit allows Louis Dreyfus Corporation to discharge air contaminants from the facility, on condition that it complies with all requirements of the permit and the rules and laws administered by the DEQ.

Paragraph 4(b) of the permit requires that particulate emissions from any single air contaminant emission point at the facility not exceed an opacity equal to or greater than 20 percent for a period or periods aggregating more than 30 seconds in any one hour. OAR 340-28-070 imposes the same requirement. Louis Dreyfus began working with the DEQ several years ago to develop

and implement a plan for achieving compliance with this opacity standard. Economic and engineering problems encountered in devising an adequate control system necessitated several revisions in the company's original compliance schedule.

Initially, the company planned to install a spout system, which was the best available control technology for shiploading facilities. Subsequent engineering studies showed that this system could not be adapted to the configuration of the existing equipment at the facility.

The company then turned to consideration of hatch tents, which was the only alternative technology available. The use of hatch tents presented new economic, engineering, and labor problems which required further study. At the same time that the company was exploring the use of hatch tents, it also sought to develop a new technology which would surpass both spouts and hatch tents. While studies proceeded on these matters, the company planned, installed, and put into operation control equipment which brought other parts of the facility into compliance with the permit ahead of schedule. At all phases of the development of control procedures, Louis Dreyfus consulted with the DEQ and kept it fully informed of the company's progress.

By letter of February 12, 1976, Louis Dreyfus informed the DEQ that no feasible alternative to hatch tents was available, and that the company would prepare engineering plans for installing them. The letter noted that although the company believed the hatch tents would achieve compliance, it would undertake a feasibility study to determine if it would be technologically and

economically feasible to install a system at the facility similar to one in use at the Continental Grain Company elevator in Tacoma.

The DEQ approved the company's plans and specifications for the hatch tents on May 3, 1976, and the equipment was installed and in use by August, 1976. The use of hatch tents did not achieve full compliance with the 20 percent opacity standard. In January, 1977, the DEQ and Louis Dreyfus agreed to await the evaluation of the control technology in use at Bunge Corporation's neighboring operation before making plans to modify the Louis Dreyfus hatch tents. When the evaluation was completed, Louis Dreyfus submitted plans to the DEQ for modifying its system in a manner patterned after Bunge's system. The modified hatch tents were completed in late 1977 and used on one occasion.

In late 1977 and early 1978, grain dust explosions occurred at several elevators in other parts of the country, resulting in loss of lives. Shortly thereafter, OSHA took the position that hatch tents endanger the health and safety of longshoremen performing shiploading services. The longshoremen who work at the facility concurred and refused to continue using them. Consequently, Louis Dreyfus stopped using the hatch tents at the facility. A short time later, OSHA changed its position and concluded that the hatch tents were safe. Based on this change, on October 27, 1978 the DEQ requested Louis Dreyfus to reinstate its use of hatch tents, and Louis Dreyfus passed along the request to the stevedoring companies who supply the longshoremen for the facility.

On November 17, 1978, the DEQ issued Louis Dreyfus a Notice of Violation and Intent to Assess Civil Penalty for opacity violations occurring on September 18, 1978 during shiploading operations conducted at the facility without hatch tents.

On November 24, 1978, longshoremen supplied by Jones Oregon Stevedoring Company refused to load grain in the hold of a ship at the facility because hatch tents had been erected at the site pursuant to Louis Dryefus' instructions. The refusal to work precipitated an arbitration between representatives of Local 8, ILWU, and PMA which resulted in a determination that the refusal to work was justified because a hazard was present in the use of the hatch tents.

On December 19, 1978, the DEQ reiterated its request that Louis Dreyfus use hatch tents, expresed its intention to impose civil penalties for violations, and notified the company of its right to request a variance.

As of the present time, the longshoremen still refuse to work with the hatch tents. Without the longshoremen, the facility cannot operate. Unless a variance is granted, Louis Dreyfus will be faced with the immediate choice of operating the facility without hatch tents and incurring civil penalties, or closing down the facility. The latter would have a substantial impact on the Portland area in that the facility loads approximately 50 million bushels of grain annually and pays approximately $1.8 million per year in salaries and wages. Louis Dreyfus is hopeful that it can achieve compliance with its permit in the near future, but it cannot do so immediately.

PLANS FOR ACHIEVING COMPLIANCE

The modified hatch tents which Louis Dreyfus has provided at the facility are capable of achieving compliance with the permit, as shown by Bunge Corporation's experience. Louis Dreyfus and the local stevedoring companies are in agreement that the tents should be used. The longshoremen's position that they will not work with the tents is the only impediment to compliance. Louis Dreyfus believes that it can persuade the longshoremen to change their stance.

Current circumstances differ considerably from those present at the time Local 8 of the ILWU first refused to use the hatch tents. At that time, several grain elevator explosions had just occurred, OSHA was of the opinion that hatch tents might create dangers of explosion, and no test data was available which demonstrated that the tents were safe. The impact of OSHA's later reversal of its opinion was negated by an arbitrator's determination that the tents were dangerous.

Louis Dreyfus now has the preliminary results of grain dust explosion tests conducted at the United Grain terminal in Tacoma, Washington. Although the tests were conducted in October, 1978, the results were not available until late November, 1978. The purpose of the tests was to make a determination of the safety of tent-controlled ship loading operations. Preliminary results show the maximum concentrations of dust in the ship hold to be five percent of the minimum explosive limit. Further study of the test data may provide additional evidence of the tests' safety.

An ILWU election is scheduled for January, 1979, which

may well result in a change in the leadership of Local 8. Louis Dreyfus plans to meet with representatives of Local 8 as soon as possible after the election to discuss the hatch tent problem. Representatives of other grain exporters, the local stevedore companies, the EPA, OSHA, and the DEQ will also be invited to attend. Louis Dreyfus is hopeful that these parties will be able to persuade the representatives of Local 8 to resume use of the hatch tents.

In the event that the meeting fails to produce this result, Louis Dreyfus is prepared to force another arbitration. Neither Louis Dreyfus, which is not a member of PMA, nor the DEQ was present at the November 24, 1978 arbitration, and the arbitrator did not have the benefit of the Tacoma tests results. If a second arbitration becomes necessary, Louis Dreyfus will ask the arbitrator to allow both Louis Dreyfus and the DEQ to appear and present evidence on the safety issue which will include the Tacoma test results. If the arbitrator is made aware of all the relevant facts, it is likely that he will find the hatch tents to be a safe working condition.

APPROPRIATENESS OF VARIANCE

ORS 468.345(1)(a), (b), and (c) set forth three criteria for a variance, any one of which justifies its grant. Louis Dreyfus meets all three criteria.

Conditions Exist Which Are Beyond the Control of Louis Dreyfus Corporation.

Louis Dreyfus has at all times made a good-faith effort

to comply with all applicable emissions standards. It has succeeded, except in the area of ship loading operations. The company's failure to achieve compliance in this area is solely attributable to the longshoremen's refusal to work with hatch tents, which is a circumstance beyond Louis Dreyfus's control. The company has done everything in its power to change the attitude of the longshoremen and will continue to do so.

Special Circumstances Render Strict Compliance Unreasonable, Burdensome, or Impractical Due to Special Physical Conditions or Causes.

Control technology other than hatch tents is available for installation on newly constructed ship loading facilities. There is none which can be readily fitted to the existing equipment at the facility. Assuming that technology can be developed which could achieve compliance at the facility without hatch tents, the cost of such technology would likely be such that continued operation of the facility would be economically unfeasible. In addition, the development and installation would delay compliance for a lengthy period of time.

The emissions sought to be controlled at the ship loading portion of the facility consist entirely of grain dust, which is simply small particles of grain. This dust contains no chemicals, corrosives, or other harmful components. There is no evidence that dispersion of grain dust into the air, at least in the quantities involved in the ship loading, is harmful to anyone or anything.

The 20 percent opacity standard applies uniformly and

arbitrarily to all emissions, whether they consist of grain dust or toxic chemicals. In view of the difficulties and hardships experienced by Louis Dreyfus in complying with the opacity standard and the relative insignificance of its emissions, strict compliance at this time would be unreasonable, burdensome, and impractical.

Strict Compliance Would Result in Substantial Curtailment or Closing Down of a Significant Portion of Louis Dreyfus' Ship Loading Operation.

Louis Dreyfus cannot load grain ships without longshoremen. The longshoremen will not work with hatch tents, and without hatch tents, Louis Dreyfus cannot comply with its permit. Strict enforcement of the permit conditions would therefore result in closure of the ship loading portion of the operation at the facility and loss of substantial revenues for both the company and the Portland economy.

SCOPE OF VARIANCE

Louis Dreyfus' variance request asks that the variance be for the period September 1, 1978 to March 1, 1979. Retroactive application to September 1, 1978 would relieve the company from liability for the violation referred to in the DEQ's November 17, 1978 Notice of Violation and any subsequent violations which have occurred during the longshoremen's refusal to work with the tents.

For all of the reasons set forth above, it would be unjust and reasonable to impose penalties for violations occurring during this time. The proposed variance expiration date is

Louis Dreyfus' best estimate of the date by which it will be able to persuade Local 8 of the ILWU to resume use of the hatch tents.

CONCLUSION

Louis Dreyfus realizes that it must ultimately achieve compliance with the opacity standard, regardless of whether hatch tents prove to be usable. However, circumstances beyond its control make it impossible to do so at this time. The granting of a temporary variance will have no adverse effect on the environment, whereas the strict enforcement of compliance standards would have a substantial detrimental effect on Louis Dreyfus and the Portland community. The company has met the criteria for a variance, and its request should be granted.

DATED this 2nd day of January, 1979.

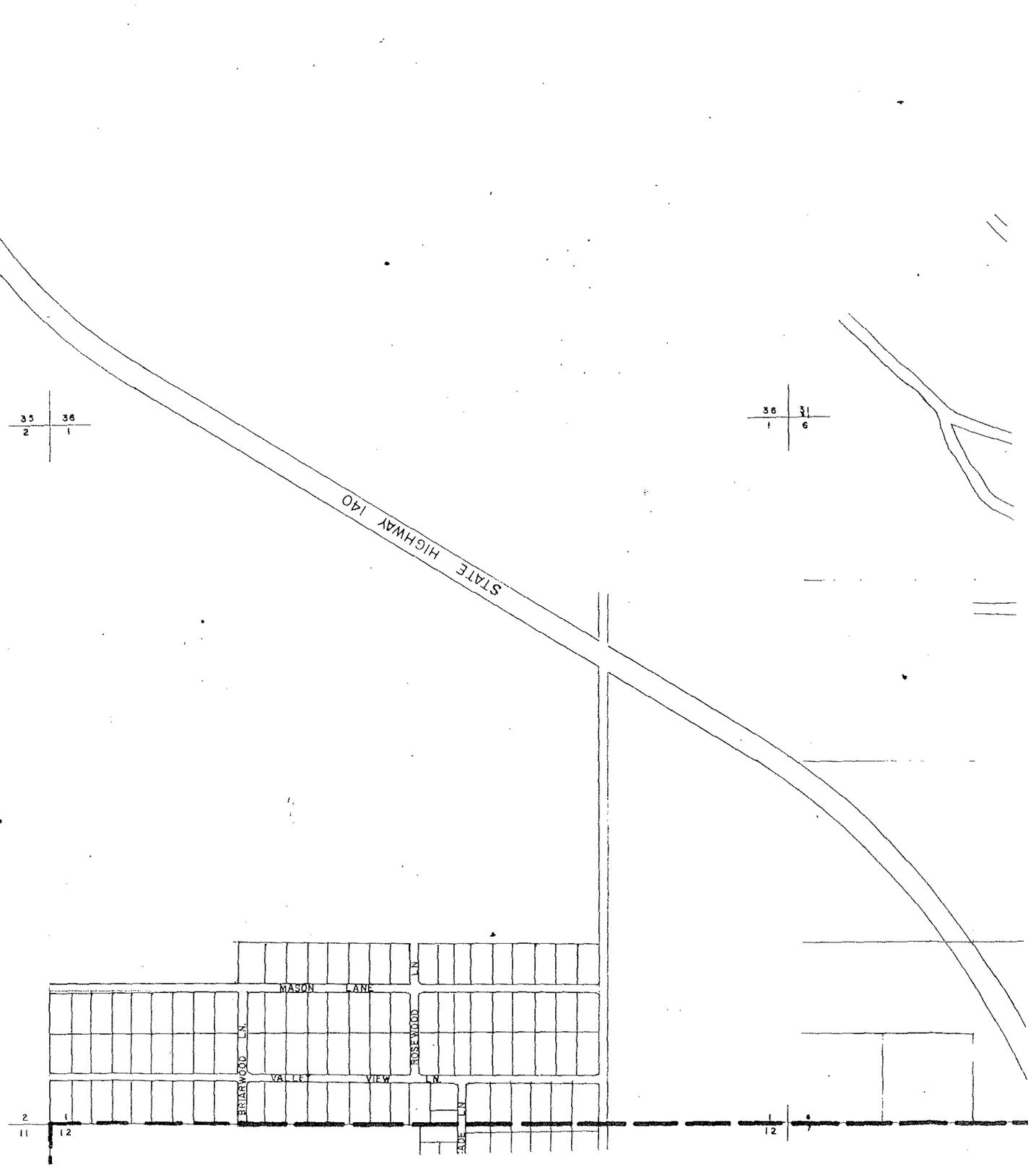
Respectfully submitted,

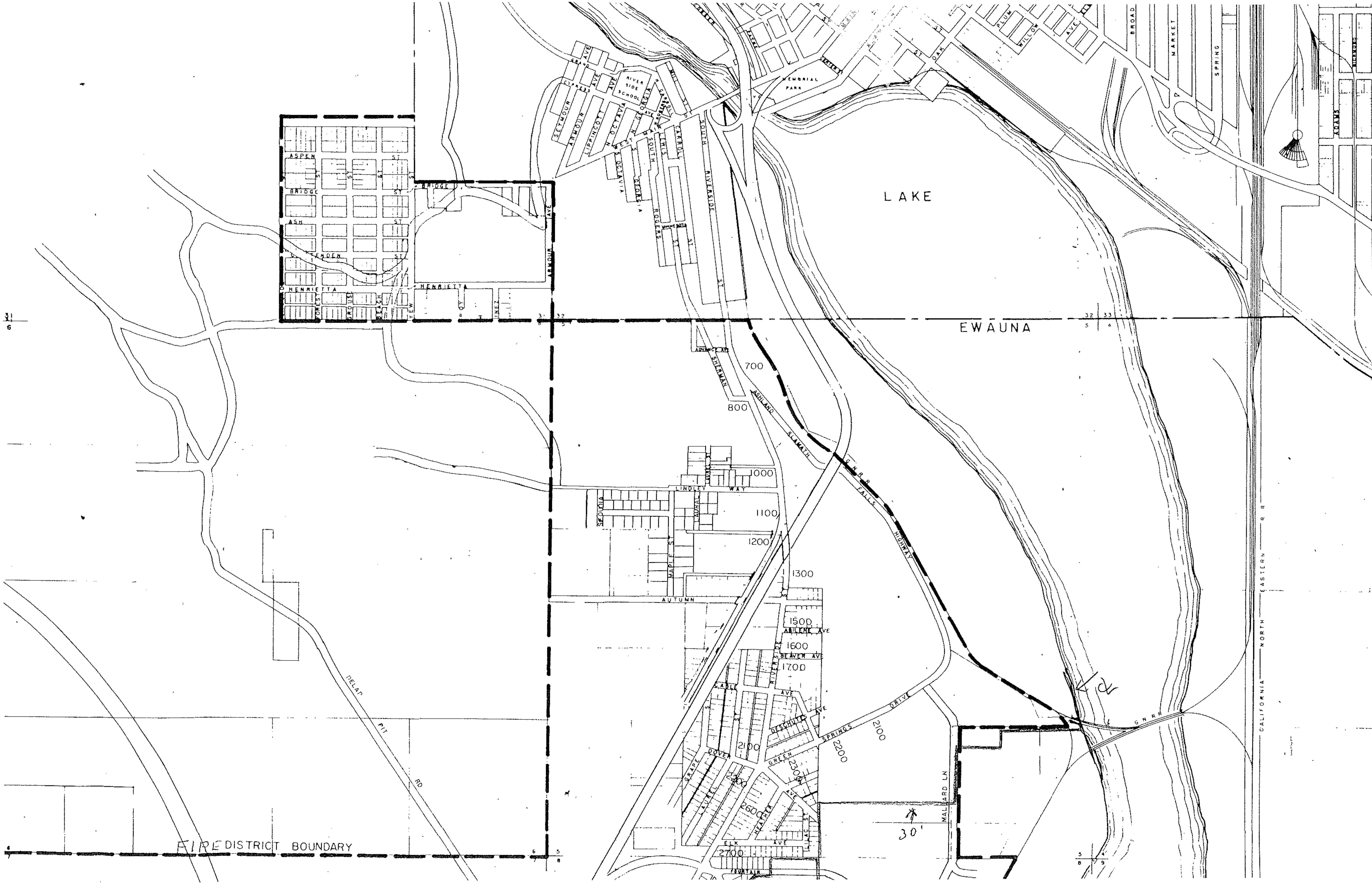
LINDSAY, NAHSTOLL, HART,
NEIL & WEIGLER

By _____
Carol A. Hewitt
Of Attorneys for
Louis Dreyfus Corporation

STEWART-LENOX
RURAL FIRE PROTECTION DISTRICT

NORTH
SCALE: 1" = 800'




LAKE
EWAUNA
FIRE DISTRICT BOUNDARY
ASPEN
BRIDGE
ASH
HENRIETTA
ARMOUR
SEYMOUR
GRAND AVE
RIVER SIDE SCHOOL
MEMORIAL PARK
SOUTH RIVERSIDE ST
ROGERS ST
OAK ST
PLUM
WILLOW AVE
BROAD
MARKET
SPRING
SHERMAN
ASHLAND KLAMATH FALLS HIGHWAY
G N R R
LINDLEY WAY
MAPLE ST
AUTUMN
ABILENE AVE
BEAVER AVE
DESCHUTES AVE
GREEN SPRINGS DRIVE
ELK AVE
MALLARD LN
DELAP PIT RD
CALIFORNIA NORTH EASTERN R R
700
800
1000
1100
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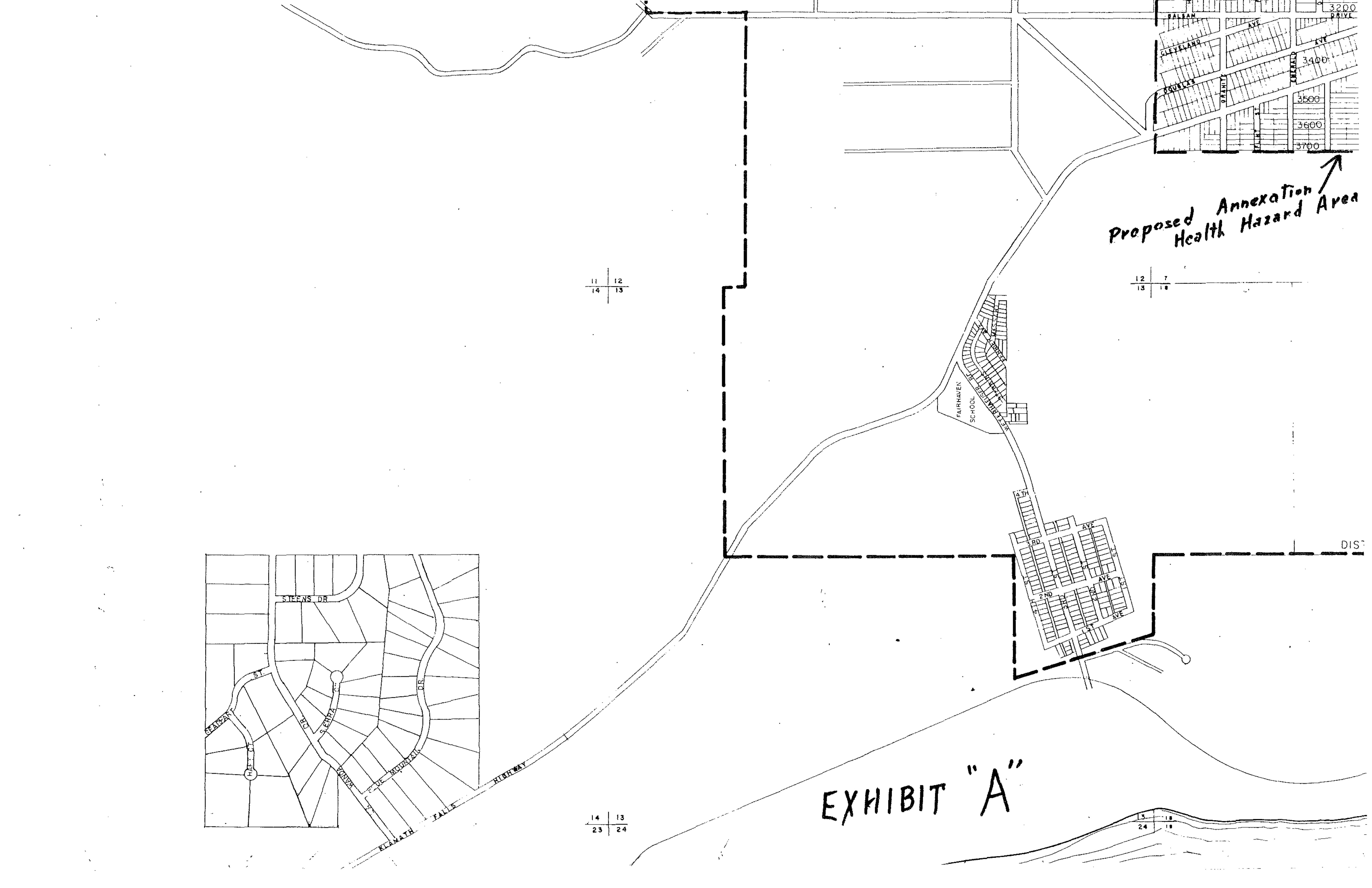
1300
1500
1600
1700
2100
2200
2300
2600
2700
30'


3200
DRIVE
BALSAM
CLEVELAND
AVE
DOUGLAS
GRANITE
3400
3500
3600
3700
Proposed Annexation
Health Hazard Area
11 12
14 13
12 7
13 18
FAIRHAVEN SCHOOL
4TH
3RD
AVE
2ND
AVE
1ST
AVE
DIST
STEENS DR
ST.
SIERRA
DR.
MOUNTAIN
KLAMATH FALLS HIGHWAY
14 13
23 24
13 18
24 19
EXHIBIT "A"

- 44 Acres
Annexed 1974

UNDEVELOPED

30' strip Annexed to Lake Ewana (City)
2 Mile Lake

Annexation
1th Hazard Area

DISTRICT BOUNDARY

KLAMATH FALLS HIGHWAY

ASHLAND

DRIVE

AVE

3200

3400

3500

3600

3700

F.D.

NORTHERN

RIVER

KLAMATH

LOST

PACIFIC

RAILROAD

SOUTHERN

COUNTY

DRAIN

HIGHWAY

CANAL

MANZANITA

BIRCH ST

CEDAR WAY

PINE ST

MAY

PARK PLACE

WILLOW ST

OAK ST

WAY

E. R. BASHAW
LAWYER
313 SOUTH IVY STREET
POST OFFICE BOX 1262
MEDFORD, OREGON 97501
TELEPHONE 779-0821

January 23, 1979

Mr. Joe Richards, Chairman
Ms. Grace Phinney, Vice Chairman
Ms. Jacqueline Hallock
Mr. Ronald Somers
Mr. Albert Densmore

Environmental Quality Commission
State of Oregon
1234 S. W. Morrison Street
Portland, Oregon 97205

SUBJECT: AGENDA ITEM NO. R-3; JANUARY 26, 1979 EQC MEETING IN BEHALF OF THE WESTSIDE SANITARY DISTRICT

In behalf of the Westside Sanitary District, and of the majority of voters who petitioned for consideration of the alternative plan, we respectfully and earnestly request that you defer action on the proposed approval of the city of Klamath Falls' sewerage plan for an area which comprises a portion of Westside Sanitary District and Stewart-Lennox Fire Protection District, for the brief time necessary to get a determination of some basic issues, and, in any event, to give us an opportunity to be heard briefly on the subject.

Our reasons follow.

On November 1, 1978 more than 51% (we believe, 58%) of the voters in the area filed a petition with the Health Division proposing an alternative plan. ORS 228.885 says:

> "(2) Upon receipt of such petition, the (health) division shall:
>
> a. Immediately forward copies of the petition. . . to the (Environmental Quality) Commission.
>
> b. Order further proceedings on the findings filed under ORS 222.888 stayed pending the review. . . under ORS 222.890. . . ." (Emphasis and parenthetical matter supplied)

ORS 222.890 then requires review and comparison of the voters' alternative plan with merits of the annexation proposal, to determine which is "best", "most expeditious", and "preferable".

Nevertheless, after November 1, 1978 the Health Division proceeded with these

1/25/79 - T T M. Downs

forced annexation proceedings. Sometime in January, 1979 it told these people for the first time that they did not comprise a majority of the registered voters in the area. However, the Health Division arrives at this by purporting to rely on a voter's list and an undated certificate of the county clerk. I am advised that the voter's list had not been purged for several years of voters who moved away and had not been brought up to date as to new registrations, as of the time of the undated certificate. In other words, petitioners tell me that about eighty of the voters on the clerk's list "relied" on by Health Division are not there. To belabor the point, Health Division includes voters that had left the area in arriving at its total "registered" voters.

There are at least three reasons why it would be a good idea to postpone this "certification" on the basis of the pending voters' petition and the pending LCDC proceedings.

1. The action taken by the Health Division since the voters petition, and the action which is requested of you at this point, are unauthorized by law and void, if the petition is sufficient. The question of whether the voters' petition was signed by a majority is being tested on writ of mandamus, and the results will be known soon.

2. It is evident that you have not had a chance to compare the plan advanced by the city of Klamath Falls with the alternative which is preferred by the people. The area-wide treatment facility for this sewage would be identical under either plan, whether there is annexation or not. If it is necessary to get some "federal money" for this area-wide project, it is doubtful whether the federal people care about the form or mode of government adopted by the people. There are reasons why these people prefer an alternative plan, which they have proposed, and the commission should have the benefit of a real comparison.

3. It is not fair that you be led to certify, and permit yourselves to be committed to, the city's plan in advance, when you may have to subsequently choose between it and the plan preferred by the residents.

4. The application of ORS 197.180 to these proceedings must be decided and will be decided soon. The purpose of the proceedings is not to provide sewers, but to require an unusual annexation. The area-wide planning issues are real and not imagined, as you can see by a reading of the Westside Sanitary District's amended petition for review. In addition, the Stewart-Lennox Fire District petition for intervention (which was granted) underlines some of the issues. I am enclosing a copy of it. The attorneys who represent you take a position that the Environmental Quality Commission is not bound to observe the state-wide planning goals and guidelines adopted under ORS Chapter 197. We do not know whether this really represents the policy of this commission. Even if it does, it would serve no useful purpose to rush into a "certification" on January 26, 1979 when the LCDC will decide its position on jurisdiction on February 8, 1979, thirteen days later. If your attorneys are correct, then you could take up the matter after February 8 without concerning yourself with state-wide planning goals in the matter of this annexation proceeding. If your attorneys are not correct, an early certification of the Klamath Falls plan in aid of the annexation might prove time consuming for all of us.

There are a few factors on which you should have some accurate information.

The area-wide sewerage treatment plan, developed by an engineering firm called HGE, Inc., contemplates combining the central treatment facilities of South Suburban District and Klamath Falls under any of seven alternate plans (Plan A, B, C, D, E, F or G). Plan G, supported by the sanitary district, is substantially the same as Plan B, the only difference being that the Westside Sanitary District sewage enters the combined central treatment system through the South Surburban lines under contract instead of through Klamath Falls lines by annexation. An outline of each of the seven general plans (A-G) would be helpful to you.

In 1977 the Westside Sanitary District negotiated with the city of Klamath Falls for sewage treatment. The city of Klamath Falls declined to negotiate with Westside Sanitary District on a contract basis except on its unique and unworkable "checkerboard" plan. Westside Sanitary District never terminated negotiations. However, some months later, with no other alternative, it negotiated an agreement to transport the sewage to the core facilities with, and through, the South Suburban Sanitary District lines.

After Klamath Falls' terms were generally found to be impossible, "health hazard petitions" were circulated in the subject area, with the view to compelling annexation. We are advised that the petitions were circulated by DEQ's Mr. Neil Adams. Such a petition required only eleven signers. ORS 222.905(2). In fact, no such petition is necessary for the board of health. ORS 222.905(1).

Stewart-Lennox is an old, established residential community, accustomed to using its own initiatives to solve its problems and without any ambition to urbanize the rather large undeveloped areas between it and Lake Ewauna. Klamath Falls is on the other side of Lake Ewauna. The proceeding now before the commission relates to the form and mode of government, which involves planning questions of substantive nature, and not the question of whether the people will have a sanitary sewer.

These people in Stewart-Lennox were encouraged by DEQ representatives to form a sanitary district and did so in 1975, adopting a tax base. In April, 1977 the Department of Environmental Quality decided, once and for all, without the benefit of the area-wide engineering study then in progress, that the area must become part of the city of Klamath Falls. The people have the impression that this administrative agency became irrevocably committed to this political alternative, which would not only dismantle a fire district and a sanitary district, which both have public support, but would have serious urban impacts by reason of the unusual configuration of the city limits. (Please note map on enclosed fire district's petition.)

Please give us a chance to settle these and other basic issues. It will not take long. At least, please give us an opportunity to be heard before you act on a proposed "certification". It is true that the city started your sixty days running by filing plans December 18, but it did so with full knowledge of the voters' petition and of the LCDC proceedings which were then pending.

Very truly yours,

E. R. Bashaw

cs

cc: Mr. Steven Couch, Attorney
Environmental Protection Agency
Health Division

ROBERT W. STRAUB
GOVERNOR

Environmental Quality Commission

522 S.W. 5th AVENUE, P.O. BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

January 19, 1979

Mr. Joe B. Richards, Chairman
Environmental Quality Commission
P. O. Box 10747
Eugene, Oregon 97401

Mr. William H. Young, Director
Department of Environmental Quality
P. O. Box 1760
Portland, Oregon 97207

Gentlemen:

Please accept my resignation as Hearing Officer for the Environmental Quality Commission. I have accepted a position as Administrative Law Judge with the Oregon Worker's Compensation Board. They would like me to start on February 1, 1979.

My new employer is giving me leeway to return to DEQ to wrap up unfinished business. I will discuss specific arrangements with Bill Young in the next few days.

I will always appreciate having worked for the Commission and the Department. If I can be of any assistance to you in the future, please let me know.

Sincerely,

Peter W. McSwain

Peter W. McSwain
Hearing Officer

PWM:jas

cc: Thelma Hetrick

RONALD M. SOMERS
ATTORNEY AT LAW
106 E. FOURTH STREET
THE DALLES, OREGON
97058

P. O. BOX 618
PHONE 296-2181

January 9, 1979

Mr. Richard W. Miller
Attorney at Law
1404 Standard Plaza
Portland , Oregon 97204

RE: Rough and Ready Lumber Co.

Dear Mr. Miller:

I have reviewed your letter of January 5, 1979, a copy of which I am enclosing for the benefit of the other members on the Commission. Your argument that your facility will qualify for the kilns under 468.155(1)(c) does not convince me.

The definitions as set forth in 168.155 control what the purpose that the legislature was trying to seek as well as their policy as set forth in 168.160. The generator which you allude to which the Commission certified produced generating capacity beyond the needs of the Mill it served and was using a waste product for the conversion of that power. Your steam boiler which was certified uses waste products for the generation of steam. If your conclusions were followed to their logical end the Commission could be asked to certify as a tax exempt organization or tax credits almost every major industrial facility in the State which was not the intent of the legislature. My opinion is that if the legislative attempt was so subverted, then perhaps they ought to wipe out the tax credits altogether which is as I pointed out to you at the meeting, there is strong sentiment that they be done away with at this point anyway.

The use of a new veneer dryer is not a new and novel use for steam; however, as you are aware I am but one voice of five.

Very truly yours,

Ronald M. Somers

RMS:mz

Enclosure

cc: William H. Young
Grace S. Phinney
Jacklyn L. Hallock
Albert H. Densmore

STATE OF OREGON

INTEROFFICE MEMO

ENVIRONMENTAL QUALITY DEPT. 229-5397 TELEPHONE

TO: W. H. Young

DATE: January 25, 1979

FROM: E. J. Weathersbee

SUBJECT: AQ - Indirect Source Rules

Indirect source rules have two main thrusts:

1. Regulating individual projects to mitigate emissions.

2. Encourage and/or require development of Traffic Circulation and Parking Plans in designated areas as a means of attaining/ maintaining AQ standards.

To date the Department has concentrated on the individual project review and permit issuance because of lack of funding and other conditions which were not conducive to plan development.

Now, funding is available, local lead agencies are designated and TCM's are being developed under Clean Air Act mandates. This planning is going forward with inadequate Department participation due to lack of staff.

The Air Quality Division would like EQC consideration of the following:

1. Designate in accordance with the present rules, specific areas projected to need TC&P Plans to attain/maintain standards and proceed to develop schedules and programs for preparing, adopting and implementing such plans with appropriate local agencies.

2. Amend the present rules to allow the Department to suspend individual project review and permit requirements for designated areas for which TC&P Plans are being developed and implemented in accordance with an approved schedule and program.

ENVIRONMENTAL QUALITY COMMISSION

BREAKFAST AGENDA

JANUARY 26, 1979

1.	SEWAGE WORKS CONSTRUCTION GRANTS - STATUS REPORT ON FEDERAL FUNDING	(SAWYER)
2.	DOUGLAS COUNTY - STATUS REPORT ON SUBSURFACE PROGRAM	(BOLTON)
3.	LOG HANDLING IN COOS BAY - STATUS REPORT	(BOLTON)
4.	AIR QUALITY TRENDS IN OREGON 1970-1977	(WEATHERSBEE)
5.	AGATE BEACH BLASTING	(WEATHERSBEE)
6.	DATE & LOCATION OF MARCH & APRIL EQC MEETINGS MARCH 30 - SALEM OR ALBANY APRIL 27 - PORTLAND	(YOUNG)
7.	FIELD BURNING RULES	(WEATHERSBEE)
8.	INDIRECT SOURCE RULES	(WEATHERSBEE)
9.	PORTLAND OPEN BURNING STATUS REPORT	(WEATHERSBEE)
10.	PETER MCSWAIN'S RESIGNATION	(YOUNG)

STATE OF OREGON

INTEROFFICE MEMO

ENVIRONMENTAL QUALITY DEPT. 229-5397 TELEPHONE

TO: W. H. Young

DATE: January 25, 1979

FROM: E. J. Weathersbee

SUBJECT: Noise - Yaquina Head Quarries (Complaints alleging destruction of Yaquina Head and noise rules violations by blasting)

12/7/78 Noise survey performed.

No violation could be documented. Wind gusts and heavy gravel trucks bounding on Highway 101 had contributed to false readings. Reading of 102 dB peak impulse. No blast sound was heard, but we saw dust rise in the quarry.

12/17/78 Penelope Hull letter said blasts had been kept to low volume until blasts of 12/9 and 12/15/78. cc: to Joe Richards

12/21/78 Steve Desmond, DEQ Tillamook Office, checked blast records of Yaquina Head Quarries. They didn't blast at times indicated by Ms. Hull.

12/26/78 Joe Richard's letter asking for detailed discussion of Yaquina Head blasting at January breakfast meeting.

12/28/78 WHY letter informing Ms. Hull that staff investigations had concluded that quarry blast had been kept to acceptable levels. Department did not intend to conduct lengthy monitoring. Requested Ms. Hull to let us know of further problems. cc: Joe Richards

1/24/79 Gerry Wilson, Noise Technician, called Steve Desmond and Penelope Hull to get updated status report. Steve Desmond has continued to observe the situation; quarry blasting has apparently proceeded without noise problem. Thinks previous reported loud blasts may have been caused by logging blasting. Will continue to observe.

Ms. Hull has experienced no further noise problem from quarry blasts and appreciates the Department's follow-up on this matter.

Department of Environmental Quality

522 S.W. 5th AVENUE, P.O. BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5373

MEMORANDUM

To: Environmental Quality Commission

From: Water Quality and Regional Operations

Subject: Log Handling in Coos Bay

Breakfast Meeting January 26, 1979

1. In December 1978 the Department completed a study to determine if the grounding of log rafts on the mud flats in Coos Bay affected the kinds and numbers of organisms and if there was damage to the biological productivity in that area.

2. The study report has been submitted to firms in the area and other interested parties.

3. On January 11, 1979, an informational meeting was held in Coos Bay to review the study.

4. Because damage was shown, the Department staff is discussing methods for control of log storage in the Bay with the industries affected and attempts are being made to identify transitional water sites.

5. DEQ is proposing to bring this before the Commission in March or April 1979 with recommended action.

FMB:hk
1-25-79

ROBERT W. STRAUB
GOVERNOR

Department of Environmental Quality

522 S.W. 5th AVENUE, P.O. BOX 1760, PORTLAND, OREGON 97207

January 25, 1979

The Honorable Jack Ripper, Co-Chairman
The Honorable Jeff L. Gilmour, Co-Chairman
Joint Committee on Ways and Means
115 State Capitol
Salem, Oregon 97310

Gentlemen:

At the November 14, 1978, meeting of the Emergency Board, the Department of Environmental Quality (DEQ) received authorization to establish three positions to conduct the subsurface sewage disposal permit program in Douglas County until June 30, 1979. This was approved on the basis that the Department would continue negotiations with the county and report the result to the Joint Committee on Ways and Means by no later than February 1, 1979. This is a status report as requested.

BACKGROUND

In August and September of 1978, the Douglas County Commissioners issued three subsurface sewage permits that did not conform to the Environmental Quality Commission (EQC) adopted rules. As a result of that action, DEQ terminated the contract that allowed the county to administer the subsurface program. Since September 11, the Department has operated the program in Douglas County. The county has filed suit in Circuit Court related to this action. Those cases are still pending.

AGENCY ACTION

On December 5, 1978, appropriate Department staff and I met with the Douglas County Commissioners. A number of items were discussed regarding the county re-assuming the program. The county felt that two major problem areas needed to be reviewed.

1. The Department needed to review the subsurface rules and propose changes which could make the program operate smoother.
2. The county wishes to develop a structure for an arbitration board which would rule on conflicts of subsurface sewage disposal permits. DEQ is seeking legal opinion on this proposal.

On January 19, 1979, DEQ staff again met with the County Commissioners, including the one new Commissioner, to review these proposed rule changes. Commissioners from other counties attended that meeting (Klamath, Coos and Lincoln). Attached is a copy of conditions that Douglas County feels need to be addressed before they will consider renewing the contract.

During the meeting, one county commissioner added more conditions: rotation of DEQ field staff and relaxing of the rules which use soils as design criteria for systems.

The DEQ agreed to respond to the county's proposed conditions by February 1, 1979. That review is underway at this time.

At this time the DEQ is proposing to the Environmental Quality Commission temporary rules which will allow a new type of alternative systems (evapotranspiration-absorption). This will be applicable primarily in Jackson County or areas of low rainfall not generally occurring in Douglas County.

An advisory rule committee was formed and the Commission will authorize a hearing in March, 1979, with possible adoption in April of rule amendments which will allow improved operation of the program in regard to the following:

1. Bedroom definitions.
2. Connection to an existing system.
3. Hardship connections.

NEXT ACTION

The DEQ is continuing negotiations with the county. At the meeting on January 19, one commissioner stated that, even if DEQ meets the conditions that they have proposed, they are not sure they want to contract with DEQ. If an agreement is not close to acceptance by the time the Department's budget is before the Subcommittee of Ways and Means, we will report again the status and propose measures for serving the citizens of Douglas County past June 30, 1979.

Sincerely,

WILLIAM H. YOUNG
Director

/ahe
Enclosures

cc: Pat Amedo, Assistant to the Governor

DOUGLAS COUNTY

BOARD OF COMMISSIONERS

PAUL MAKINSON JOHN T. TRUETT W. S. VIAN

COURTHOUSE ROSEBURG, OR 97470 503/672-3311

DEPARTMENT OF ENVIRONMENTAL QUALITY MEETING

January 19, 1979

The three conditions we must have if Douglas County is to take the sanitation program back from D.E.Q. are as follows:

1. We must have an Arbitration Board composed of one D.E.Q. representative, one Board of Commissioners member, and one "outside" soil scientist or engineer agreed to by the other two. + sanitarians

2. The human aspect in all hardship and aged cases MUST be considered and given some leeway.

3. The bedroom designation must be changed in regard to drainfield size. As it now stands, there can be a dozen people sleeping in each bedroom, or there can be two people living in a four-bedroom home.

2419 Hillcrest Road
Medford, Oregon

January 24, 1979

Mr. Joe Richards
Chairman
Environmental Quality Commission
P.O. Box 10747
Eugene, Oregon 97401

RE: OFFSET POLICY

Dear Chairman Richards,

I am writing to you regarding the Offset Policy for industry in Jackson County as recommended by an 11-4 vote of the Medford-Ashland Air Quality Advisory Committee.

As a representativeof the public-at-large and as Communications Chairman, much of my time is spent talking with the public and hearing their very real concerns about our worsening air quality. Many calls are received weekly asking me why more is not being done to prevent continued deterioration of our airshed. With compliance dates far off and controls not yet on many industrial emission sources the Offset Policy is all we have to protect the airshed until implementation of controls is completed and compliance reached. In 1977 our Air Quality Maintenance Area chalked up 256 recorded [illegible] violations as compared with Portland's 90 total for the year. We have not fared any better for 1978, statistics which are just now being compiled. I urge you and your commission to help us in our two year struggle to respond to public demand for cleaner air.

Without the Offset Policy, industrial growth will continue with no protection to the air as the more lenient federal offset policy would then apply and all sources would be exempt under 100T per year. Our Offset Rule tailored for the unique conditions of this valley (no prevailing winds and 90% of all mornings experiencing temperature inversions due to bowl shape and surrounding high mountains)would only allow 5T per year emitted before an offset is needed.

Thank you for your attention to my concern and that of hundreds of Jackson County residents who have contacted me.

Sincerely yours,

Patricia P. Kuhn

Patricia P. Kuhn
Representative of public-at-larg
Medford-Ashland Air Quality
Advisory Committee

pk

Jackson County Oregon
COUNTY COURTHOUSE / MEDFORD, OREGON 97501

BOARD OF
COUNTY COMMISSIONERS
Commissioners Office 776-7231

January 25, 1979

Mr. Joe Richards, Chairman
Environmental Quality Commission
P.O. Box 10747
Eugene, OR 97401

Dear Chairman Richards and Members of the Commission:

As the Commission understands, the Medford-Ashland airshed has unique meterological conditions. Between 1970 and 1977, the primary standard for total suspended particulates was usually violated; the first analysis of the 1978 data appears to confirm a particulate level again in excess of 80mg/m^3. Your own staff is concerned that the adopted particulate control strategy is insufficient to bring the Medford-Ashland area into compliance with the federal primary standard (75mg/m^3). The long-term trend is for increased particulate and more air quality problems, rather than improvement.

Concerning oxidants, in 1977 Medford had 40 days of standard violation; this is nearly equal to Portland, and our airshed traps emissions and encourages the buildup of photochemical oxidant precursors. This area has no strategies to control mobile sources. It is urgent to maintain, not increase, allowable oxidant precursors.

The local Air Quality Advisory Committee reviewed growth control mechanisms throughout 1978. The outcome of the Committee's study and discussion was a vote for an offset policy as being the fairest method of allowing continued growth in pollution sources. Why should existing industries bear the costs for pollution controls in order to provide airshed for new growth?

It is the County's position that a delay would be a step in the wrong direction; it would lead to more drastic, costly reductions at some future time, placing large enterprises at an economic advantage; it would increase health risks for numerous County residents; it would increase federal violations and thus threaten continued funding opportunities; it would represent a setback for the entire State which is struggling to manage its development and maintain its livability.

The Board of Commissioners respectfully urges your immediate adoption of the offset policy.

Sincerely,

JACKSON COUNTY BOARD OF COMMISSIONERS

Carol N. Doty
Chairwoman

CND/dmg

cc: Al Densmore, Mayor, City of Medford

ROBERT W. STRAUB
GOVERNOR

Environmental Quality Commission

POST OFFICE BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

January 23, 1979

COPY

The Honorable Lenn Hannon
Co-Chairman
Legislative Committee on Trade and
Economic Development
Room H197, State Capitol Building
Salem, Oreogn 97310

RE: Medford AQMA Emission Offset Rule

Dear Senator Hannon:

Thank you for your letter of January 18, 1979.

I appreciate your concern about the economic effect of the proposed rule. As you know, failure to enact any offset rule could also have serious adverse effect on the local economy.

You and I may have had some misunderstanding in our phone conversation last week. I informed you that I was certain the other members would be willing to consider your Committee's request to delay action. I did not agree that the EQC would delay taking action on the proposed change. I am pleased that we had the opportunity to clarify that matter this morning by telephone.

At the EQC meeting this Friday, the Commission will address the consequences of further delay for up to 90 days in addressing the offset issue. You advised me in our phone conversation today that a representative of your Committee will likely be present at 11:30 a.m. at the EQC meeting.

Very truly yours,

JOE B. RICHARDS

JOE B. RICHARDS

JBR:lmm

cc: Mr. Wm. H. Young, Director
Commission members

Bill Young

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DATE: 1-25-79

SUBJECT: Legislative Review of SIPs

FROM: Norm Edmisten Norm

TO: Jack Weathersbee

In response to the Resolution by the Legislative Committee on Trade and Economic Development, I made inquiry as to similar circumstances elsewhere in the U.S.

There are at least 6 states that have provisions for legislative review of SIP submittals to EPA. The states I have been able to identify are:

Connecticut	Indiana
Michigan	Ohio
Illinois	Wisconsin

The legislature review provisions are addressed in the Administrative Procedures Act of the respective state. I suspect this or similar provisions are much wider spread than I was able to identify. It has developed as a problem in Region V (Chicago) because the states are claiming delays in submittals due to the extra time required for legislative review.

In none of the states could the legislature make substantive change to the state agency adopted SIP but some states could scuttle the plan.

The legislative review was, in each case, limited to review on conformance to the agency's legal authority and adherence to administrative procedures.

It appears that this review authority has been in existence for several years but is coming to the surface because of controversies and sensitivities.

Department of Environmental Quality

522 S.W. 5th AVENUE, P.O. BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5373

MEMORANDUM

To: Environmental Quality Commission

From: Water Quality and Regional Operations

Subject: Log Handling in Coos Bay

Breakfast Meeting January 26, 1979

1. In December 1978 the Department completed a study to determine if the grounding of log rafts on the mud flats in Coos Bay affected the kinds and numbers of organisms and if there was damage to the biological productivity in that area.

2. The study report has been submitted to firms in the area and other interested parties.

3. On January 11, 1979, an informational meeting was held in Coos Bay to review the study.

4. Because damage was shown, the Department staff is discussing methods for control of log storage in the Bay with the industries affected and attempts are being made to identify transitional water sites.

5. DEQ is proposing to bring this before the Commission in March or April 1979 with recommended action.

FMB:hk
1-25-79

STATE OF OREGON

INTEROFFICE MEMO

ENVIRONMENTAL QUALITY DEPT. 229-5397 TELEPHONE

TO: W. H. Young

DATE: January 25, 1979

FROM: E. J. Weathersbee

SUBJECT: Noise - Yaquina Head Quarries (Complaints alleging destruction of Yaquina Head and noise rules violations by blasting)

12/7/78 Noise survey performed.

No violation could be documented. Wind gusts and heavy gravel trucks bounding on Highway 101 had contributed to false readings. Reading of 102 dB peak impulse. No blast sound was heard, but we saw dust rise in the quarry.

12/17/78 Penelope Hull letter said blasts had been kept to low volume until blasts of 12/9 and 12/15/78. cc: to Joe Richards

12/21/78 Steve Desmond, DEQ Tillamook Office, checked blast records of Yaquina Head Quarries. They didn't blast at times indicated by Ms. Hull.

12/26/78 Joe Richard's letter asking for detailed discussion of Yaquina Head blasting at January breakfast meeting.

12/28/78 WHY letter informing Ms. Hull that staff investigations had concluded that quarry blast had been kept to acceptable levels. Department did not intend to conduct lengthy monitoring. Requested Ms. Hull to let us know of further problems. cc: Joe Richards

1/24/79 Gerry Wilson, Noise Technician, called Steve Desmond and Penelope Hull to get updated status report. Steve Desmond has continued to observe the situation; quarry blasting has apparently proceeded without noise problem. Thinks previous reported loud blasts may have been caused by logging blasting. Will continue to observe.

Ms. Hull has experienced no further noise problem from quarry blasts and appreciates the Department's follow-up on this matter.

STATE OF OREGON

INTEROFFICE MEMO

ENVIRONMENTAL QUALITY DEPT. 229-5397 TELEPHONE

TO: W. H. Young

DATE: January 25, 1979

FROM: E. J. Weathersbee

SUBJECT: AQ - Field Burning Smoke Management Rules (Submittal as SIP Revision)

EQC adopted revised rules at the December, 1978 meeting and directed the Department to submit rules to EPA, but to withhold action as a SIP Revision until complete SIP package is submitted.

Objective for withholding action was to buy time to try to reach agreement with seed growers, City of Eugene and EPA on minimum acceptable inclusion of Field Burning Smoke Management Plan in SIP.

Agreement does not appear imminent. EPA wants enforceable strategy for assuring that field burning smoke will not contribute to standards violations. Seed growers want field burning either excluded entirely from SIP or only generally referred to in the SIP as is the case with slash burning. City of Eugene wants to maintain acreage limitations unless and until an acceptable alternative or enforceable control strategy can be substituted.

The Department needs to take some action at this time to get 50,000 acre limit out of present SIP prior to next field burning season.

Possible Alternatives:

1. Submit rules as adopted with 180,000 acreage limitation and ask EPA to promulgate as SIP Revision.

2. Submit rules to EPA (except for acreage limitation sections) and ask EPA to approve as SIP Revision.

    a. Would require public hearing.

    b. City of Eugene would object.

    c. May not be able to convince EPA that Smoke Management Program without acreage limit could assure against standards violation.

3. Modify rule to provide for acreage increase above 180,000 if certain air quality criteria are met.

ROBERT W. STRAUB
GOVERNOR

Department of Environmental Quality

522 S.W. 5th AVENUE, P.O. BOX 1760, PORTLAND, OREGON 97207

January 25, 1979

The Honorable Jack Ripper, Co-Chairman
The Honorable Jeff L. Gilmour, Co-Chairman
Joint Committee on Ways and Means
115 State Capitol
Salem, Oregon 97310

Gentlemen:

At the November 14, 1978, meeting of the Emergency Board, the Department of Environmental Quality (DEQ) received authorization to establish three positions to conduct the subsurface sewage disposal permit program in Douglas County until June 30, 1979. This was approved on the basis that the Department would continue negotiations with the county and report the result to the Joint Committee on Ways and Means by no later than February 1, 1979. This is a status report as requested.

BACKGROUND

In August and September of 1978, the Douglas County Commissioners issued three subsurface sewage permits that did not conform to the Environmental Quality Commission (EQC) adopted rules. As a result of that action, DEQ terminated the contract that allowed the county to administer the subsurface program. Since September 11, the Department has operated the program in Douglas County. The county has filed suit in Circuit Court related to this action. Those cases are still pending.

AGENCY ACTION

On December 5, 1978, appropriate Department staff and I met with the Douglas County Commissioners. A number of items were discussed regarding the county re-assuming the program. The county felt that two major problem areas needed to be reviewed.

1. The Department needed to review the subsurface rules and propose changes which could make the program operate smoother.
2. The county wishes to develop a structure for an arbitration board which would rule on conflicts of subsurface sewage disposal permits. DEQ is seeking legal opinion on this proposal.

On January 19, 1979, DEQ staff again met with the County Commissioners, including the one new Commissioner, to review these proposed rule changes. Commissioners from other counties attended that meeting (Klamath, Coos and Lincoln). Attached is a copy of conditions that Douglas County feels need to be addressed before they will consider renewing the contract.

During the meeting, one county commissioner added more conditions: rotation of DEQ field staff and relaxing of the rules which use soils as design criteria for systems.

The DEQ agreed to respond to the county's proposed conditions by February 1, 1979. That review is underway at this time.

At this time the DEQ is proposing to the Environmental Quality Commission temporary rules which will allow a new type of alternative systems (evapotranspiration-absorption). This will be applicable primarily in Jackson County or areas of low rainfall not generally occurring in Douglas County.

An advisory rule committee was formed and the Commission will authorize a hearing in March, 1979, with possible adoption in April of rule amendments which will allow improved operation of the program in regard to the following:

1. Bedroom definitions.
2. Connection to an existing system.
3. Hardship connections.

NEXT ACTION

The DEQ is continuing negotiations with the county. At the meeting on January 19, one commissioner stated that, even if DEQ meets the conditions that they have proposed, they are not sure they want to contract with DEQ. If an agreement is not close to acceptance by the time the Department's budget is before the Subcommittee of Ways and Means, we will report again the status and propose measures for serving the citizens of Douglas County past June 30, 1979.

Sincerely,

WILLIAM H. YOUNG
Director

/ahe
Enclosures

cc: Pat Amedo, Assistant to the Governor

DOUGLAS COUNTY

BOARD OF COMMISSIONERS

PAUL MAKINSON JOHN T. TRUETT W. S. VIAN

COURTHOUSE ROSEBURG, OR 97470 503/672-3311

DEPARTMENT OF ENVIRONMENTAL QUALITY MEETING

January 19, 1979

The three conditions we must have if Douglas County is to take the sanitation program back from D.E.Q. are as follows:

1. We must have an Arbitration Board composed of one D.E.Q. representative, one Board of Commissioners member, and one "outside" soil scientist or engineer agreed to by the other two. + sanitarian

2. The human aspect in all hardship and aged cases MUST be considered and given some leeway.

3. The bedroom designation must be changed in regard to drainfield size. As it now stands, there can be a dozen people sleeping in each bedroom, or there can be two people living in a four-bedroom home.

R(3)

E. R. BASHAW
LAWYER
313 SOUTH IVY STREET
POST OFFICE BOX 1262
MEDFORD, OREGON 97501
TELEPHONE 779-0821

JAN 29 1979

January 23, 1979

Mr. Joe Richards, Chairman
Ms. Grace Phinney, Vice Chairman
Ms. Jacqueline Hallock
Mr. Ronald Somers
Mr. Albert Densmore

Environmental Quality Commission
State of Oregon
1234 S. W. Morrison Street
Portland, Oregon 97205

SUBJECT: AGENDA ITEM NO. R-3; JANUARY 26, 1979 EQC MEETING IN BEHALF OF THE WESTSIDE SANITARY DISTRICT

In behalf of the Westside Sanitary District, and of the majority of voters who petitioned for consideration of the alternative plan, we respectfully and earnestly request that you defer action on the proposed approval of the city of Klamath Falls' sewerage plan for an area which comprises a portion of Westside Sanitary District and Stewart-Lennox Fire Protection District, for the brief time necessary to get a determination of some basic issues, and, in any event, to give us an opportunity to be heard briefly on the subject.

Our reasons follow.

On November 1, 1978 more than 51% (we believe, 58%) of the voters in the area filed a petition with the Health Division proposing an alternative plan. ORS 228.885 says:

> "(2) Upon receipt of such petition, the (health) division shall:
>
> a. Immediately forward copies of the petition. . . to the (Environmental Quality) Commission.
>
> b. Order further proceedings on the findings filed under ORS 222.888 stayed pending the review. . . under ORS 222.890. . ." (Emphasis and parenthetical matter supplied)

ORS 222.890 then requires review and comparison of the voters' alternative plan with merits of the annexation proposal, to determine which is "best", "most expeditious", and "preferable".

Nevertheless, after November 1, 1978 the Health Division proceeded with these

forced annexation proceedings. Sometime in January, 1979 it told these people for the first time that they did not comprise a majority of the registered voters in the area. However, the Health Division arrives at this by purporting to rely on a voter's list and an undated certificate of the county clerk. I am advised that the voter's list had not been purged for several years of voters who moved away and had not been brought up to date as to new registrations, as of the time of the undated certificate. In other words, petitioners tell me that about eighty of the voters on the clerk's list "relied" on by Health Division are not there. To belabor the point, Health Division includes voters that had left the area in arriving at its total "registered" voters.

There are at least three reasons why it would be a good idea to postpone this "certification" on the basis of the pending voters' petition and the pending LCDC proceedings.

1. The action taken by the Health Division since the voters petition, and the action which is requested of you at this point, are unauthorized by law and void, if the petition is sufficient. The question of whether the voters' petition was signed by a majority is being tested on writ of mandamus, and the results will be known soon.

2. It is evident that you have not had a chance to compare the plan advanced by the city of Klamath Falls with the alternative which is preferred by the people. The area-wide treatment facility for this sewage would be identical under either plan, whether there is annexation or not. If it is necessary to get some "federal money" for this area-wide project, it is doubtful whether the federal people care about the form or mode of government adopted by the people. There are reasons why these people prefer an alternative plan, which they have proposed, and the commission should have the benefit of a real comparison.

3. It is not fair that you be led to certify, and permit yourselves to be committed to, the city's plan in advance, when you may have to subsequently choose between it and the plan preferred by the residents.

4. The application of ORS 197.180 to these proceedings must be decided and will be decided soon. The purpose of the proceedings is not to provide sewers, but to require an unusual annexation. The area-wide planning issues are real and not imagined, as you can see by a reading of the Westside Sanitary District's amended petition for review. In addition, the Stewart-Lennox Fire District petition for intervention (which was granted) underlines some of the issues. I am enclosing a copy of it. The attorneys who represent you take a position that the Environmental Quality Commission is not bound to observe the state-wide planning goals and guidelines adopted under ORS Chapter 197. We do not know whether this really represents the policy of this commission. Even if it does, it would serve no useful purpose to rush into a "certification" on January 26, 1979 when the LCDC will decide its position on jurisdiction on February 8, 1979, thirteen days later. If your attorneys are correct, then you could take up the matter after February 8 without concerning yourself with state-wide planning goals in the matter of this annexation proceeding. If your attorneys are not correct, an early certification of the Klamath Falls plan in aid of the annexation might prove time consuming for all of us.

There are a few factors on which you should have some accurate information.

The area-wide sewerage treatment plan, developed by an engineering firm called HGE, Inc., contemplates combining the central treatment facilities of South Suburban District and Klamath Falls under any of seven alternate plans (Plan A, B, C, D, E, F or G). Plan G, supported by the sanitary district, is substantially the same as Plan B, the only difference being that the Westside Sanitary District sewage enters the combined central treatment system through the South Surburban lines under contract instead of through Klamath Falls lines by annexation. An outline of each of the seven general plans (A-G) would be helpful to you.

In 1977 the Westside Sanitary District negotiated with the city of Klamath Falls for sewage treatment. The city of Klamath Falls declined to negotiate with Westside Sanitary District on a contract basis except on its unique and unworkable "checkerboard" plan. Westside Sanitary District never terminated negotiations. However, some months later, with no other alternative, it negotiated an agreement to transport the sewage to the core facilities with, and through, the South Suburban Sanitary District lines.

After Klamath Falls' terms were generally found to be impossible, "health hazard petitions" were circulated in the subject area, with the view to compelling annexation. We are advised that the petitions were circulated by DEQ's Mr. Neil Adams. Such a petition required only eleven signers. ORS 222.905(2). In fact, no such petition is necessary for the board of health. ORS 222.905(1).

Stewart-Lennox is an old, established residential community, accustomed to using its own initiatives to solve its problems and without any ambition to urbanize the rather large undeveloped areas between it and Lake Ewauna. Klamath Falls is on the other side of Lake Ewauna. The proceeding now before the commission relates to the form and mode of government, which involves planning questions of substantive nature, and not the question of whether the people will have a sanitary sewer.

These people in Stewart-Lennox were encouraged by DEQ representatives to form a sanitary district and did so in 1975, adopting a tax base. In April, 1977 the Department of Environmental Quality decided, once and for all, without the benefit of the area-wide engineering study then in progress, that the area must become part of the city of Klamath Falls. The people have the impression that this administrative agency became irrevocably committed to this political alternative, which would not only dismantle a fire district and a sanitary district, which both have public support but would have serious urban impacts by reason of the unusual configuration of the city limits. (Please note map on enclosed fire district's petition.)

Please give us a chance to settle these and other basic issues. It will not take long. At least, please give us an opportunity to be heard before you act on a proposed "certification". It is true that the city started your sixty days running by filing plans December 18, but it did so with full knowledge of the voters' petition and of the LCDC proceedings which were then pending.

Very truly yours,

E. R. Bashaw

cs

cc: Mr. Steven Couch, Attorney
Environmental Protection Agency
Health Division

BEFORE THE LAND CONSERVATION AND

DEVELOPMENT COMMISSION OF THE STATE OF OREGON

WEST SIDE SANITARY DISTRICT, a special district in Klamath County, Oregon, Petitioner, vs. HEALTH DIVISION OF THE DEPARTMENT OF HUMAN RESOURCES OF THE STATE OF OREGON; KRISTINE GEBBIE, ASSISTANT DIRECTOR FOR HEALTH THEREOF; ENVIRONMENTAL QUALITY COMMISSION OF THE STATE OF OREGON; AND THE CITY OF KLAMATH FALLS, an incorporated city in Klamath County, Oregon, Respondents.	NO. 78-035 MOTION FOR INTERVENTION

Intervenor, STEWART-LENOX RURAL FIRE PROTECTION DISTRICT, alleges:

I

Intervenor is a special service district, organized and existing in Klamath County, Oregon, and has a tax base, and owns substantial amounts of equipment and property, and improvements designed and located, and employs volunteer personnel to provide fire protection to the area shown in attached Exhibit "A" which area includes the area described in the above described proceeding as the "Health Hazard" area, (outlined in green on the attached exhibit).

II

Intervenor furnishes good and sufficient fire protection to the alleged "health hazard" area and to many other areas within its boundaries, which areas require such protection in the interest of public safety. The "health hazard" area is an established community of many years duration and has been within intervenor's area of protection and taxation for many years.

III

If the "health hazard" area is annexed to the respondent city and withdrawn from the area of intervenor, this will impair and interfere with intervenor's financial ability to maintain fire protection for the remainder of the area it now protects. If the area is annexed to the respondent city and not withdrawn from the area of the intervenor, the residents of the area may be taxed doubly, by the city and by intervenor, for fire protection, which would be inequitable to them. The protection which the city could provide from its area would not be an adequate substitute for the protection of the residents of the area which they now provide for themselves, through their own fire protection district, intervenor herein, from the location of its facility, shown in the attached exhibit. For instance, the fire station and all equipment is located within the "health hazard" area. Also, the majority of the firefighters including the Fire Chief, Ass't Fire Chief, and two Captains live within the area. Furthermore, four of the District's Directors, who live within the area, would be forced to resign, according to the law (ORS 478.050) which stipulates that a Director has to be a voter or own land within the district.

IV

In ordering the city to proceed with involuntary annexation of the subject area, respondents did not give adequate consideration to any of the planning goals prescribed by law.

WHEREFORE, the intervenor requests that it be allowed to intervene on the side of the Petitioner (and of the residents who signed and filed the Voters' petition (Exhibit "C") of the Amended Petition for Review) and that the proceedings of respondents be held null and void.

Dated this Third day of January, 1979,

STEWART-LENOX RURAL FIRE PROTECTION DISTRICT BOARD OF DIRECTORS

By

William H. Homer — Chairman

Lyle Foulon — Director

Rose L. Mathews — Director

Dia M. Fredrick — Director

Charles E. Martin — Director

E. R. BASHAW
LAWYER
313 SOUTH IVY STREET
POST OFFICE BOX 1262
MEDFORD, OREGON 97501
TELEPHONE 779-0821

November 30, 1978

Ms. Kristine M. Gebbie
Assistant Director, Human Resources
Administrator, State Health Division
1400 S. W. 5th Avenue
Portland, Oregon 97201

Dear Ms. Gebbie:

This office represents the petitioners living in the area apparently contiguous to Klamath Falls, which is proposed to be withdrawn from the Westside Sanitary District and annexed to the city of Klamath Falls by involuntary annexation. I note that the petition was filed in your office at 9:15 A.M. on November 1, 1978.

Neither the statutes involved here, nor the regulations, provide any procedures or fix responsibility for deciding whether the petition was signed by the right number of people, so we will have to improvise. It would not be possible for the county clerk to certify that the registered voters who signed the petition comprised any particular percentage of the registered voters in the area described in your proceedings. That area is carved out of a precinct and therefore the residents are not segregated out in any official list in his office. We have the polling list print-outs, have compared the names on the petition with the list, and it is clear that the petition was signed by 58% of the registered voters and therefore calls the statute into operation.

We know that in the area described in your proceedings there were 293 registered voters residing at the time of the petition, which was circulated October 28-29. The people who certified the petition worked from the poll book for the precinct. Only residents of the area described by your agency signed, and 170 who signed were registered voters. During the short time the petition was circulated, it was not possible to see all the residents at home, but of all who were contacted, only one (I am advised) declined to sign the petition. The poll list existing at the time the petition was circulated listed people who had moved out of the area and also omitted nine who had moved in and who had registered. The nine are included in the 293 total.

It is doubtful that a ten-day extension would have served the purpose of extending the statutory period for filing such a petition.

Mr. Pearlman and I talked by telephone after my return to Medford and he suggested it would be proper to consider the matter at the time of the hearing

before the Environmental Quality Commission. Counsel for the commission is agreeable. This would be satisfactory from our point of view. You may prefer to give the matter more specific attention at this earlier state. In either event, we would be pleased to cooperate.

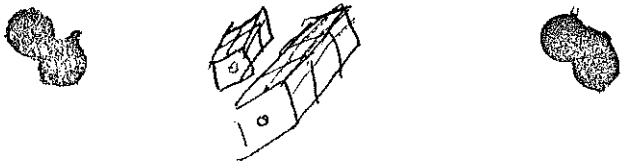
Please send this office a copy of your orders staying the involuntary annexation proceedings and referring the matter to the EQC.

Very truly yours,

E. R. Bashaw

cs

bcc: Mr. Steven Couch
Attorney At Law
220 Main St., Suite 1-D
Klamath Falls, OR 97601



December 21, 1978

Ms. Kristine M. Gebbie
Assistant Director, Human Resources
Administrator, State Health Division
1400 S. W. 5th Avenue
Portland, Oregon 97201

Dear Ms. Gebbie:

May I have a response to my letter of November 30, 1978?

I represent the petitioners who filed with you the petition under ORS 222.885 in the above matter, and there are quite a few of them. It would be more to your advantage to communicate with me than to be obliged to communicate with each of them.

If you have entered the orders required by ORS 222.885(2), please furnish me with a copy. If you have not done so, please tell me why, or what procedure, if any, you desire to follow. If you feel that this is a matter you should entrust to your attorney, please ask him or her to make response for you. If you did not receive my letter of November 30, 1978, attached is a photocopy of my file copy.

Very truly yours,

E. R. Bashaw

cs

Encl.
BCC: Mr. Steve Couch
220 Main St., Suite 1-D
Klamath Falls, Oregon 97601

STATE OF OREGON
LEGISLATIVE COMMITTEE ON TRADE
AND ECONOMIC DEVELOPMENT
ROOM H197, STATE CAPITOL BUILDING
SALEM, OREGON 97310
(503) 378-8811

January 18, 1979

Joe Richards
Chairman
Environmental Quality Commission
P.O. Box 10747
Eugene, Oregon 97440

Dear Mr. Richards:

This letter is to confirm our telephone conversation yesterday on the Emission Offset Rule being proposed for the Medford-Ashland area. As the Co-Chairmen for the Legislative Committee on Trade and Economic Development, we are vitally concerned about the economic stability and development of all Oregon communities. It is reassuring that the Environmental Quality Commission shares our concerns and is agreeing to delay taking action on the proposed administrative rule change.

Let us again reiterate the reasons why we have asked the Commission to postpone final action on the Emission Offset Rule.

First, the state's control strategy plan and the proposed offset rule are more stringent than that which has been suggested by the federal Environment Protection Agency.

Second, the offset requirements could seriously damage the economic base for the Medford-Ashland area and restrict both existing and future business expansion. In view of the potential economic impacts, and the fact that similar plans will be considered for the Eugene-Springfield and Portland areas, we feel that the Legislative Assembly should be involved by formally reviewing the implementation plan.

Thirdly, the proposed rule presents a major policy change from a privilege to pollute by permit to that of the pollution permit becoming an intangible property right that you can sell. The ramifications of this policy change should be evaluated by the Legislature before it is finalized by a state regulatory agency.

And finally, the most important reason for postponement is contained within the Environment Protection Agency's guidelines on preparing the implementation plan. Under the "Plan Requirements for Nonattainment Areas", Section 172, subsection (b) reads that:

> "The plan provisions required by subsection (a) shall...
> (9) evidence public, local government and State legislative involvement and consultation in accordance with Section 174 (relating to planning procedures...)"

This letter is to formally convey our desire to review the Oregon Clean Air Act Implementation Plan and the proposed Emission Offset Rule.

Once again, we appreciate the cooperation extended by the Commission by delaying your final action on the Emission Offset Rule. It is our intention to review this proposed rule in the near future. We will keep you fully apprised of the forthcoming meeting date.

Sincerely,

Senator Lenn Hannon
Co-Chairman

Representative Ed Stevenson
Co-Chairman

Attachment

JANUARY 17, 1979

RESOLUTION

Be It Resolved by the Legislative Committee on Trade and Economic Development:

(1) The Environmental Quality Commission is urged to postpone taking any action to adopt a Clean Air Act Implementation Plan for the Medford-Ashland Air Quality Maintanance Area until the Legislative Committee on Trade and Economic Development has the opportunity to investigate and evaluate the problems of air quality maintenance and Clean Air Act implementation in that area.

(2) The Environmental Quality Commission is further urged not to adopt any rules involving offsets for air pollutant emission sources in this state until the Legislative Committee on Trade and Economic Development has an opportunity to review the Oregon Clean Air Act Implementation Plan.

(3) The Environmental Quality Commission is further urged to refer all proposed Clean Air Act Implementation Plans for other air quality maintenance areas in this state to the Legislative Committee on Trade and Economic Development for review, prior to submission of those plans to the federal Environmental Protection Agency.

cc: Sawyer

Jan 79

Sunrise Village
Along the Deschutes River

2151 N. E. FIRST STREET, BEND, OREGON 97701

February 5, 1979

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
FEB 8 1979
OFFICE OF THE DIRECTOR

State of Oregon
Environmental Quality Commission
522 SW Fifth Street
P. O. Box 1760
Portland, Oregon 97207

Attention: The Commission and DEQ Director, William H. Young

Re: Sunrise Village
Deschutes County

Dear Commissioners:

On January 26, 1979 your honorable commission unanimously approved Sunrise Village's community sewer system provided the systems compatibility with Statewide Land Use Goals has been tested by the County, its design is approved by DEQ, and it is maintained and operated by a municipality.

These requirements appeared to be satisfactory to us as from the onset of our development we have recognized and respected the fundamental purposes they served and have strived to meet their ends.

Regretfully, we have just come to realize several problems associated with the forming of a sanitation district as a means to complying with the municipality requirement. These problems are as follows.

1. We hadn't expected regional DEQ manager, Mr. Dick Nichols, would work in opposition to EQC's rulings by continuing to encourage Deschutes County and the City of Bend to resist the formation of a district so as to cause us to acquiesce to his persistent position of having a sewer agreement with the City.

2. The City of Bend apparently dosen't favor special districts out of fear the districts will grow in size and compete with the City for State and Federal dollars.

3. Were it not for Mr. Nichol's position regarding a sewer agreement with the City (a position not supported by the commission)

the marketing of our development would not have been delayed since May 26, 1978. As it is , we've incurred great expense and a tightening market without any cash flow. An additional 100 plus days delay in marketing while a sanitation district is being formed would cause us further, more serious financial hardship.

It would now appear that at the January 26, 1979 hearing the Commission touched upon a satisfactory solution to these problems when it referenced the alternative to a municipality of our posting a $25,000. bond. The provisions of ORS454.425 bolsterd by our incorporated homeowners association with the resources, management and enforcement powers would equal if not exceed the same force and effect of a sanitation district while enabling us to make needed sales and dispensing with the Cities fears relative to special districts. Furthermore, we have a planned unit development subdivision improvement and maintenance agreement with Deschutes County which is a condition and covenant running with the land and binding upon the property wherein the County may perform by enforceable lien the improvement, maintenance and upkeep of the development should we fail to do so.

For these reasons we respectfully request our community sewer system be approved subject to the conditions set forth on January 26, 1979 with the exception of substituting the provisions of ORS 454.425 augmented by our homeowners association in place of the municipality requirement. In the event the system is acquired or its operation and maintenance is assumed by the County, City or a special district, the homeowners association will relinquish its responsibility for the system.

We are most grateful for your thoughtful consideration of our matter and hope it can be decided upon at or before your February hearing.

Very truly yours,

Tim Ward

Tim Ward
Vice President, Sunrise Village

CC: Ross Mather
Marty West
Gray, Fancher, Holmes and Hurley

E. R. BASHAW
LAWYER
313 SOUTH IVY STREET
POST OFFICE BOX 1262
MEDFORD, OREGON 97501
TELEPHONE 779-0821

January 23, 1979

Mr. Joe Richards, Chairman
Ms. Grace Phinney, Vice Chairman
Ms. Jacqueline Hallock
Mr. Ronald Somers
Mr. Albert Densmore

Environmental Quality Commission
State of Oregon
1234 S. W. Morrison Street
Portland, Oregon 97205

SUBJECT: AGENDA ITEM NO. R-3; JANUARY 26, 1979 EQC MEETING IN BEHALF OF THE WESTSIDE SANITARY DISTRICT

In behalf of the Westside Sanitary District, and of the majority of voters who petitioned for consideration of the alternative plan, we respectfully and earnestly request that you defer action on the proposed approval of the city of Klamath Falls' sewerage plan for an area which comprises a portion of Westside Sanitary District and Stewart-Lennox Fire Protection District, for the brief time necessary to get a determination of some basic issues, and, in any event, to give us an opportunity to be heard briefly on the subject.

Our reasons follow.

On November 1, 1978 more than 51% (we believe, 58%) of the voters in the area filed a petition with the Health Division proposing an alternative plan. ORS 228.885 says:

> "(2) Upon receipt of such petition, the (health) division shall:
>
> a. Immediately forward copies of the petition. . . to the (Environmental Quality) Commission.
>
> b. Order further proceedings on the findings filed under ORS 222.888 stayed pending the review. . . under ORS 222.890. . ." (Emphasis and parenthetical matter supplied)

ORS 222.890 then requires review and comparison of the voters' alternative plan with merits of the annexation proposal, to determine which is "best", "most expeditious", and "preferable".

Nevertheless, after November 1, 1978 the Health Division proceeded with these

forced annexation proceedings. Sometime in January, 1979 it told these people for the first time that they did not comprise a majority of the registered voters in the area. However, the Health Division arrives at this by purporting to rely on a voter's list and an undated certificate of the county clerk. I am advised that the voter's list had not been purged for several years of voters who moved away and had not been brought up to date as to new registrations, as of the time of the undated certificate. In other words, petitioners tell me that about eighty of the voters on the clerk's list "relied" on by Health Division are not there. To belabor the point, Health Division includes voters that had left the area in arriving at its total "registered" voters.

There are at least three reasons why it would be a good idea to postpone this "certification" on the basis of the pending voters' petition and the pending LCDC proceedings.

1. The action taken by the Health Division since the voters petition, and the action which is requested of you at this point, are unauthorized by law and void, if the petition is sufficient. The question of whether the voters' petition was signed by a majority is being tested on writ of mandamus, and the results will be known soon.

2. It is evident that you have not had a chance to compare the plan advanced by the city of Klamath Falls with the alternative which is preferred by the people. The area-wide treatment facility for this sewage would be identical under either plan, whether there is annexation or not. If it is necessary to get some "federal money" for this area-wide project, it is doubtful whether the federal people care about the form or mode of government adopted by the people. There are reasons why these people prefer an alternative plan, which they have proposed, and the commission should have the benefit of a real comparison.

3. It is not fair that you be led to certify, and permit yourselves to be committed to, the city's plan in advance, when you may have to subsequently choose between it and the plan preferred by the residents.

4. The application of ORS 197.180 to these proceedings must be decided and will be decided soon. The purpose of the proceedings is not to provide sewers, but to require an unusual annexation. The area-wide planning issues are real and not imagined, as you can see by a reading of the Westside Sanitary District's amended petition for review. In addition, the Stewart-Lennox Fire District petition for intervention (which was granted) underlines some of the issues. I am enclosing a copy of it. The attorneys who represent you take a position that the Environmental Quality Commission is not bound to observe the state-wide planning goals and guidelines adopted under ORS Chapter 197. We do not know whether this really represents the policy of this commission. Even if it does, it would serve no useful purpose to rush into a "certification" on January 26, 1979 when the LCDC will decide its position on jurisdiction on February 8, 1979, thirteen days later. If your attorneys are correct, then you could take up the matter after February 8 without concerning yourself with state-wide planning goals in the matter of this annexation proceeding. If your attorneys are not correct, an early certification of the Klamath Falls plan in aid of the annexation might prove time consuming for all of us.

There are a few factors on which you should have some accurate information.

The area-wide sewerage treatment plan, developed by an engineering firm called HGE, Inc., contemplates combining the central treatment facilities of South Suburban District and Klamath Falls under any of seven alternate plans (Plan A, B, C, D, E, F or G). Plan G, supported by the sanitary district, is substantially the same as Plan B, the only difference being that the Westside Sanitary District sewage enters the combined central treatment system through the South Surburban lines under contract instead of through Klamath Falls lines by annexation. An outline of each of the seven general plans (A-G) would be helpful to you.

In 1977 the Westside Sanitary District negotiated with the city of Klamath Falls for sewage treatment. The city of Klamath Falls declined to negotiate with Westside Sanitary District on a contract basis except on its unique and unworkable "checkerboard" plan. Westside Sanitary District never terminated negotiations. However, some months later, with no other alternative, it negotiated an agreement to transport the sewage to the core facilities with, and through, the South Suburban Sanitary District lines.

After Klamath Falls' terms were generally found to be impossible, "health hazard petitions" were circulated in the subject area, with the view to compelling annexation. We are advised that the petitions were circulated by DEQ's Mr. Neil Adams. Such a petition required only eleven signers. ORS 222.905(2). In fact, no such petition is necessary for the board of health. ORS 222.905(1).

Stewart-Lennox is an old, established residential community, accustomed to using its own initiatives to solve its problems and without any ambition to urbanize the rather large undeveloped areas between it and Lake Ewauna. Klamath Falls is on the other side of Lake Ewauna. The proceeding now before the commission relates to the form and mode of government, which involves planning questions of substantive nature, and not the question of whether the people will have a sanitary sewer.

These people in Stewart-Lennox were encouraged by DEQ representatives to form a sanitary district and did so in 1975, adopting a tax base. In April, 1977 the Department of Environmental Quality decided, once and for all, without the benefit of the area-wide engineering study then in progress, that the area must become part of the city of Klamath Falls. The people have the impression that this administrative agency became irrevocably committed to this political alternative, which would not only dismantle a fire district and a sanitary district, which both have public support, but would have serious urban impacts by reason of the unusual configuration of the city limits. (Please note map on enclosed fire district's petition.)

Please give us a chance to settle these and other basic issues. It will not take long. At least, please give us an opportunity to be heard before you act on a proposed "certification". It is true that the city started your sixty days running by filing plans December 18, but it did so with full knowledge of the voters' petition and of the LCDC proceedings which were then pending.

Very truly yours,

E. R. Bashaw

cs

cc: Mr. Steven Couch, Attorney
Environmental Protection Agency
Health Division

E. R. BASHAW
LAWYER
313 SOUTH IVY STREET
POST OFFICE BOX 1262
MEDFORD, OREGON 97501
TELEPHONE 779-0821

November 30, 1978

Ms. Kristine M. Gebbie
Assistant Director, Human Resources
Administrator, State Health Division
1400 S. W. 5th Avenue
Portland, Oregon 97201

Dear Ms. Gebbie:

This office represents the petitioners living in the area apparently contiguous to Klamath Falls, which is proposed to be withdrawn from the Westside Sanitary District and annexed to the city of Klamath Falls by involuntary annexation. I note that the petition was filed in your office at 9:15 A.M. on November 1, 1978.

Neither the statutes involved here, nor the regulations, provide any procedures or fix responsibility for deciding whether the petition was signed by the right number of people, so we will have to improvise. It would not be possible for the county clerk to certify that the registered voters who signed the petition comprised any particular percentage of the registered voters in the area described in your proceedings. That area is carved out of a precinct and therefore the residents are not segregated out in any official list in his office. We have the polling list print-outs, have compared the names on the petition with the list, and it is clear that the petition was signed by 58% of the registered voters and therefore calls the statute into operation.

We know that in the area described in your proceedings there were 293 registered voters residing at the time of the petition, which was circulated October 28-29. The people who certified the petition worked from the poll book for the precinct. Only residents of the area described by your agency signed, and 170 who signed were registered voters. During the short time the petition was circulated, it was not possible to see all the residents at home, but of all who were contacted, only one (I am advised) declined to sign the petition. The poll list existing at the time the petition was circulated listed people who had moved out of the area and also omitted nine who had moved in and who had registered. The nine are included in the 293 total.

It is doubtful that a ten-day extension would have served the purpose of extending the statutory period for filing such a petition.

Mr. Pearlman and I talked by telephone after my return to Medford and he suggested it would be proper to consider the matter at the time of the hearing

December 21, 1978

Ms. Kristine M. Gebbie
Assistant Director, Human Resources
Administrator, State Health Division
1400 S. W. 5th Avenue
Portland, Oregon 97201

Dear Ms. Gebbie:

May I have a response to my letter of November 30, 1978?

I represent the petitioners who filed with you the petition under ORS 222.885 in the above matter, and there are quite a few of them. It would be more to your advantage to communicate with me than to be obliged to communicate with each of them.

If you have entered the orders required by ORS 222.885(2), please furnish me with a copy. If you have not done so, please tell me why, or what procedure, if any, you desire to follow. If you feel that this is a matter you should entrust to your attorney, please ask him or her to make response for you. If you did not receive my letter of November 30, 1978, attached is a photocopy of my file copy.

Very truly yours,

E. R. Bashaw

cs

Encl.
BCC: Mr. Steve Couch
220 Main St., Suite 1-D
Klamath Falls, Oregon 97601

ROBERT W. STRAUB
GOVERNOR

Department of Human Resources
HEALTH DIVISION
1400 S.W. 5th AVENUE, PORTLAND, OREGON 97201 PHONE 229-5032
(EMERGENCY PHONE (503) 229-5599

CERTIFIED MAIL NO. 491922
RETURN RECEIPT REQUESTED

January 10, 1979

E. R. Bashaw, Attorney
313 South Ivy Street
Post Office Box 1262
Medford, Oregon 97501

Dear Mr. Bashaw:

We have received from the Klamath County Clerk the certification of petitioners' names that were on the petitions requesting an alternate plan for sewering the Stewart-Lennox area. The clerk has informed us that they carefully compared names and addresses to ascertain that only registered voters within boundaries of the area proposed for annexation were counted. The clerk has certified to us that there are 161 petitioners who are registered voters, and that there are 380 registered voters within the area. The 161 petitioners would represent only 42.37% of the registered voters and therefore are not sufficient to propose an alternative to annexation. The proposed alternate plan does not meet the requirements of ORS 222.885 and therefore will not be forwarded to the Environmental Quality Commission for review.

Sincerely,

Kristine M. Gebbie
Assistant Director, Human Resources
Administrator, State Health Division

KMG:ho
Enclosure

cc: Ed Barnes, Bend Regional Office
Peggy Bunnell, Pres. West Side Sanit. Dist.
Stephen Couch, Attorney
City of Klamath Falls
Robert Drake, DEQ Bend Office
John Huffman
Klamath Couty Health Department
Len Pearlman
Jim Van Domelin, DEQ

BEFORE THE LAND CONSERVATION AND

DEVELOPMENT COMMISSION OF THE STATE OF OREGON

WEST SIDE SANITARY DISTRICT, a special district in Klamath County, Oregon, Petitioner, vs. HEALTH DIVISION OF THE DEPARTMENT OF HUMAN RESOURCES OF THE STATE OF OREGON; KRISTINE GEBBIE, ASSISTANT DIRECTOR FOR HEALTH THEREOF; ENVIRONMENTAL QUALITY COMMISSION OF THE STATE OF OREGON; AND THE CITY OF KLAMATH FALLS, an incorporated city in Klamath County, Oregon, Respondents.	NO. 78-035 MOTION FOR INTERVENTION

Intervenor, STEWART-LENOX RURAL FIRE PROTECTION DISTRICT, alleges:

I

Intervenor is a special service district, organized and existing in Klamath County, Oregon, and has a tax base, and owns substantial amounts of equipment and property, and improvements designed and located, and employs volunteer personnel to provide fire protection to the area shown in attached Exhibit "A" which area includes the area described in the above described proceeding as the "Health Hazard" area, (outlined in green on the attached exhibit).

II

Intervenor furnishes good and sufficient fire protection to the alleged "health hazard" area and to many other areas within its boundaries, which areas require such protection in the interest of public safety. The "health hazard" area is an established community of many years duration and has been within intervenor's area of protection and taxation for many years.

III

If the "health hazard" area is annexed to the respondent city and withdrawn from the area of intervenor, this will impair and interfere with intervenor's financial ability to maintain fire protection for the remainder of the area it now protects. If the area is annexed to the respondent city and not withdrawn from the area of the intervenor, the residents of the area may be taxed doubly, by the city and by intervenor, for fire protection, which would be inequitable to them. The protection which the city could provide from its area would not be an adequate substitute for the protection of the residents of the area which they now provide for themselves, through their own fire protection district, intervenor herein, from the location of its facility, shown in the attached exhibit. For instance, the fire station and all equipment is located within the "health hazard" area. Also, the majority of the firefighters including the Fire Chief, Ass't Fire Chief, and two Captains live within the area. Furthermore, four of the District's Directors, who live within the area, would be forced to resign, according to the law (ORS 478.050) which stipulates that a Director has to be a voter or own land within the district.

IV

In ordering the city to proceed with involuntary annexation of the subject area, respondents did not give adequate consideration to any of the planning goals prescribed by law.

WHEREFORE, the intervenor requests that it be allowed to intervene on the side of the Petitioner (and of the residents who signed and filed the Voters' petition (Exhibit "C") of the Amended Petition for Review) and that the proceedings of respondents be held null and void.

Dated this Third day of January, 1979,

STEWART-LENOX RURAL FIRE PROTECTION DISTRICT BOARD OF DIRECTORS

By

Willis R. Homer — Chairman

Lyle Jackson — Director

Rose L. Mathers — Director

Ida M. Fredrick — Director

Charles E. Martin — Director