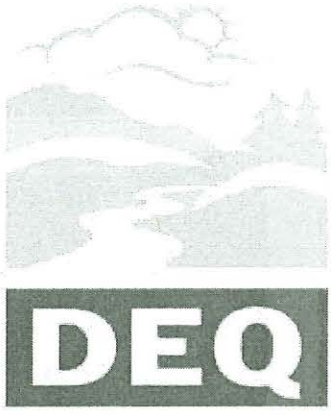
5/25/1979

OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS



State of Oregon
Department of Environmental Quality

OREGON ENVIRONMENTAL QUALITY COMMISSION MEETING

May 25, 1979

Portland City Council Chambers
City Hall
1220 Southwest Fifth Avenue
Portland, Oregon

A G E N D A

9:00 am CONSENT ITEMS

Items on the consent agenda are considered routine and generally will be acted on without public discussion. If a particular item is of specific interest to a Commission member, or sufficient public interest for public comment is indicated, the Chairman may hold any item over for discussion.

A. Minutes of the March 30, 1979 and April 27, 1979 EQC Meetings

B. Monthly Activity Report for April 1979

C. Tax Credit Applications

D. Request for authorization to hold a public hearing on a proposed revision of Air Contaminant Discharge Permit Fees, Table A, OAR 340-20-155, to increase revenues for the FY79-81 biennium

E. Request for authorization to hold a public hearing on a proposed revision of Water Quality Permit Fees (OAR 340-45-070, Table A) to increase revenues for the 79-81 biennium

PUBLIC FORUM

9:15 am F. 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.

ACTION ITEMS

The Commission will hear testimony on these items at the time designated, but may reserve action until the Work Session later in the meeting.

G. Request for authorization to hold public hearings on proposed Noise Control Regulations for airports

9:30 am H. Field Burning - Public Hearing and Proposed Rule Adoption - Revision of Rules pertaining to experimental field burning (OAR 340-26-013(6))

I. Petition for Rulemaking - Consideration of petition to promulgate rule requiring reduction of particulate emissions from existing sources to accommodate increased field burning.

J. Hazardous Waste Rules - Proposed Repeal of OAR 340-62-060(2) pertaining to exemptions from requirements for obtaining hazardous waste collection site licenses

K. Hazardous Waste Rules - Proposed adoption of amendments to Oregon Administrative Rules for Hazardous Waste Management (OAR Chapter 340, Division 63)

L. Air Quality Rules - Proposed adoption of amendment to particulate emission limitation rule (OAR 340-21-020) to allow boilers utilizing salt laden fuels to meet new grain loading limits exempting salt emissions, and requiring specific monitoring of emissions

M. Appeal by Kenneth Hyde of denial of request for variance from subsurface sewage disposal rules

~~11:00 am N. Variance Request - Request by the Cities of Myrtle Point and Powers for an extension of variance for open burning dumps.~~ DELETED

O. Request for approval of stipulated consent order for the City of Hood River

P. Request for approval of amendment to the City of Woodburn's Stipulated Final Order

1:30 pm Q. Contested Case and Other Reviews

1. DEQ v. Norman Steckley - Appeal of Hearing Officer's Decision

~~2. DEQ v. Mr. and Mrs. E.W. Mignot - Motion to dismiss request for Commission Review~~ POSTPONED

3. DEQ v. Kenneth Brookshire - limited only to request for Commission interpretation of time computation for filing request for Commission review.

4. Teledyne Wah Chang Albany - Request for approval of Stipulation and Final Order in the matter of Wah Chang's Contest of Conditions of Air Contaminant Discharge Permit No. 22-0547.

WORK SESSION

The Commission reserves this time if needed to further consider proposed action on any item on the agenda.

Because of the uncertain time span involved, the Commission reserves the right to deal with any item in the meeting except Items F, H, N, and Q. 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) in Conference Room A off the Standard Plaza Building Cafeteria, 1100 S.W. Sixth Avenue; and lunch in Room 511, DEQ Headquarters, 522 S.W. Fifth Avenue, Portland.

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

May 25, 1979

On Friday, May 25, 1979, the one hundred ninth meeting of the Oregon Environmental Quality Commission convened in the Portland City Council Chambers, 1220 S. W. Fifth Avenue, Portland.

Present were all Commission members: Mr. Joe B. Richards, Chairman; Dr. Grace S. Phinney, Vice-Chairman; Mrs. Jacklyn L. Hallock; Mr. Ronald M. Somers; and Mr. Albert H. 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.

BREAKFAST MEETING

The Environmental Quality Commission met informally for breakfast in Conference Room A off the Standard Plaza Building Cafeteria, 1100 S. W. Sixth Avenue in Portland, and discussed the following items without taking any action:

1. Status report on Fiscal Year 1980 Sewerage Works Construction Grant Priority List process.

2. Briefing on process for developing Fiscal Year 1980 State-EPA Agreement.

3. Status of SB 915 on emission offsets.

4. Briefing on proposed Landsat project to determine actual number of grass fields open burned.

5. Briefing on petition requesting rules promulgation to require reduction of particulate emissions from existing sources to accommodate increased field burning.

6. Status of Department's 1979-81 budget request.

7. Date and location of July and Ausut, 1979 EQC meetings. July 27 - Eugene; August 31 - Portland

8. Status of Evans Products, Corvallis.

FORMAL MEETING

AGENDA ITEM A - MINUTES OF MARCH 30, 1979 AND APRIL 27, 1979 EQC MEETINGS

It was MOVED by Commissioner Hallock, seconded by Commissioner Phinney and carried unanimously that the minutes of the March 30, 1979 and April 27, 1979 EQC meetings be approved.

AGENDA ITEM B - MINTHLY ACTIVITY REPORT FOR APRIL 1979

It was MOVED by Commissioner Phinney, seconded by Commissioner Hallock and carried unanimously that the Monthly Activity Report for April 1979 be approved.

AGENDA ITEM C - TAX CREDIT APPLICATIONS

It was MOVED by Commissioner Densmore, seconded by Commissioner Phinney and carried unanimously that the Director's Recommendation on tax credit applications, as follows, be approved:

1. Issue Pollution Control Facility Certificates to applications T-1067, T-1068 (Babler Brothers, Inc.), and T-1081 (Reynolds Metals Company).

2. Amend Pollution Control Facility Certificate No. 947 issued to Publishers Paper Company to reflect a reduced cost.

AGENDA ITEM D - REQUEST FOR AUTHORIZATION TO HOLD A PUBLIC HEARING ON A PROPOSED REVISION OF AIR CONTAMINANT DISCHARGE PERMIT FEES, TABLE A, OAR 340-20-155, TO INCREASE REVENUES FOR THE FISCAL YEAR 1979-81 BIENNIUM

It was MOVED by Commissioner Hallock, seconded by Commissioner Densmore and carried unanimously that the Director's recommendation to authorize public hearings to take testimony on proposed changes to the fees in Table A of OAR 340-20-155, be adopted.

AGENDA ITEM E - REQUEST FOR AUTHORIZATION TO HOLD A PUBLIC HEARING ON A PROPOSED REVISION OF WATER QUALITY PERMIT FEES (OAR 340-45-070, TABLE A) TO INCREASE REVENUES FOR THE 1979-81 BIENNIUM

It was MOVED by Commissioner Densmore, seconded by Commissioner Hallock and carried unanimously that the public hearing be authorized.

AGENDA ITEM G - REQUEST FOR AUTHORIZATION TO HOLD PUBLIC HEARINGS ON PROPOSED NOISE CONTROL REGULATIONS FOR AIRPORTS

Director Young reminded the Commission that they had considered and denied a petition for rule making on this matter at their December meeting and then directed staff to develop a separate draft rule for airport noise control. A draft rule was presented to the Commission at their February meeting, he said, and at that time staff was directed to solicit public testimony to ascertain the need for a rule, and to determine what form it would take. Evening workshops were conducted in April around the State and the Department was now presenting a proposed rule as a result of input received during those meetings, he said.

Chairman Richards said that testimony on this matter would be taken only on the question of whether or not to hold a public hearing.

Mr. Robert W. Shelby, Oregon Airport Management Association, opposed going to public hearing at this time and suggested that the Department's draft rules be set aside pending the final action on the Federal Aviation Administration's proposed rule making and the outcome of various noise abatement bills before Congress. Mr. Shelby submitted written testimony which is made part of the Commission's record on this matter.

Mr. Gary Gregory, Parkrose Citizens Association, appeared on behalf of Gordon Shadburn, County Commissioner-Elect; Don Clark, Chairman of the County Commission; and State Representatives Sandy Richards and Frank Roberts. Mr. Gregory said all those he represented supported the rule making process and asked that a completion date of within 60 days be set for the rule hearings to be completed.

Ms. Melinda Renstrom, Oregon Environmental Council, urged the Commission to go ahead with the rule making process. She also presented letters from the North Portland Citizen's Committee and State Representative Sandy Richards supporting the holding of public hearings on this matter.

Mr. Richard Daniels, Multnomah County Planning Department, said the County supported the continuing rule making process.

Ms. Janice L. Redding, Medford-Jackson Counti Airport, emphasized that a lot of time and money had been spend in keeping a noise problem from developing at their airport. She said they were in compliance with all current Federal guidelines and felt that the proposed Department rules were redundant. Ms. Redding asked if the Department was sure that these proposed rules would help the problem or identify if there was a problem at airports other than Portland International.

Mr. Clifford Hudsick, Port of Portland, said that before any hearings were held on the proposed rule, modifications to the proposed rule were necessary. Mr. Hudsick presented written testimony on why the Port felt modifications were necessary and what modifications they proposed. This written testimony is made a part of the Commission's record on this matter. Mr. Hudsick opposed going to hearing at this time.

Chairman Richards commented that if the material presented by the Port had not previously been thoroughly considered by the Department, then he assumed the Department would so so prior to going to hearing. He said it was not the purpose of this meeting to consider the specific merits of the Port's proposal; only to consider whether or not to hold public hearings.

Ms. Annette Farmer, Portland, said that few persons attended the Department workshops on this matter because not enough notice was given as to the content of the workshops. Ms. Farmer favored holding hearings on this matter.

Mr. David Henson, Flightcraft at Portland International Airport, did not feel that hearings should be held or rules adopted. He said these rules were not justified by input received at the workshop meetings. He asked what the cost of implementing the proposed rules would be. Mr. Richards replied that one of the reasons for holding hearings would be to develop that type of information.

Commissioner Somers declared a possible conflict of interest on this matter as he was Chairman of The Dalles Airport Commission and an owner of an aircraft licensed and flown in Oregon.

It was MOVED by Commissioner Hallock, seconded by Commissioner Phinney and carried unanimously that a public hearing on proposed noise control regulations for airports be authorized.

AGENDA ITEM F - PUBLIC FORUM

No one wished to appear on any subject.

AGENDA ITEM I - CONSIDERATION OF PETITION TO PROMULGATE RULE REQUIRING REDUCTION OF PARTICULATE EMISSIONS FROM EXISTING SOURCES TO ACCOMMODATE INCREASED FIELD BURNING

Director Young said this item was in response to a petition by Representatives Fadeley and Kerans requesting the Department to promulgate a rule which would require 10,500 tons per year of particulate offsets to be developed from existing Willamette Valley sources to offset increased field burning authorized by the 1979 Legislature. The Department believed the intent of the rule was justified, he said, however the proposed rule was not necessary to accomplish what may be required. He said the Department was proposing to deny the petition but continue forward on a program to identify, develop, and secure offsets that may be needed to meet Clean Air Act requirements prior to the 1980 field burning season.

Representative Gratan Kerans, Eugene, said that because of the passage of legislation allowing an increase in field burning for the 1980 season, the Legislature set in motion circumstances which threatened the economic survival and the livelihoods of many thousands of his constituents. He said that if offsets were required the employment of persons in businesses holding air contaminant discharge permits would be threatened.

Representative Kerans wanted to make sure that when offsets were required, they were distributed fairly among industries in the Willamette Valley.

Commissioner Somers asked if this matter could be handled with a policy statement to the staff. Representative Kerans replied that he believed it could be, however, he also believed that it could be hendled with a rule.

Chairman Richards said that if the petition were denied, it would not mean that the petitioners had raised valid points which the Department would address.

Representative Nancie Fadeley, Lane County, said that her area had realized for some time the limits of their airshed. She asked that this matter be dealt with by the State rather than having the Federal government intervene. Representative Fadeley was concerned that the Eugene area would have to bear the cost of increased field burning. Whether or not the Commission granted the petition, she asked that some action be taken as soon as possible.

Ms. Janet Gillespie, Assistant to Representative Fadeley, said their petition was related to the SIP and the alterations that must be made to it now that increased field burning acreage was allowed. The petition did not deal with offsets, she said. She said the petition addressed the types of things that would be necessary if the state SIP was to comply with EPA regulations and the Clean Air Act with the increased field burning acreage.

Allowing pollution emissions to increase, or even to decrease more slowly in non-attainment areas due to the increase in field burning acreage was inexcusable in light of federal law, she continued. Ms. Gillespie said that even in attainment areas the increase in acreage to be burned would severely limit growth in the area and would require emission decreases by current emitters and also possibly result in reclassification of the mid-Willamette Valley as a non-attainment area.

Ms. Gillespie said the petition asked that the Commission endorse the following two policies:

1. That in fareness, the emission compensations required by the increase in field burning acreage should be spread throughout the Willamette Valley.

2. That the Commission direct the staff to start finding those emission compensations on a firm schedule which should commence as soon as possible.

Ms. Gillespie's written comments are made a part of the Commission's record on this matter.

Professor John Bonine, University of Oregon Law School, offered his expertise to the Commission in regard to field burning. He said he was concerned that Oregon handle its own problem rather than having the federal government do it.

Professor Bonine said the Commission needed to know more than what informal discussions with the Department and EPA in Seattle could offer.

Professor Bonine was also concerned that offsets be evenly distributed throughout the Valley. He said the staff report did not agree that reductions would be distributed throughout the Valley, but suggested that reductions of less than 10,500 tons could be obtained from the north or south ends of the Valley.

Professor Bonine suggested that denying the petition and waiting until next January to promulgate new field burning rules would be waiting too long and would prompt the Federal government to step in.

Commissioner Somers said the Commission was caught between upholding the Legislative mandate of increased acreage and the Federal requirement of lowered acreage. Professor Bonine replied that the Legislature had directed the Commission to reduce emissions from Willamette Valley sources by 10,500 tons because they made a policy choice the Commission had no way to go against. Under Federal law, he said, the Commission had to do whatever was necessary to carry out the Legislatures policy choice which would mean reducing emissions in the Willamette Valley by 10,500 tons.

Ms. Melinda Renstrom, Oregon Environmental Council, said that the OEC Board of Directors considered support of this petition a priority issue. Regardless of anything else, she said, the level of particulates was going to increase in the Willamette Valley. She urged the Commission's support of the petition.

Mr. Tom Donaca, Associated Oregon Industries, agreed with the staff's recommendation to deny the petition. He said they realized that the Department was getting a lack of direction from EPA because much of the problem was national in nature. He appreciated the Commission moving cautiously on this matter.

After some discussion, it was decided to leav until the work session at the end of the meeting a policy statement to the staff on this matter.

It was MOVED by Commissioner Somers, seconded by Commissioner Phinney and carried unanimously that the following Order of Denial be adopted:

> The Commission hereby denies the petition to establish a specific rule requiring offsets for increased field burning for the following reasons:
>
> 1. While the intent of the petition is valid, it does not cover all the offset requirements that may be necessary as the result of increased field burning emissions, including requirements for offsets in carbon monoxide and ozone non-attainment areas and requirements for Prevention of Significant Deterioration in attainment areas.

2. Information on existing source emission and potential offsets can be obtained under authoirity of ORS 468.320 and OAR 340-20-005 through 015.

3. Development of necessary emission offsets or other growth management methods to accommodate increased field burning emissions must be sought by the Department under federal requirements.

A special rule is not needed to provide the authority to do so.
So Ordered this 25th day of May 1979.

/s/ Joe B. Richards, Chairman

AGENDA ITEM H - FIELD BURNING PUBLIC HEARING AND PROPOSED RULE ADOPTION - REVISION OF RULES PERTAINING TO EXPERIMENTAL FIELD BURNING (OAR 340-26-013(6))

Commissioner Densmore asked if the recent legislation on field burning affected the experimental burning program. Mr. Scott Freeburn, of the Department's Air Quality Division, replied that that section of the law was not affected.

Mr. Howard E. Shirley, Tri Heat, Inc., testified that his company was still involved in trying to build an effective field burning machine. He asked if they would have sufficient acreage for experimentation. Mr. Freeburn said the section allowed for 7500 acres for experimentation with regard to open burning techniques. Burning of acreage by experimental field burning machines was not regulated by the law, he continued.

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

Director's Recommendation

Based upon the Summation and the testimony in the record of the May 25, 1979 public hearing, it is recommended that the Environmental Quality Commission:

1. Adopt as a permanent rule the proposed rule set forth in Attachment 2 to the Director's staff report, such rule to become effective upon its prompt filing (along with the Statement of Need for Rulemaking) with the Secretary of State.

2. Instruct the staff to submit the rule revision set forth in Attachment 2 of the Director's staff report to EPA pursuant to federal rules as a revision to the Oregon Clean Air Act State Implementation Plan.

AGENDA ITEM J - HAZARDOUS WASTE RULES - PROPOSED REPEAL OF OAR 340-62-060(2)

Director Young said the subject rule was adopted by the Commission as part of a rules package governing the procedures for licensing hazardous waste management facilities. It permitted a collection site that would be operated for less than 60 days to be established by a letter of authorization rather than having to go through the full licensing procedure, he said. Director Young said that subsequent legal review indicated that DEQ had no authority to establish a collection site other than by issuance of a license.

It was MOVED by Commissioner Hallock, seconded by Commissioner Somers and carried unanimously that the Director's recommendation to repeal OAR 340-62-060(2) be adopted.

AGENDA ITEM K - PROPOSED AMENDMENTS TO THE ADMINISTRATIVE RULES FOR HAZARDOUS WASTE MANAGEMENT (OAR CHAPTER 340, DIVISION 63)

Director Young said that the present hazardous waste rules dealt primarily with the disposal of pesticide wastes, however there was a growing awareness that certain other wastes may be of equal hazard and their proper disposal could be assured only by controls starting when they were generated. The proposed rules were designed, he said, to (1) expand the list of hazardous wastes to include ignitable, corrosive, reactive, and certain toxic wastes; and (2) expand the existing hazardous waste rules, which were aimed primarily at disposal, to a comprehensive program that also considers waste generation, storage, and transportation. Director Young said the Public Utility Commissioner would manage hauler participation in the program and was proposing to adopt OAR 860-36-060 through 36-066 for this purpose.

Mr. Fred Bromfeld, of the Department's Hazardous Waste Section, in response to Commissioner Somers, said that small quantities were defined throughout the rules in relation to what type of waste was being addressed. The exception to that, he said, was reactive wastes because the Department did not feel that those wastes should be placed in a solid waste landfill except upon careful examination on a case-by-case basis.

Mr. Bromfeld presented an amendment to proposed rule 63-135 and explained that thos modification would direct industrial sources that dispose of hazardous waste to first contact the collector or the landfill and tell them that this was a special alert for a substance DEQ considered hazardous. This would not apply to households disposing of small amounts, he said.

Mr. Roger Emmons, Oregon Sanitary Service Institute, spoke in favor of the objectives of the proposed regulations and of the State of Oregon having its own hazardous waste program. Mr. Emmons also favored the amendment to proposed rule 63-135 in order to better protect the collector and the landfill operator.

It was MOVED by Commissioner Somers, seconded by Commissioner Hallock and carried unanimously that the Director's Recommendation to repeal the present Rules Pertaining to Management of Environmentally Hazardous Wastes, and adopt the proposed rules for Hazardous Waste Management be approved with Section 63-135 amended to read as follows:

> 63-135 SMALL QUANTITY MANAGEMENT. Small quantities of hazardous wastes, as specified in Sections 63-110, -115 and -125, need not be disposed through a hazardous waste management facility if they are handled in accordance with the following procedure.
>
> (1) The waste shall be securely contained to minimize the possibility of waste release prior to burial.
>
> (2) Persons disposing of hazardous waste from other than domestic or household use shall obtain permission from the waste collector or landfill permittee before depositing the waste in any container or landfill for subsequent collection or disposal.
>
> In the event that the waste collector or landfill permittee refuses acceptance, the Department shall be contacted for alternative disposal instructions.

FIELD BURNING POLICY STATEMENT

Commissioner Somers said that the Commission's proposed policy had been submitted to EPA Region X as a modification to the SIP and the hearings on that SIP were conducted by the Oregon State Legislature, therefore there would be ample authority for modification of the SIP. Chairman Richards said that the Department's legal counsel, Ray Underwood, feld that a temporary rule was inappropriate and that the Commission should adopt a policy statement.

It was MOVED by Commissioner Somers, seconded by Commissioner Hallock and carried unanimously that the following statement be adopted as policy of the Commission:

> All field burning permits to be issued pursuant to rules of the Commission will be issued subject to all governing laws including the applicable requirements of the Federal Clean Air Act and rules issued thereunder.

Chairman Richards asked that some notice be given on each permis issued that would carry out the intent of this policy statement.

AGENDA ITEM Q(1) - DEQ v. NORMAN STECKLEY - APPEAL OF THE HEARING OFFICER'S DECISION

Mr. Morely appeared on behalf of Mr. Norman Steckley appealing the hearing officer's decision in this matter. He cited the exception that there was no testimony or evidence to how many acres, or parts

of an acre were burning at the time of the Department's investigation of the burning. He said his client admitted that some of the grass was smoldering after 5:00 p.m., but he had worked diligently to get the fire out in time. Mr. Morely also contended that there was no evidence that prohibitive conditions existed at the time of the burning, which was also in the Department's complaint.

Mr. Morely said his client had paid substantial sums every year in order to burn his fields and many times was unable to burn all the acreage he paid for because he conformed to the Department's rules. In this instance, he said, his client made a real effort to extinguish all the burning by 5:00 p.m. but was unable to do it. He also said that the meteorologist was unable to say that at 5:00 p.m. that evening prohibitive conditions existed.

Mr. Frank Ostrander, Assistant Attorney General appeared on behalf of the Department. He stated that the Department's brief and the arguments presented in the brief were adequate to present the Department's position. Under the rules in effect at the time, he said, prohibitive conditions were defined as a forecast of a fire-out condition.

It was MOVED by Commissioner Somers, seconded by Commissioner Phinney and carried unanimously that the Findings of Fact and Conclusions of the Hearing Officer be sustained, and that the Order be modified to reduce the civil penalty to $100.

AGENDA ITEM Q(3) - DEQ v. KENNETH BROOKSHIRE - LIMITED ONLY TO REQUEST FOR COMMISSION INTERPRETATION OF TIME COMPUTATION FOR FILING REQUEST FOR COMMISSION REVIEW

Mr. McMillan said that the Hearing Officer's proposed Order was sent to Mr. Brookshire on November 22, 1978. This Order stated Mr. Brookshire had 14 days from the date he was servid with the Order to request a review, he said. However, Mr. McMillan continued, the letter sent with the order indicated his client had 14 days from the mailing date of the order to request review. On December 6, 1978, exactly 14 days from the mailing of the order, Mr. Brookshire sent in his request for review, he said, however this request was not received by the Department until December 8, 1978. The request for review was subsequently denied because the 14 day time limit had been exceeded, he said.

Some discussion followed regarding what constituted "filing" and "mailing" of a request.

Chairman Richards said the Commission had heard this matter on its merits and upheld the Hearing Officer's Order. He asked if any additional evidence was going to be presented. Mr. McMillan replied that it was his understanding that when the Commission heard this matter previously there was some confusion on the dates.

Mr. Robert Haskins, Assistant Attorney General representing the Department in this matter, said the timing in this case was very important. He said Mr. Brookshire's request for more time to answer the Hearing Officer's Order was received in the Department two days late. The rules provide, he continued, that filing will be completed mailing or service upon the Director. In this instance, he said, the

Respondent was asking the Commission to ignore "completed mailing" and accept placing the request in the mailbox as filing. Mr. Haskins said the Department interpreted "completed mailing" to mean receipt in hand or personal service.

On January 26, 1979, Mr. Haskins said, the Commission heard Mr. Brookshire's request for additional time. At that time, he said, the Commission voted to take no action which thereby kept the Hearing Officer's Order in effect.

Mr. Haskins said the time for filing an appeal on this case had expired and if the Commission took no action at this time the case would be dead.

Mr. McMillan responded that the question before the Commission was, was there a timely request for review. If there was a timely request then Mr. Brookshore should have the right of review, he said.

Chairman Richards asked what alternatives the Commission had on this appeal. Mr. Underwood said one of the options would be for the Commission to take no action, another would be to give the relief requested by respondent's attorney. Mr. Underwood said the Commission would be weakening their interpretation of the rule if they granted the respondent's request and heard the case on its merits.

It was MOVED by Commissioner Phinney, seconded by Commissioner Densmore and carried unanimously that the Commission take no action on this matter.

AGENDA ITEM Q(4) - TELEDYNE WAH CHANG ALBANY - REQUEST FOR APPROVAL OF STIPULATION AND FINAL ORDER IN THE MATTER OF WAH CHANG'S CONTEST OF CONDITIONS OF AIR CONTAMINANT DISCHARGE PERMIT NO. 22-0547

Director Young said that Teledyne Wah Chang's air contaminant discharge permit had been a matter of contest and the proposed Stipulation and Final Order was a negotiated item.

Chairman Richards said the report was quite detailed and explained the situation thoroughly.

In response to a question from Commissioner Hallock, Mr. Fritz Skirvin Air Quality Division, replied that the Company was in compliance with the emission limits of their permit and most of the compliance schedule set forth in the permit had been completed. He said there were some dates in the schedule that were going to be lengthened for various reasons and the Department would include those parts of the proposed Stipulation and Final Order that apply to those schedule modifications in a permit modification. Mr. Robert Haskins, Assistant Attorney General, said it was important to note that some of those dates which had not been met involved projects which were improving the situation as further insurance that the permit limits would be met.

Commissioner Hallock requested that additional language be added to Condition 10 as follows:

> "...(b) has demonstrated to the satisfaction of the Department that the conditions of the permit are being met..."

Representatives of Teledyne Wah Chang Albany agreed to this addition.

Mr. LeRoy Dean Pruitt testified that he owned property just downwind from Teledyne Wah Chang Albany. He said he had appeared at several meetings protesting emissions from the plant. He said that at the last meeting he appeared at regarding the Company he was advised to seek recourse through legal channels, however he said he had been unable to get to court with the matter. Mr. Pruitt said he realized that the plant was important to the economy of Albany, however he protested the odorous emissions from the plant.

Chairman Richards responded that the plant was mostly in compliance and where they were out of compliance they were on a schedule to meet requirements. He said that sometimes eventhough a source complies with state and/or federal law, it might still constitute a nuisance to a neighboring property owner and therefore that person's recourse would be through the courts.

Mr. Pruitt insisted that the Commission were the only ones that could do anything about the emissions from the plant by tightening their rules and the controls on the plant.

It was MOVED by Commissioner Phinney, seconded by Commissioner Hallock and carried unanimously that the Stipulation and Final Order, as amended, be approved.

AGENDA ITEM L - PROPOSED ADOPTION OF AMENDMENT TO PARTICULATE EMISSION LIMITATION RULE (OAR 340-21-020) TO ALLOW BOILERS UTILIZING SALT LADEN FUELS TO MEET NEW GRAIN LOADING LIMITS EXEMPTING SALT EMISSIONS, AND REQUIRING SPECIFIC MONITORING OF EMISSIONS

In response to a request from a mill which utilized salt laden hogged fuel, Director Young said the Department was proposing changes in the emission limits for boilers which would exempt the salt portion of the emissions. He said salt emissions were difficult and costly to control and no significant adverse environmental impacts were apparent. Public hearings had been held, he continued, and this matter was being presented for final action on the proposed rule change.

Chairman Richards indicated that no one was signed up to testify on this matter and asked if any correspondence regarding this item had been received in opposition to the Department's recommendation. Mr. Fritz Skirvin, Air Quality Division, replied that no correspondence in opposition had been received.

Commissioner Phinney asked why the Commission was being asked to adopt a rule that would apply only to two companies instead of just giving those companies a variance. Mr. Skirvin replied that it would be unwise to adopt an open-ended variance with no expiration date and adopting a rule would be permanent. Also, he said, with a variance EPA's concurrence would have to be obtained in order to keep the companies from the non-compliance penalty program.

Commissioner Phinney asked that staff be instructed to develop a monitoring program to receive data on fine particulate.

It was MOVED by Commissioner Hallock, seconded by Commissioner Phinney and carried unanimously that the proposed changes to OAR 340-21-020(1) and (2) be adopted.

AGENDA ITEM M - APPEAL BY KENNETH HYDE OF DENIAL OF REQUEST FOR VARIANCE FROM SUBSURFACE SEWAGE DISPOSAL RULES

Director Young indicated Mr. Hyde would not be present. Chairman Richards said that based on the staff report he would have no intention of granting a variance.

It was MOVED by Commissioner Hallock, seconded by Commissioner Phinney and carried unanimously that the decision of the Variance Officer to deny Kenneth Hyde's request for variance be upheld.

AGENDA ITEM O - REQUEST FOR APPROVAL OF STIPULATED CONSENT ORDER FOR THE CITY OF HOOD RIVER

Mr. Richard Nichols, Central Region Manager, presented a minor amendment to the Stipulated Consent Order as follows:

> I.A. By July 1, 1979, to submit [~~an approvable~~] for approval a detailed written plan...

AGENDA ITEM P - REQUEST FOR APPROVAL OF AMENDMENT TO THE CITY OF WOODBURN'S STIPULATED FINAL ORDER

It was MOVED by Commissioner Phinney, seconded by Commissioner Hallock and carried unanimously that the Stipulated Consent Order for the City of Hood River, as amended, and the Amendment to the City of Woodburn's Stipulated Final Order, be approved.

WORK SESSION

Director Young presented a proposed policy statement dealing with emission offsets for increased field burning. He said the Department's intent was to develop some language that would satisfy the Commission's desire to look at questions of equity in assigning offsets and that a work schedule be established.

It was MOVED by Commissioner Hallock, seconded by Commissioner Phinney and carried unanimously that the following be adopted as a policy of the Commission:

ENVIRONMENTAL QUALITY COMMISSION POLICY STATEMENT
ON
EMISSION OFFSETS FOR INCREASED FIELD BURNING

The EQC hereby directs the Department of Environmental Quality immediately to pursue identification of the offsets that may be required under the federal Clean Air Act to compensate for increased field burning. The Department shall also concurrently pursue the identification of potential offsets from existing sources and identify the associated costs. The Department shall identify the equity of various offset alternatives and present this information to the EQC in sufficient time to resolve the matter prior to the 1980 field burning season.

A work schedule in response to this policy shall be presented to the EQC no later than August 1, 1979. A progress report on implementing the work schedule shall be submitted to the EQC no later than October 1, 1979.

Adopted by the Oregon Environmental Quality Commission, May 25, 1979.

/s/ Joe B. Richards, Chairman

There being no further business, the meeting was adjourned.

Respectfully submitted,

Carol A. Splettstaszer

Carol A. Splettstaszer
Recording Secretary

V.A.Atiyeh
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, May 25, 1979, EQC Meeting

April Program Activity Report

Discussion

Attached is the April Program Activity Report.

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

Water and Solid Wastes 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 pages 2 through 4 of the report.

Bill

WILLIAM H. YOUNG

M.Downs:ahe
229-6485
05-10-79

DEPARTMENT OF ENVIRONMENTAL QUALITY

Monthly Activity Report

April, 1979
Month

TABLE OF CONTENTS

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality, Water Quality, Solid Waste Divisions (Reporting Unit) — April, 1979 (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	16	180	21	171	0	2	52
Total	16	180	21	171	0	2	52
Water							
Municipal	123	1,077	112	1,014	0	0	32
Industrial	7	104	6	99	0	0	22
Total	130	1,181	118	1,113	0	0	54
Solid Waste							
General Refuse	0	17	1	17	0	2	3
Demolition	1	6	0	2	0	0	1
Industrial	0	22	4	25	0	0	2
Sludge	1	3	0	3	0	0	1
Total	2	48	5	47	0	2	7
Hazardous Wastes							
GRAND TOTAL	148	1,429	144	1,331	0	4	113

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — April, 1979 (Month and Year)

PLAN ACTIONS COMPLETED (21)

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Direct Stationary Sources			
Morrow (NC 656)	Portland General Electric Ash handling, ash dumping	3/27/79	Approved (partial)
Douglas (NC 1303)	Lone Star Minerals Inc. Replacement baghouse & scrubber	1/30/79	Approved
Linn (NC 1307)	Teledyn Wah Chang Albany Scrubber, magnesium recovery	2/28/79	Approved
Coos (NC 1312)	Union Oil Co. of Calif. Internal floating roofs	2/30/79	Approved
Lane (NC 1317)	Lane Plywood Inc. Sander dust cyclone and baghouse	2/20/79	Approved
Linn (NC 1319)	Teledyne Wah Chang Albany Diesel electric generator	5/1/79	Approved
Klamath (NC 1332)	Weyerhauser Co. Green wood fines conveyor	4/9/79	Approved
Hood River (NC 1337)	Butzik Orchard Orchard fan	3/12/79	Approved
Jackson (NC 1338)	Boise Cascade Corp. Sand filter on veneer dryer	4/16/79	Approved
Jackson (NC 1341)	Peter Naumes Orchard fan	3/12/79	Approved
Clatsop (NC 1342)	American Can Co. Lacquer sideseam	4/18/79	Approved

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — April, 1979 (Month and Year)

PLAN ACTIONS COMPLETED (21, cont'd)

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Direct Stationary Sources (cont.)			
Umatilla (NC 1346)	Johns-Manville Sales Corp. Increase plastic pipe production	3/7/79	Approved
Douglas (NC 1348)	International Paper Co. Sandair filter on veneer dryer	4/3/79	Approved
Douglas (NC 1349)	International Paper Co. Replace & modify veneer dryers	4/3/79	Approved
Jackson (NC 1352)	Timber Products Co. Burley scrubber boiler	4/18/79	Approved
Baker (NC 1353)	Baker Redi-Mix, Inc. CMI scrubber	3/22/79	Approved
Multnomah (NC 1354)	Dura Enameling Co., Inc. Spray paint booth	4/6/79	Approved
Douglas (NC 1359)	Woolley Enterprises Inc. Burley scrubber & air curtains	4/16/79	Approved
Portable (NC 1362)	Roseburg Paving Co. Asphalt paving plant	4/10/79	Approved

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — April, 1979 (Month and Year)

PLAN ACTIONS COMPLETED (21, cont'd)

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Direct Stationary Sources (cont.)			
Douglas (NC 1369)	DR_2 Enterprises Fire retardant wood treatment	4/16/79	Approved
Yamhill (NC 1370)	Martin & Wright Paving Asphalt paving plant	4/5/79	Approved

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — April, 1979 (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	2	4	2	29	28		
Existing	2	27	2	44	10		
Renewals	3	98	14	70	102		
Modifications	1	62	2	73	11	1902	1942
Total	8	227	20	216	151	-	-
Indirect Sources							
New	6	26	4	28	12		
Existing	-	-	-	-	-		
Renewals	-	-	-	-	-		
Modifications	-	6	0	6		118	
Total	6	32	4	34	12		
GRAND TOTALS	14	259	24	250	163	2120	1942

17 A-95's 62 Technical Assistances

Number of Pending Permits	Comments
15	To be drafted by Northwest Region Office
7	To be drafted by Willamette Valley Region Office
12	To be drafted by southwest Region Office
3	To be drafted by Central Region Office
5	To be drafted by Eastern Region Office
13	To be drafted by Program Operations
3	To be drafted by Program Planning & Development
58	
7	Permits awaiting next public notice
86	Permits awaiting end of 30-day public notice period

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — April, 1979 (Month and Year)

PERMIT ACTIONS COMPLETED (24)

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Direct Stationary Sources			
Benton	Venell Farms 02-1003 (Renewal)	3/27/79	Permit Issued
Benton	Evans Products 02-2515 (New)	3/27/79	Permit Issued
Clackamas	Rock Creek Sand & Gravel 03-1938 (Renewal)	3/27/79	Permit Issued
Clackamas	Sandy Ready Mix 03-2673 (New)	3/27/79	Permit Issued
Clatsop	Palmberg Paving 04-0001 (Renewal)	3/27/79	Permit Issued
Columbia	Scappoose Sand & Gravel 05-1954 (Renewal)	3/27/79	Permit Issued
Coos	Coos County Solid Waste 06-0095 (Modification)	3/27/79	Permit Issued
Crook	O'Neil Sand & Gravel 07-0018 (Existing)	3/27/79	Permit Issued
Linn	Scroggin Feed & Seed 22-5148 (Renewal)	3/27/79	Permit Issued
Multnomah	Col-West Matls. & Const. 26-1761 (Renewal)	3/27/79	Permit Issued
Multnomah	Cascade Construction 26-1762 (Renewal)	3/27/79	Permit Issued
Multnomah	K. F. Jacobsen 26-1764 (Renewal)	3/27/79	Permit Issued

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — April, 1979 (Month and Year)

PERMIT ACTIONS COMPLETED (24, cont'd)

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Direct Stationary Sources (cont.)			
Multnomah	Oregon Asphaltic Paving Co. 26-1765 (Renewal)	3/27/79	Permit Issued
Mutlnomah	Oregon Asphaltic Paving Co. 26-1766 (Renewal)	3/27/79	Permit Issued
Polk	Willamette Industries 27-0177 (Renewal)	3/27/79	Permit Issued
Union	Rogers Asphalt 31-0001 (Renewal)	3/27/79	Permit Issued
Washington	Banks Lumber 34-2565 (Renewal)	3/27/79	Permit Issued
Portable	Peter Kiewit Sons Co. 37-0095 (Renewal)	3/27/79	Permit Issued
Portable	M. E. Kauffman 37-0156 (Modification)	3/27/79	Permit Issued
Portable	Weathers Crushing 37-0210 (Existing)	3/27/79	Permit Issued

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — April, 1979 (Month and Year)

PERMIT ACTIONS COMPLETED (24, cont'd)

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Indirect Sources			
Clackamas	Ford Industries, Inc. Offices and Manufacturing Plant, 433 spaces File No. 03-7903	4/13/79	Final Permit Issued
Multnomah	Lloyd Center Tower 753 spaces File No. 26-7904	4/13/79	Final Permit Issued
Multnomah	East Burnside Road Phase II File No. 26-7905	4/27/79	Final Permit Issued
Multnomah	United Parcel Service Parking Extension 592 spaces	4/27/79	Final Permit Issued

DEPARTMENT OF ENVIRONMENTAL QUALITY WATER QUALITY DIV.ACTIVITY REPORT

5/04/79 PLAN ACTIONS COMPLETED: 118 MUNICIPAL SOURCES: 112 FOR APRIL 1979

ENGINER	LOCATION COUNTY	PROJECT	REVIEWER	DATE REC	DATE OF ACTION	ACTION	DAYS TO COMPLETE
27	DALLAS	SE UGLOW ST	J	4/06/79	4/12/79	PROV APP	06
24	SALEM	CHERRY AVE INDUSTRIAL	J	4/04/79	4/12/79	PROV APP	08
24	SALEM	OAKWOOD ESTATES	J	4/04/79	4/12/79	PROV APP	08
24	MARION CO	CHANDELLE SUBD	J	4/06/79	4/12/79	PROV APP	06
6	BANDON	JOHNSON CREEK INTERCEPTOR	J	3/30/79	4/12/79	PROV APP	10
6	BANDON	JOHNSON CREEK INTERCEPTOR	J	3/30/79	4/12/79	PROV APP	13
34	HILLSBORO	HAWTHORN FARM VILLAGE	J	4/02/79	4/12/79	PROV APP	10
26	MILWAUKIE	SCHEIBERT GLEN	J	4/05/79	4/13/79	PROV APP	08
3	MOLALLA	BYINGTON MANOR	J	4/09/79	4/17/79	PROV APP	08
3	CCSD	MATHERVIEW SUBD	J	4/09/79	4/17/79	PROV APP	08
19	LAKEVIEW	WESTWOOD PARK	J	4/09/79	4/17/79	PROV APP	08
	E/S MWMC	REVISED CONTRACT 1	V	3/19/79	4/02/79	PROV APP	14
	E/S MWMC	ADDENDA NO5 1-5 CONTRACT 1	V	3/25/79	4/02/79	APPROVED	08
	E/S MWMC	CONTRACT 17	V	3/19/79	4/02/79	PROV APP	00
32	ENTERPRISE	HARGROVE SUBDIV	K	4/04/79	4/19/79	PROV APP	15
36	MCMINNVILLE	CENTURY ADDITION	J	4/06/79	4/12/79	PROV APP	06
9	REEDSPORT	SLUDGE TRUCK ETC	V	3/22/79	4/03/79	APPROVED	00
10	NOR ROSB SD	STEWART PARKWAY	K	4/05/79	4/17/79	PROV APP	12
24	SALEM	REGAN-NICOLE ESTATES	K	4/13/79	4/17/79	PROV APP	04
18	SO SUBURB SD	BRISTOL PARK	K	4/04/79	4/17/79	PROV APP	13
31	LAGRANDE	FOLEY ST PROJECT	K	3/29/79	4/13/79	PROV APP	15
30	HERMISTON	SOUTH HILL ADDITION	K	3/23/79	4/12/79	PROV APP	19
20	SPRINGFIELD	SMITH DRIVE PROJ	K	3/23/79	4/12/79	PROV APP	20
34	USA	SHERWOOD-E DIVISION ST	J	4/16/79	4/23/79	PROV APP	07
34	USA	HUNTERS WOOD	J	4/16/79	4/23/79	PROV APP	07
24	PORTLAND	SW ARNOLD CREEK DISTRICT	J	4/16/79	4/25/79	PROV APP	09
24	PORTLAND	SE BARBARA WELCH/SE 144TH	J	4/13/79	4/23/79	PROV APP	10
36	YAMHILL	79-211 OFF MAIN ST	J	4/16/79	4/20/79	PROV APP	04
8	GERVAIS	SIXTH ST EXT-JO 617	J	4/12/79	4/20/79	PROV APP	08
24	SALEM	HARLANDALE ESTATES	J	4/12/79	4/26/79	PROV APP	14
4	ASTORIA	REVISED 12 TO 13	J	4/05/79	4/20/79	PROV APP	15
9	REDMOND	BATTLEGROUND HOMESITES NO 1	J	4/06/79	4/20/79	PROV APP	14
22	LEBANON	VICTORIA ADDITION	J	3/21/79	4/02/79	PROV APP	12
9	REDMOND	23RD-GLACIER-MCKENZIE PROJ	K	4/11/79	4/20/79	PROV APP	09
21	GLENEDEN SD	EVERGREEN EAST SUBDIV	K	4/06/79	4/25/79	PROV APP	19
10	TRI-CITY SD	SEELY AVE (MYRTLE CRK)	K	4/16/79	4/23/79	PROV APP	07
15	CULVER	CULVER RIDGE 2ND ADD	K	4/11/79	4/20/79	PROV APP	09
10	ROSEBURG	ROBERTSON LONGTON PROJ	K	4/10/79	4/21/79	PROV APP	11
26	TROUTDALE	C.P. PARK PHASE II	K	4/09/79	4/19/79	PROV APP	10
16	CORVALLIS	WILLOW TREE ADD	K	4/09/79	4/18/79	PROV APP	09
5	COLUMBIA CTY	6TH ST. RIVERVIEW HTS	K	4/09/79	4/18/79	PROV APP	09
20	EUGENE	CLAREY FIRST ADD	K	4/02/79	4/20/79	PROV APP	18
20	EUGENE	CLEVELAND PROJ	K	4/02/79	4/20/79	PROV APP	18
20	EUGENE	GOODPASTURE ISLAND	K	4/02/79	4/20/79	PROV APP	18
20	EUGENE	13TH AVE WEST	K	4/02/79	4/20/79	PROV APP	18
34	UNI SWR AGCY	VARNS ST. IMP	K	4/12/79	4/23/79	PROV APP	11
34	UNI SWR AGCY	JOHN THE THIRD	K	4/12/79	4/22/79	PROV APP	10

DEPARTMENT OF ENVIRONMENTAL QUALITY WATER QUALITY DIV.ACTIVITY REPORT

5/04/79 PLAN ACTIONS COMPLETED: 118 MUNICIPAL SOURCES 112 (Cont.) FOR APRIL 1979

ENGINER	COUNTY	LOCATION	PROJECT	REVIEWER	DATE REC	DATE OF ACTION	ACTION		DAYS TO COMPLETE
	34	UNI SWR AGCY	WATSON SWR EXT (BEAV)	K	4/06/79	4/19/79	PROV APP		13
	34	UNI SWR AGCY	THUNDERHEAD PK (BEAV)	K	4/06/79	4/19/79	PROV APP		13
	3	WEST LINN	HIDDEN SPRINGS VILLAGE	J	4/09/79	4/17/79	PROV APP		08
	16	MADRAS	WHISPERING SPRINGS SUBDIV	K	4/23/79	4/25/79	PROV APP		02
	26	GRESHAM	PINE SQUARE PROJ	K	4/24/79	4/25/79	PROV APP		01
	20	SPRINGFIELD	AKERS PROJ	K	3/23/79	4/12/79	PROV APP		20
	26	LAKE OSWEGO	GLENMORRIE AREA LID 190	K	4/18/79	4/23/79	PROV APP		05
	22	SWEET HOME	EXT SO OF LONG ST	K	4/19/79	4/24/79	PROV APP		05
	20	SPRINGFIELD	GILLOCK EXT	K	4/06/79	4/16/79	PROV APP		10
	20	SPRINGFIELD	COROLLA PARK	K	4/06/79	4/15/79	PROV APP		09
	26	PORTLAND	SW BROADLEAF-BALMER	K	4/04/79	4/17/79	PROV APP		13
	26	PORTLAND	SW ILLINOIS-CAROLINA	K	4/04/79	4/17/79	PROV APP		13
	32	ENTERPRISE	HARGROVE PROJ	K	4/04/79	4/19/79	PROV APP		15
	9	BEND	CONTRACT 25 SELONDARY FAC	V	4/19/79	4/24/79	PROV APP		05
	10	TRI CITY SD	A AND K ESTATES	K	4/16/79	4/26/79	PROV APP		10
	24	SALEM	WESTBROOK PARK	K	4/18/79	4/26/79	PROV APP		08
	15	ASHLAND	MOUNTAIN-PALM SWT	K	4/20/79	4/30/79	PROV APP		10
	3	ORE CITY	CANEMAH PROJ	K	4/20/79	4/26/79	PROV APP		06
	26	PORTLAND	GARDEN HOME-66TH	K	4/20/79	4/30/79	PROV APP		10
	26	PORTLAND	BARNES RD WEST	K	4/19/79	4/30/79	PROV APP		11
	2	CORVALLIS	GRANT PLAZA	K	4/23/79	4/27/79	PROV APP		04
	24	SALEM	BRECKENRIDGE HTS NO 3	K	4/23/79	4/30/79	PROV APP		07
	34	UNI SWR AGCY	COLEMAN IMP DIST 710	K	4/09/79	4/19/79	PROV APP		10
	34	UNI SWR AGCY	TRANQUIL PARK	K	4/06/79	4/19/79	PROV APP		13
	10	NOR ROSB SD	JOHNSON ST EXT	K	4/18/79	4/25/79	PROV APP		07
	23	ONTARIO	SUNSHINE ESTATES	K	4/16/79	4/25/79	PROV APP		09
	24	SALEM	WEST SAL REPLACEMENT	K	4/18/79	4/30/79	PROV APP		12
	24	SALEM	TERRACE LAKE	K	4/19/79	4/30/79	PROV APP		11
	20	CRESWELL	MEADOW PARK 1ST ADD	K	4/19/79	4/30/79	PROV APP		11
	23	ONTARIO	SE 3RD AVE EXTENSION	K	4/19/79	4/25/79	PROV APP		06
	9	SUNRIVER	QUELAH PROJECT	K	4/26/79	4/30/79	PROV APP		04
	20	EUGENE	MAYWOOD SUBDIV	K	4/24/79	4/27/79	PROV APP		03
	24	SALEM	IRONWOOD ESTATES	J	4/18/79	4/20/79	PROV APP		02
	24	SALEM	TIERRA JUNIPERO	J	4/17/79	4/20/79	PROV APP		03
	26	MILWAUKIE	ACER WOODS ESTATES	J	4/12/79	4/20/79	PROV APP		08
		WILSONVILLE	RIDDER RD-EDW BUS PK	K	4/26/79	4/30/79	PROV APP		04
		TUALATIN	COMANCHE WOODS II	K	4/23/79	43/07/90	ROV APP		07
		CANBY	HARVEST OAK ESTATES	K	4/19/79	43/07/90	ROV APP		11
	2	LEM	H SANNA ADDITION	K	4 20/79/00	30/79/07	OV APP	1	20
		E/S NWMC	CONTRACT C-1-FINAL	V	3/14/79	4/02/79	PROV APP		19
	30	HERMISTON	STP-FINAL	V	2/13/79	4/13/79	PROV APP		60
	30	HERMISTON	WEST SIDE PUMPSTATION	V	2/13/79	4/13/79	PROV APP		60
	30	HERMISTON	INTERCEPTORS SCHDLS II&III	V	2/13/79	4/13/79	PROV APP		60
	30	HERMISTON	INTERCEPTORS SCHEDULES II&I	V	2/13/79	4/13/79	PROV APP		60
	21	LINCOLN CITY	STP-FINAL	V	1/20/79	4/20/79	PROV APP		90
	21	LINCOLN CITY	INTERCEPTORS & PUMP STATION	V	1/20/79	4/20/79	PROV APP		90
	9	BEND	CONTRACT 15 SLUDGE TRUCK	V	3/20/79	4/02/79	PROV APP		13

DEPARTMENT OF ENVIRONMENTAL QUALITY WATER QUALITY DIV. ACTIVITY REPORT

5/04/79 PLAN ACTIONS COMPLETED: 118 MUNICIPAL SOURCES 112 (Cont.) FOR APRIL 1979

ENGINER	COUNTY	LOCATION	PROJECT	REVIEWER	DATE REC	DATE OF ACTION	ACTION	DAYS TO COMPLETE
	9	BEND	CONTRACT 20A BAR SCREEN	V	2/12/79	4/02/79	PROV APP	18
	9	BEND	CONTRACT 24 AERATION	V	3/19/79	4/02/79	PROV APP	14
	9	BEND	CONTRACT 26A,26B PUMPS	V	2/12/79	4/02/79	PROV APP	18
	9	BEND	CONTRACT 27 WATER PUMPS	V	3/19/79	4/02/79	PROV APP	14
	21	LINCOLN CTY	NELSCOTT BEACH 2ND ADD	K	4/26/79	4/30/79	PROV APP	04
	22	ALBANY	CEDARWOOD ADD	K	4/26/79	4/30/79	PROV APP	04
18	27	MONMOUTH	SPECIFICATIONS & PLANS	V	7/26/78	4/03/79	PROV APP	60
24		SALEM	MCC REPLACEMENT-PLANT P.S.	V	2/16/79	3/14/79	PROV APP	30
22		HARRISBURG	SCHED. B STP MODIFICATIONS	V	3/02/79	4/02/79	PROV APP	30
18		KLAMATH FALLS	COLLEGE INDUSTRIAL PARK	J	3/20/79	4/02/79	PROV APP	13
26		GRESHAM	DAWN CREST	J	3/27/79	4/10/79	PROV APP	14
34		USA	TIGARD COMM DEV	J	4/02/79	4/02/79	PROV APP	01
24		SALEM	BRECKENRIDGE HTS. NO 2	J	3/29/79	4/02/79	PROV APP	04
15		BCVSA	FOREST ACRES-TABLE ROCK	J	3/28/79	4/05/79	PROV APP	08
24		SALEM	CHEMAWA TRUNK	J	3/22/79	4/05/79	PROV APP	14
21		NEWPORT	BECKRIDGE PROJ	K	3/29/79	4/18/79	PROV APP	20
31		LAGRANDE	FOLEY STREET EXT	K	3/29/79	4/13/79	PROV APP	15
21		LINCOLN CITY	FOREST LAKE PK SWR-PUMP STA	K	3/29/79	4/20/79	PROV APP	22

MONTHLY ACTIVITY REPORT

Water Quality (Reporting Unit) — April 1979 (Month and Year)

PLAN ACTIONS COMPLETED (118, cont'd)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
INDUSTRIAL WASTE SOURCES (6)			
Multnomah	Portland Community College-Portland (Wacker) Clarifier	3-28-79	Approved
Marion	Valley Oil Co. - Salem Oil Spill Containment	3-28-79	Approved
Marion	Richard Goff Farms - Turner Animal Waste	4-10-79	Approved
Linn	Teledyne Wah Chang Albany Aqueous Ammonia Storage Tank	4-16-79	Approved
Linn	Teledyne Wah Chang Albany Sulfuric Acid Tank Berm	4-16-79	Approved
Polk	Elliot Farms - Dallas Prune Dryer Waste Water Holding Tank	4-25-79	Approved

MONTHLY ACTIVITY REPORT

Water Quality (Reporting Unit) — April 1979 (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	1	4	7	0	0	2	3	1	6				
Existing	0	0	0	1	0	2 1/	0	2	0	0				
Renewals	6	0	49	10	5	3	41	11	45	5				
Modifications	0	0	13	0	1	1	14	1	4	0				
Total	6	1	66	18	6	6	57	17	50	11	245	83	246	89
Industrial														
New	0	0	14	15	1	3	15	19	6	5				
Existing	0	0	1	0	0	0	9	0	3	0				
Renewals	3	0	69	15	4	1	76	23	55	3				
Modifications	1	0	4	3	0	0	6	3	5	0				
Total	4	0	88	33	5	4	106	45	69	8	407	131	413	136
Agricultural (Hatcheries, Dairies, etc.)														
New	1	1	3	8	0	0	4	6	1	1				
Existing	0	0	0	0	0	0	0	0	0	0				
Renewals	0	1	1	1	0	0	1	1	2	1				
Modifications	0	0	0	0	0	0	0	0	0	0				
Total	1	2	4	9	0	0	5	7	3	2	62	21	63	22
GRAND TOTALS	11	3	158	60	11	10	168	69	122	21	714	235	722	247

* NPDES Permits
** State Permits

1/ Includes one Existing State Permit Canceled (Connected to sewer system)

MONTHLY ACTIVITY REPORT

Water Quality (Reporting Unit) — April 1979 (Month and Year)

PERMIT ACTIONS COMPLETED (21)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
Lane	Lynbrook Inc. Sewage Disposal	4-2-79	State Modification Issued
Clackamas	City of Molalla Add. #1	4-4-79	NPDES Modification Issued
Yamhill	Dayton Sand & Gravel Aggregate	4-4-79	State Permit Renewed
Linn	Stuckey's Pecan Shoppe Sewage Disposal	4-4-79	State Permit Issued
Wasco	City of Maupin Sewage Disposal	4-4-79	NPDES Permit Renewed
Multnomah	Centennial Unified School Dist. Pleasant Valley H.S.	4-4-79	NPDES Permit Renewed
Multnomah	Sauvie Island Moorage Sewage Disposal	4-4-79	NPDES Permit Renewed
Linn	Pacific Power & Lignt Albany	4-4-79	NPDES Permit Renewed
Lincoln	3-G Lumber Sawmill	4-4-79	NPDES Permit Renewed
Columbia	City of Scappoose Sewage Disposal	4-4-79	NPDES Permit Renewed
Clackamas	Caffall Bros. Forest Products Wood Products	4-4-79	NPDES Permit Renewed
Harney	City of Hines Sewage Disposal	4-10-79	State Permit Renewed
Harney	City of Burns Sewage Disposal	4-10-79	State Permit Renewed

MONTHLY ACTIVITY REPORT

Water Quality (Reporting Unit) — April 1979 (Month and Year)

PERMIT ACTIONS COMPLETED (21, cont'd)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
Hood River	City of Hood River Sewage Disposal	4-16-79	NPDES Permit Renewed
Multnomah	City of Portland St. Johns Landfill	4-16-79	NPDES Permit Issued
Linn	Freres Lumber Wood Products	4-19-79	State Permit Issued
Baker	Malcom Eckleberry Placer Mine	4-20-79	State Permit Issued
Baker	Hereford Placer Co. Mining	4-20-79	State Permit Issued
Clackamas	Mt. Hood Nat. Forest. Timberline Lodge	4-20-79	State Permit Renewed
Josephine	Rogue Community College Sewage Disposal	4-10-79	State Permit Canceled Connected to Sewer.

MONTHLY ACTIVITY REPORT

Solid Waste Division (Reporting Unit) — April 1979 (Month and Year)

PLAN ACTIONS COMPLETED (5)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
Lane	Delta Property Company New Tire Disposal Site Operational Plan	4/2/79	Letter Authorization Issued
Linn	Willamette Industries-Hutson New Woodwaste Site Operational Plan	4/3/79	Letter Authorization Issued
Jackson	Ashland Landfill Existing Sanitary Landfill Expansion Plan	4/4/79	Approved
Linn	Douglas Construction Company New Oil Well Drilling Mud Lagoon Construction and Operation Plan	4/5/79	Letter Authorization
Douglas	Roseburg Lumber-Dixonville New Log Pond Sludge Disposal Site Operational Plan	4/10/79	Letter Authorization Issued

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Solid Waste Division (Reporting Unit) — April 1979 (Month and Year)

SUMMARY OF SOLID 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		3		2	2			
Existing		1		3	15	(* -14)		
Renewals	2	30	1	19	14			
Modifications	2	15	1	15	2			
Total	4	49	2	39	33		168	171
Demolition								
New		1		2				
Existing		1						
Renewals		2		3				
Modifications		7		2	5			
Total	0	11	0	7	5		20	20
Industrial								
New	3	14	3	15	1	(*)		
Existing		1	1	2				
Renewals		15	2	21	4			
Modifications		1		3	5			
Total	3	31	6	41	10		103	103
Sludge Disposal								
New		1		1				
Existing		1			1	(*)		
Renewals		1	1	4				
Modifications				1				
Total	0	3	1	6	1		11	12
Hazardous Waste								
New Authorizations	11	147	9	143	4			
Renewals								
Modifications	11							
Total		147	9	143	4		1	1
GRAND TOTALS	18	241	18	236	53		303	307

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

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Solid Waste Division (Reporting Unit) — April 1979 (Month and Year)

PERMIT ACTIONS COMPLETED (9)

County	Name of Source/Project/Site and Type of Same	Date of Action	Action
General Refuse Facilities (2)			
Multnomah	St. Johns Landfill Existing facility	4/16/79	Permit renewed
Yamhill	Newberg Landfill Existing facility	4/24/79	Permit amended
Demolition Waste Facilities-none			
Industrial Waste Facilities (6)			
Linn	Willamette Industries New wood waste site	4/3/79	Letter authorization issued.
Linn	Douglas Construction Company New site for drilling mud	4/5/79	Letter authorization issued
Douglas	Roseburg Lumber, Dixonville New wood waste site	4/10/79	Letter authorization issued.
Linn	Old Timber Pond Existing wood waste site	4/12/79	Permit renewed.
Lane	Bohemia, Inc.-Saginaw Existing wood waste site	4/16/79	Permit renewed
Crook	Hudspeth Sawmill Company Existing wood waste site	4/19/79	Permit issued
Sludge Disposal Facilities (1)			
Lincoln	T & L Septic Tank Service Existing disposal site	4/16/79	Permit renewed

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Solid Waste Division (Reporting Unit) — April 1979 (Month and Year)

HAZARDOUS WASTE DISPOSAL REQUESTS

CHEM-NUCLEAR SYSTEMS, GILLIAM CO.

Date	Waste Description: Type	Source	Quantity: Present	Quantity: Future
Disposal Requests Granted (9)				
Oregon (1)				
16	Unwanted pesticide	Nursery	400 lb.	None
Washington (4)				
5	Miscellaneous laboratory chemicals	Paper Mill	22 lb.	None
9	PCB wastes	University	46 cu. ft.- 55 cu. ft.	None
17	Pesticides	General public	150 gals.	None
17	PCB spill cleanup debris	Paper mill	Several cu. yds.	None
Hawaii (1)				
27	Miscellaneous laboratory chemicals	Federal Agency	30 lb.	None
Idaho (1)				
10	Chemical wastes consisting of spent chromic acid, degreasing solvent, Retones, machine coolant and heavy metal sludge.	Electronic firm	3,700 gals/md.	None
Manitoba (1)				
9	PCB capacitors	Utility	642 cu. ft.	None
Montana (1)				
10	PCB capacitors, transformers and liquids	Utility	1,341 gals- 3,000 gals/yr	None

TOTALS	LAST	PRESENT
Settlement Action	20	18
Preliminary Issues	8	8
Discovery	3	6
To be Scheduled	4	4
To be Rescheduled	0	0
Set for Hearing	0	1
Briefing	1	1
Decision Due	4	4
Decision Out	0	0
Appeal to Commission	4	3
Appeal to Court	0	0
Transcript	0	0
Finished	2	2
Appeal to Commission Dismissed	1	0
Commission Affirmed Decision	1	1
TOTAL	48	48

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/SW	Land Quality/Solid Waste
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/NWR	Portland Region/Northwest 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.

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	Settlement Action
Paulson	5/75	5/75	Atty	McS		Resp		1 SSD Permit	Settlement Action
Faydrex, Inc.	5/75	5/75	Atty	McS	11/77	Resp		64 SSD Permits	Briefing
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 dismissed~~
PGE (Harborton)	2/76	2/76	Atty	McS		Hrngs		ACD Permit Denial	Preliminary Issues
Ellsworth	10/76	10/76	Atty	McS		Resp		$10,000 WQ-PR-76-196	Settlement Action
Ellsworth	10/76	10/76	Atty	McS		Resp		WQ-PR-ENF-76-48	Settlement Action
Silbernagel	10/76	10/77	Atty	Cor		EQC		AQ-MWR-76-202 $400	Settlement Action
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	EQC	2/77	$400 SW-SWR-288-76	Appeal to Comm
Jones	4/77	7/77	DEQ	Cor	6/9/78	Hrngs		SSD Permit SS-SWR-77-57	Appeal to Comm
Sundown et al	5/77	6/77	Atty	LZ		Dept		$11,000 Total WQ Viol SNCR	Settlement Action
Wright	5/77	5/77	Atty	McS		Resp		$75 SS-MWR-77-99	Comm Affirmed Decision
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	Settlement Action
~~Suniga~~	~~7/77~~	~~7/77~~	~~Atty~~	~~Lmb~~	~~10/77~~	~~EQC~~		~~$500 AQ-SNCR-77-143~~	~~Appeal to Comm~~
Taylor, D.	8/77	10/77	DEQ	McS	4/78	Dept		$250 SS-PR-77-188	Settlement Action
Grants Pass Irrig	9/77	9/77	Atty	LZ		Prtys		$10,000 WQ-SWR-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
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		Prtys		ACD Permit Conditions	Settlement Action
Barrett & Sons, Inc.	12/77	2/78	DEQ			Resp		$500 WQ-PR-77-307	Settlement Action
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	Atty	McS	6/9/78	EQC		$200 AQ-MWR-77-298 Fld Brn	Appeal to Comm
Wah Chang	1/78	2/78	Atty	Cor		Prtys		$5500 WQ-MWR-77-334	Settlement Action
Hawkins	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
Wah Chang	4/78	4/78	Atty	McS		Prtys		NPDES Permit (Modification)	Preliminary Issues
Wah Chang	11/78	12/78	Atty	McS		Prtys		P-WQ-WVR-78-07	Preliminary Issues
Stimpson	5/78		Atty	LZ		Dept		Tax Credit Cert. T-AQ-PR-78-01	To Be Scheduled
Vogt	6/787	6/78	DEQ	LZ	11/8/78	Dept		SSD Permit	Decision Due
Hogue	7/78		Atty			Dept		P-SS-SWR-78	Preliminary Issues
B & M	8/78	8/78	DEQ	Cor	11/1/78	Hrngs		SSD License	Decision Due
Welch	10/78	10/78	Atty	Cor		Dept		P-SS-CR-78-134	Discovery
Reeve	10/78		Atty	Cor		Hrngs		P-SS-CR-78-132 & 133	Discovery
Bierly	12/78	12/78	DEQ			Resp		$700 AQ-WVR-78-144	Settlement Action
Georgia-Pacific	1/79	1/78	DEQ			Dept		$1525 AQ-NWR-78-159	Settlement Action
Glaser	1/79	1/79	DEQ	LZ		Prtys		$2200 AQ-WVR-78-147	To be Scheduled
Hatley	1/79	2/79	DEQ	LZ		Prtys		$3250 AQ-WVR-78-157	To be Scheduled
Roberts	2/79	3/79	DEQ	LZ	5/23/79	Prtys		P-SS-SWR-79-01	Scheduled
Wah Chang	2/79	2/79	Atty			Prtys		$3500 WQ-WVR-78-187	Settlement Action
TEN EYCK	12/78		DEQ			Prtys		P-SS-ER-78-06	Discovery
Loren Raymond	4/79	4/79	Atty	LZ		?		P-SS-ER-79-02	?
J. R. Simplot Co.	4/79	4/79	Atty	LZ		?		$2500 WQ-ER-79-27	?

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, May 25, 1979, EQC Meeting

TAX CREDIT APPLICATIONS

Director's Recommendation

It is recommended that the Commission take action as follows:

1. Issue Pollution Control Facility Certificates to applications T-1067, T-1068 (Babler Brothers, Inc.) and T-1081 (Reynolds Metals Company).

2. Amend Pollution Control Facility Certificate No. 947 to reflect a reduced cost (see attached review report).

Bill

WILLIAM H. YOUNG

MJDowns:cs
229-6485
5/15/79
Attachments

Proposed May 1979 Totals:

Air Quality	$1,331,224
Water Quality	-0-
Solid Waste	-0-
Noise	-0-
	$1,331,224

Calendar Year Totals to Date

Air Quality	$ 300,319
Water Quality	1,379,512
Solid Waste	424,915
Noise	84,176
	$2,188,922

Appl T-1067
Date 4/26/79

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Babler Brothers, Inc.
4617 S.E. Milwaukie Ave.
Portland, OR 97202

The applicant owns and operates three drum mix asphaltic concrete paving plants at locations throughout Oregon.

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 standard Havens baghouse, size 36 Alpha Mark II, with 140 Nomex bags.

Request for Preliminary Certification for Tax Credit was made on May 12, 1978, and approved on May 30, 1978.

Construction was initiated on the claimed facility on June 10, 1978, completed on June 15, 1978, and the facility was placed into operation on July 5, 1978.

Facility Cost: $103,000 (Accountant's Certification was provided).

3. Evaluation of Application

The claimed Facility will be used in lieu of wet control systems on Babler's three drum mix plants at sites where availability or disposal of water is a problem. A source test has demonstrated that the subject plants will be able to operate in compliance when using the claimed facility.

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 is necessary to satisfy the intents and purposes of ORS Chapter 468 and the rules adopted under that chapter.

E. No income is derived from the claimed facility. Its sole purpose is to control air pollution.

5. Director's Recommendation

Based upon the summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $103,000 with 80% or more allocated to pollution control be issued for the facility claimed in Tax Credit Application No. T-1067.

JB:jl
(503)229-5508
April 26, 1979

Appl T-1068
Date 4-19-79

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Babler Bros., Inc.
4617 SE Milwaukie Ave.
Portland, OR 97202

The applicant owns and operates a Boeing drum mix asphaltic concrete paving plant at various sites throughout Oregon.

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

2. Description of Claimed Facility

The facility described in this application consists of a pyrocone combustion control system plus electronics, insulated exhaust shroud assembly, venturi scrubber, wet/dry environmental control system, mounting devices, and percentage of fan allocable to pollution control for the subject plant.

Request for Preliminary Certification for Tax Credit was made on 10-4-77, and approved on 10-10-77.

Construction was initiated on the claimed facility on 10-5-77, completed on 10-15-77, and the facility was placed into operation on 8-9-78.

Facility Cost: $112,270 (Accountant's Certification was provided).

3. Evaluation of Application

The claimed facility was believed to be necessary to bring the subject asphaltic concrete plant into compliance with Departmental regulations. A source test has demonstrated that the claimed facility does in fact bring the subject plant into compliance.

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 and is necessary to satisfy the intents and purposes of ORS Chapter 468 and the rules adopted under that chapter.

E. No income is derived from the claimed facility. Its sole purpose is to control air pollution.

5. Director's Recommendation

Based upon the summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $112,270 with 80% or more allocated to pollution control be issued for the facility claimed in Tax Credit Application No. T-1068.

J. A. Broad:sb
(503) 221-5508
4-26-79

Appl T-1081
Date 5/8/79

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Reynolds Metals Company
Troutdale Division
Northeast Sundial Road
Troutdale, OR 97060

The applicant owns and operates a primary aluminum reduction plant at Northeast Sundial Road in Troutdale.

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

2. Description of Claimed Facility

The facility described in this application consists of sampling equipment and additional capital cost for the dry control system covered in tax credit application T-986. The specific equipment is detailed in Exhibit C in the application.

Notice of Intent to Construct was made on March 10, 1975, and approved on July 3, 1975. Preliminary Certification for Tax Credit is not required.

Site preparation for the claimed facility was initiated on March 3, 1975. On-site construction was initiated on the claimed facility on April 6, 1976, completed on October 5, 1977, and the facility was placed into operation on October 5, 1977.

Facility Cost: $1,115,954 (Accountant's Certification was provided).

3. Evaluation of Application

The sampling equipment claimed herein measures atmospheric emissions from the pot room ventilation (secondary system) and is required to comply with Department regulations. The itemized costs for this equipment total $123,105.88.

The additional costs claimed herein are for monies expended on items related to the dry control system. The major portion of the dry control system was claimed in Application No. T-986 and certified by the Environmental Quality Commission on May 26, 1978 (Certificate No. 904).

The applicant had previously advised the Department that there would be additional expenditures on this extensive project. This advisory has been repeated so at least one more related application is expected.

4. Summation

A. Facility was constructed after receiving approval to construct 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 and is necessary to satisfy the intents and purposes of ORS Chapter 468 and the rules adopted under that chapter.

E. Annual operating expense plus depreciation exceed the annual income derived from the claimed facility. Thus, the claimed facility has a negative return on investment and qualifies for 80% or more tax credit certification.

5. Director's Recommendation

Based upon the summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $1,115,954 with 80% or more allocated to pollution control be issued for the facility claimed in Tax Credit Application No. T-1081.

EJW:jl
(503)229-5397
May 9, 1979

Cert No. 947

State of Oregon
Department of Environmental Quality

AMENDMENT OF POLLUTION CONTROL FACILITY CERTIFICATE

---

1. Certificate Issued To:

Publishers Paper Company
419 Main Street
Oregon City, Oregon 97045

The Pollution Control Facility Certificate was issued for a solid waste facility.

2. Description

On December 15, 1978, Publishers Paper Company was issued Pollution Control Facility Certificate #947 for a superheater turbine generator installed to generate electrical energy from steam produced in a waste wood fired boiler. By letter of May 4, 1979, Publishers Paper notified the Department that the heating coils listed in the itemized cost statement were associated with the paper machine area and were not part of the boiler/generator facility (see letter attached).

3. Summation

Pollution Control Facility Certificate #947 should be reduced in amount from $2,547,911 to $2,321,768 by removing the heating coils in the amount of $226,143 from the certified facilities.

4. Director's Recommendation

Amend Pollution Control Facility Certificate #947 issued to Publishers Paper Company to reflect the reduced cost of $2,321,768. The amended certificate to be valid from the date of issuance of the original certificate.

MJDowns:cs
229-6485
5/15/79
Attachment (1)

PUBLISHERS PAPER TIMES MIRROR

May 4, 1979

Mr. Ernest Schmidt, Administrator
Solid Waste Division
Department of Environmental Quality
P. O. Box 1760
Portland, OR 97207

Dear Mr. Schmidt:

Publishers Paper Co. wishes to amend the certified cost statement which was submitted for the turbine generator project at the Newberg Division. (Tax credit certificate No. 947, Application No. T-1022, issued 12/15/78) The total cost figure of $2,547,911 is to be amended to $2,321,768.

The difference is the cost of the heating coils listed in the itemized cost statement at $226,143. The heating coils are associated with the paper machine area and are not part of the boiler/turbine generator complex. This item was erroneously included in the cost statement and the amendment request is made to correct the error.

Please inform Publishers of any specific procedural requirements which may exist amending a cost statement. If you have any questions regarding this matter, please contact this office or Mr. Jim Murray, Corporate Tax Manager.

Respectfully requested,

R A Schmall

R. A. Schmall, Manager
Environmental Services

RAS:jfk
cc: J. Borden, DEQ
J. Murray
P. Schnell
D. Nicholson
Z. Rozycki

419 MAIN ST., OREGON CITY, OREGON 97045, TELEPHONE (503) 656-5211

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

Agenda Item D, May 25, 1979, EQC Meeting

Subject: Request for Authorization to Conduct a Public Hearing on Modifications to the Air Contaminant Discharge Permit Fee Schedule OAR 340-20-155 Table A

Background and Problem Statement

Based upon a legislative review, the Department was instructed to increase revenues from Air Contaminant Discharge Permit fees. In order to increase total revenues, fees for individual sources must be increased. The fees for individual sources are contained in OAR 340-20-155 Table A. (Current Table A is attached.)

The commission is authorized by ORS 468.065(2) to establish a permit fee schedule.

The "Statement of Need for Rulemaking" is attached.

Alternatives and Evaluation

A budget note in the 1977 - 79 Biennial Budget instructed the Department to increase permit fee revenues at the same inflation rate experienced by General Fund programs. According to current estimates, that inflation rate is approximately 15%.

The permit fee revenues are used to support a portion of the permit program. As required by ORS 468.065(2), the fees are set in accordance with the cost to the Department of filing and investigating the application, issuing or denying the permit and determining compliance or noncompliance with the permit. Since the Department does not anticipate any significant changes in the emphasis or level of the permit program, the budget note and requirements of the statutes are compatable.

The Department anticipates revenues of $560,000 from the current fee schedule during the 79-81 biennium. In accordance with the budget note, revenues should be increased by approximately $84,000.

In order to generate the increased revenues, the Department is reviewing the individual fee categories in Table A. Each category could be increased by the 15% rate, or higher or lower rates applied to individual categories depending upon program experience or projected emphasis to increase revenues by $84,000 for the biennium.

The Department is now in the process of developing a proposed fee schedule which will generate approximately $644,000 in revenues during the 79-81 biennium. Because the biennium begins July 1, 1979, the Department is requesting authorization to hold a hearing at this time so that final action could be taken by the Commission and a rule become effective prior to July 1, 1979.

The Department is working with the Air Permit Fees Task Force set up by the Commission to develop a fee schedule that reflects the Department's involvement with each category of sources. The Department met with the Task Force on April 16, 1979, and additional meetings are anticipated.

Summation

1) The Department has been instructed by the Legislature to increase revenues from air permit fees at the same inflation rate experienced by General Fund programs.

2) The Department will propose a fee schedule (Table A) which generate approximately $644,000 by increasing individual permit fees.

3) In order to modify OAR 340-20-155 Table A, a public hearing is necessary.

Director's Recommendation

Based upon the summation, it is recommended that the Commission authorize public hearings to take testimony on proposed changes to the fees in Table A of OAR 340-20-155.

Bill

WILLIAM H. YOUNG

EJW:jl
229-6480
May 7, 1979
Attachment 1) Table A
2) Statement of Need for Rulemaking

TABLE A
AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE FOR 1976 CALENDAR YEAR

(340-20-155)

NOTE: Persons who operate boilers shall include fees as indicated in Items #57 or #58 in addition to fees for any other applicable category.

Air Contaminant Source	Standard Industrial Classification Number	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee	Fees to be Submitted with New Application	Fees to be Submitted with Renewal Application	Fees to be Submitted with Application to Modify Permit
1. Seed cleaning located in special control areas, commercial operations only (not elsewhere included)	0723	25	75	85	185	110	100
2. Smoke houses with 5 or more employees	2013	25	75	100	200	125	100
3. Flour and other grain mill products in special control areas	2041						
a) 10,000 or more t/y		25	250	275	550	300	275
b) Less than 10,000 t/y		25	200	110	335	135	225
4. Cereal preparations in special control areas	2043	25	250	200	475	225	275
5. Blended and prepared flour in special control areas	2045						
a) 10,000 or more t/y		25	250	200	475	225	275
b) Less than 10,000 t/y		25	200	100	325	125	225
6. Prepared feeds for animals and fowl in special control areas	2048						
a) 10,000 or more t/y		25	250	275	550	300	275
b) Less than 10,000 t/y		25	150	110	285	135	175

TABLE A Continued (340-20-155)

NOTE: Persons who operate boilers shall include fees as indicated in Items #57 or #58 in addition to fees for any other applicable category.

Air Contaminant Source	Standard Industrial Classification Number	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee	Fees to be Submitted with New Application	Fees to be Submitted with Renewal Application	Fees to be Submitted with Application to Modify Permit
7. Beet sugar manufacturing	2063	25	300	1325	1650	1350	325
8. Rendering plants	2077						
a) 10,000 or more T/y		25	200	325	550	350	225
b) Less than 10,000 T/y		25	200	225	450	250	225
9. Coffee roasting	2095	25	150	175	350	200	175
10. Sawmill and/or planing	2421						
a) 25,000 or more bd.ft./shift		25	150	275	450	300	175
b) Less than 25,000 bd.ft./shift		25	50	175	250	200	75
11. Hardwood mills	2426	25	50	175	250	200	75
12. Shake and shingle mills	2429	25	50	175	250	200	75
13. Mill work with 10 employees or more	2431	25	125	225	375	250	150
14. Plywood manufacturing	2435 & 2436						
a) Greater than 25,000 sq.ft./hr, 3/8" basis		25	500	550	1075	575	525
b) Less than 25,000 sq.ft./hr, 3/8" basis		25	350	325	700	350	375
15. Veneer manufacturing only (not elsewhere included)	2435 & 2436	25	75	175	275	200	100
16. Wood preserving	2491	25	125	175	325	200	150
17. Particleboard manufacturing	2492	25	500	550	1075	575	525
18. Hardboard manufacturing	2499	25	500	350	1075	575	525

TABLE A Continued (340-20-155)

NOTE: Persons who operate boilers shall include fees as indicated in Items #57 or #58 in addition to fees for any other applicable category.

Air Contaminant Source	Standard Industrial Classification Number	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee	Fees to be Submitted with New Application	Fees to be Submitted with Renewal Application	Fees to be Submitted with Application to Modify Permit
19. Battery separator mfg.	2499	25	75	100	200	125	100
20. Furniture and fixtures	2511						
a) 100 or more employees		25	150	275	450	300	175
b) 10 employees or more but less than 100 employees		25	100	175	300	200	125
21. Pulp mills, paper mills, and paperboard mills	2611 2621 2631	25	1000	2200	3225	2225	1025
22. Building paper and building-board mills	2661	25	150	175	350	200	175
23. Alkalies and chlorine mfg.	2812	25	275	450	750	475	300
24. Calcium carbide manufacturing	2819	25	300	550	875	575	325
25. Nitric acid manufacturing	2819	25	200	225	450	250	225
26. Ammonia manufacturing	2819	25	200	275	500	300	225
27. Industrial inorganic and organic chemicals manufacturing (not elsewhere included)	2819	25	250	350	625	375	275
28. Synthetic resin manufacturing	2821	25	200	200	425	225	225
29. Charcoal manufacturing	2861	25	275	550	850	575	300
30. Herbicide manufacturing	2879	25	500	2200	2725	2225	525
31. Petroleum refining	2911	25	1000	2200	3225	2225	1025
32. Asphalt production by distillation	2951	25	200	275	500	300	225

TABLE A Continued (340-20-155)

NOTE: Persons who operate boilers shall include fees as indicated in Items #57 or #58 in addition to fees for any other applicable category.

Air Contaminant Source	Standard Industrial Classification Number	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee	Fees to be Submitted with New Application	Fees to be Submitted with Renewal Application	Fees to be Submitted with Application to Modify Permit
33. Asphalt blowing plants	2951	25	200	350	575	375	225
34. Asphaltic concrete paving plants	2951						
a) Stationary		25	200	225	450	250	225
b) Portable		25	200	300	525	325	225
35. Asphalt felts and coating	2952	25	200	450	675	475	225
36. Blending, compounding, or refining of lubricating oils and greases	2992	25	175	225	425	250	200
37. Glass container manufacturing	3221	25	200	350	575	375	225
38. Cement manufacturing	3241	25	625	1650	2300	1675	650
39. Redimix concrete	3273	25	75	110	210	135	100
40. Lime manufacturing	3274	25	300	175	500	200	325
41. Gypsum products	3275	25	150	175	350	200	175
42. Rock crusher	3295						
a) Stationary		25	175	225	425	250	200
b) Portable		25	175	300	500	325	200
43. Steel works, rolling and finishing mills	3312	25	500	400	925	425	525
44. Incinerators							
a) 1000 lbs/hr and greater capacity		25	300	175	500	200	325
b) 40 lbs/hr to 1000 lbs/hr capacity		25	100	85	210	110	125

TABLE A Continued (340-20-155)

NOTE: Persons who operate boilers shall include fees as indicated in Items #57 or #58 in addition to fees for any other applicable category.

Air Contaminant Source	Standard Industrial Classification Number	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee	Fees to be Submitted with New Application	Fees to be Submitted with Renewal Application	Fees to be Submitted with Application to Modify Permit
45. Gray iron and steel foundries	3321						
Malleable iron foundries	3322						
Steel investment foundries	3324						
Steel foundries (not elsewhere classified)	3325						
a) 3,500 or more t/y production		25	500	450	975	475	525
b) Less than 3,500 t/y production		25	125	225	375	250	150
46. Primary aluminum production	3334	25	1000	2200	3225	2225	1025
47. Primary smelting of zirconium or hafnium	3339	25	5000	2200	7225	2225	5025
48. Primary smelting and refining of ferrous and nonferrous metals (not elsewhere classified)	3339						
a) 2,000 or more t/y production		25	500	1100	1625	1125	525
b) Less than 2,000 t/y production		25	100	275	400	300	125
49. Secondary smelting and refining of nonferrous metals	3341	25	225	275	525	300	250
50. Nonferrous metals foundries	3361 3362	25	125	225	375	250	150
51. Electroplating, polishing, and anodizing with 5 or more employees	3471	25	100	175	300	200	125
52. Galvanizing and pipe coating--exclude all other activities	3479	25	100	175	300	200	125
53. Battery manufacturing	3691	25	125	225	375	250	150

TABLE A Continued (340-20-155)

NOTE: Persons who operate boilers shall include fees as indicated in Items #57 or #58 in addition to fees for any other applicable category.

Air Contaminant Source	Standard Industrial Classification Number	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee	Fees to be Submitted with New Application	Fees to be Submitted with Renewal Application	Fees to be Submitted with Application to Modify Permit
54. Grain elevators--intermediate storage only, located in special control areas	4221						
a) 20,000 or more t/y		25	175	350	550	375	200
b) Less than 20,000 t/y		25	100	175	300	200	125
55. Electric power generation	4911*						
a) Greater than 25MW		25	1000	1100	2125	1125	1025
b) Less than 25MW		25	350	550	925	575	375
56. Gas production and/or mfg.	4925	25	375	275	675	300	400
57. Grain elevators--terminal elevators primarily engaged in buying and/or marketing grain--in special control areas	5153						
a) 20,000 or more t/y		25	500	450	975	475	525
b) Less than 20,000 t/y		25	150	175	350	200	175
58. Fuel burning equipment within the boundaries of the Portland, Eugene-Springfield, and Medford-Ashland Air Quality Maintenance Areas and the Salem Urban Growth Area***	4961**	(Fees will be based on the total aggregate heat input of all boilers at the site.)					
a) Residential oil fired, wood fired, or coal fired							
1) 250 million or more btu/hr (heat input)		25	150	175	350	200	175
2) 5 million or more but less than 250 million btu/hr (heat input)		25	100	100	225	125	125
3) Less than 5 million btu/hr (heat input)		25	25	75	125	100	50
b) Distillate oil fired							
1) 250 million or more btu/hr (heat input)		25	150	175	350	200	175
2) 5 million or more but less than 250 million btu/hr (heat input)		25	25	75	125	100	50

* Excluding hydroelectric and nuclear generating projects, and limited to utilities.
** Including fuel burning equipment generating steam for process or for sale but excluding power generation (SIC 4911).
*** Maps of these areas are attached. Legal descriptions are on file in the Department.

STATEMENT OF NEED FOR RULE MAKING

Pursuant to ORS 183.335(7), this statement provides information on the Environmental Quality Commission's intended action to adopt a rule.

Legal Authority

ORS 468.065(2) authorizes the Commission to establish a schedule of permit fees based upon the cost of filing and investigating the application of issuing or denying the permit and of determining compliance with the permit.

Need for the Rule

The proposed rule is a modification of the existing Table A. The individual fees would be increased based upon inflation.

Principle Documents Relied Upon in this Rulemaking

1) OAR 340-20-155, Table A

2) The Department's Biennial Budget for 1977 to 1979

F.A. Skirvin
229-6414

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. E, May 25, 1979, EQC Meeting

Request for Authorization to Hold a Public Hearing on a Proposed Amendment of Water Quality Permit Fees (OAR 340-45-070, Table A) to Increase Revenues for the 79-81 Biennium.

Background

The Department's 75-77 biennium appropriation bill, (Chapter 445 Oregon Laws 1975), required partial support of waste discharge permit program activities by fee revenue. In addition, ORS 468.065 was amended to authorize the EQC to adopt a fee schedule. The Department was required to raise about $125,000 from Water Quality permit fees during Fiscal Year 1977. The necessary rule changes and fee schedule were adopted by the Commission April 30, 1976.

A Water Quality Permit Program Task Force was appointed to evaluate the proposed fee schedule prior to its adoption. The schedule which was adopted had Task Force concurrence. A three-part fee was adopted, consisting of a fixed filing fee, minimal application processing fee and, annual compliance determination fee. The annual compliance determination fee was based on the relative amount of staff time necessary to determine compliance. It varied from $50 per year for simple sources to $950 per year for complex sources. The Task Force expressed the view that the application processing fees were minimal and should be further evaluated when increased revenues were necessary.

Since that original fee schedule in 1976, no fee increases have been proposed. Minor changes were made in the fee schedule on February 25, 1977. They consisted of a reduction in fees for small placer miners and clarified language in some industrial categories.

The 1977 Legislature included a budget note requiring a revision of permit fees for the 79-81 budget. This was to cover inflation proportional to general fund inflation using 74-75 as the base year. These proposed fee increases are for that purpose.

Evaluation

An increase in permit fee revenues of about 25% is sought. The two alternatives considered are to: (1) increase the annual compliance determination fee by 25% or (2) increase the permit processing fees substantially.

The annual compliance determination fees range from $50 to $950 per year. The fees in each category are based on the proportional amount of time it normally takes to ensure compliance. Because of the reduced level budget, we are losing some staff positions who have been involved in inspecting facilities. This means that there will be a reduced level of surveillance. With this reduced level of surveillance it would be hard to justify a raise in the compliance determination fees.

The Water Permit Task Force indicated that the permit processing fees were minimal and should be adjusted when additional fee revenues were necessary. The only drawback to relying on this source of revenue is the unpredictability of applications to be considered. The number of permit renewals to occur each year is known but the number of new permittees is hard to predict. The number of permit modifications is also hard to predict.

By averaging the permit actions which have occurred the last two years and assuming the same trends will occur in the future, we have developed a proposed revision in the permit processing fees. The attached sheet shows this proposal.

It is our intent to get input from the previously appointed Water Quality Permit Task Force and then to call for public testimony at a public hearing. The purpose for this being before the Commission today is to make you aware of the proposed fee changes and to request authorization to hold a public hearing.

Summation

1. ORS 468.065(2) authorizes the EQC to establish a schedule of permit fees for permits issued pursuant to ORS 468.740 (Water Pollution Permit).

2. A fee schedule was adopted April 30, 1976 and slightly modified Febrary 25, 1977 (OAR 340-45-070, Table A). (See Attachment 1.)

3. Budget considerations require that income from fees be increased for the 1979-81 biennium to offset the impacts of inflation.

4. Proposed revisions to the fee schedule have been developed. These proposed changes would increase permit application processing fees. (See Attachment 2.)

Director's Recommendation

Based on the summation, the Director recommends that the Commission authorize the Department to schedule a public hearing on a proposed amendment of the Water Quality Permit Fee Schedule (OAR 340-45-070, Table A) to increase the revenues for the 79-81 biennium.

Bill

WILLIAM H. YOUNG

Charles K. Ashbaker:ak/em
229-5325
May 9, 1979

Attachments:
1. Table A, Permit Fee Schedule
2. Proposed Revision of Water Quality Permit Application Processing Fee

TABLE A

PERMIT FEE SCHEDULE

1. Filing Fee. A filing fee of $ 25.00 shall accompany any application for issuance, renewal, modification, or transfer of an NPDES Waste Discharge Permit or Water Pollution Control Facilities Permit. This fee is non-refundable and is in addition to any application processing fee or annual compliance determination fee which might be imposed.

2. Application Processing Fee. An application processing fee varying between $ 50.00 and $150.00 shall be submitted with each application. The amount of the fee shall depend on the type of application required (see Table B) as follows:

a.	NPDES Standard Form A (Municipal)	$ 100.00
b.	NPDES Standard Form C (Manufacturing and Commercial). .	$ 150.00
c.	NPDES Short Forms A, B, C or D.	$ 50.00
d.	Application to the Department for a Water Pollution Control Facilities permit (WPCF-N).	$ 50.00
e.	Application for Renewal of an NPDES or WPCF permit where no increase in the discharge or disposal of waste water is requested.	$ None
f.	Application for Renewal of an NPDES or WPCF permit where an increase in the discharge or disposal of waste water is requested.	$ 50.00
g.	Request for modification or transfer of an NPDES or WPCF permit which does not include a request for an increase in discharge or disposal of waste water. . . .	$ None
h.	Request for modification or transfer of an NPDES or WPCF permit which does include a request for an increase in the discharge or disposal of waste water. .	$ 50.00

See Attachment 2 for proposed changes.

3. Annual Compliance Determination Fee Schedule

a. Domestic Waste Sources (Select only one category per permit)

	Category	Dry Weather Design Flow	Initial and Annual Fee
(1)	Sewage Discharge	10 MGD or more	$ 750.00
(2)	Sewage Discharge	At least 5 but less than 10 MGD	$ 600.00
(3)	Sewage Discharge	At least 1 but less than 5 MGD	$ 300.00
(4)	Sewage Discharge	Less than 1 MGD	$ 150.00
(5)	No scheduled discharge during at least 5 consecutive months of the low stream flow period		1/2 of above rate

Category	Initial and Annual Fee
(6) Land disposal-no scheduled discharge to public waters	$ 50.00
(7) Chlorinated septic tank effluent from facilities serving more than 5 families and temporarily discharging to public waters.	$ 50.00
(8) Chlorinated septic tank effluent from facilities serving 5 families or less and temporarily discharging to public waters.	$ 30.00
(9) Chlorinated septic tank effluent from facilities serving more than 25 families or 100 people and temporarily discharging to waste disposal wells as defined in OAR 340-44-005 (4).	$ 30.00

b. Industrial, Commercial and Agricultural Sources

Source (For multiple sources on one application select only the one with highest fee)	Initial and Annual Fee 1/
(1) Major pulp, paper, paperboard and other wet pulping industry discharging process waste water	$ 950.00
(2) Major sugar beet processing, potato and other vegetable and fruit processing industry discharging process waste water.	$ 950.00
(3) Fish processing industry:	
a. Bottom fish, crab and/or oyster processing	$ 75.00
b. Shrimp processing.	$ 100.00
c. Salmon and/or tuna canning	$ 150.00
(4) Electroplating industry with discharge of process water (excludes facilities which do anodizing only).	
a. Rectifier output capacity of 15,000 amps or more	$ 950.00
b. Rectifier output capacity of less than 15,000 amps	$ 450.00

1/ For any of the categories itemized above (1-14) which have no discharge for at least 5 consecutive months of the low stream flow period, the fee shall be reduced to 1/2 of the scheduled fee or $50.00, whichever is greater.

For any specifically classified categories above (1-12) which dispose of all waste water by land irrigation, evaporation and/or seepage, the fee shall be reduced to 1/4 of the scheduled fee or $50.00, whichever is greater.

	Category	Initial and Annual Fee
(5)	Primary aluminum smelting	$ 950.00
(6)	Primary smelting and/or refining of non-ferrous metals utilizing sand chlorination separation facilities.	$ 950.00
(7)	Primary smelting and/or refining of ferrous and non-ferrous metals not elsewhere classified above.	$ 450.00
(8)	Alkalies, chlorine, pesticide, or fertilizer manufacturing with discharge of process waste waters	$ 950.00
(9)	Petroleum refineries with a capacity in excess of 15,000 barrels per day discharging process waste water	$ 950.00
(10)	Cooling water discharges in excess of 20,000 BTU/sec	$ 450.00
(11)	Milk products processing industry which processes in excess of 250,000 pounds of milk per day and discharges process waste water to public waters.	$ 950.00
(12)	Fish hatching and rearing facilities.	$ 75.00
(13)	Small placer mining operations which process less than 50 cubic yards of material per year and which:	
	(a) discharge directly to public waters	$ 50.00
	(b) do not discharge to public waters	$ None
(14)	All facilities not elsewhere classified with discharge of process waste water to public waters	$ 150.00
(15)	All facilities not elsewhere classified which discharge from point sources to public waters (i.e., small cooling water discharges, boiler blowdown, filter backwash, etc.)	$ 75.00
(16)	All facilities not specifically classified above (1-12) which dispose of all waste by an approved land irrigation or seepage system.	$ 50.00

Proposed Revision of Water Quality Permit Application Processing Fee, (Section 2) of OAR 340-45-070, Table A

(Note: This Table is not presented in rule amendment form so as to more clearly indicate the proposed changes.)

New Applications	Present Fee	Proposed Fee
Major Industry	$150	$1000
Minor Industry	150	500
Major Domestic	100	500
Minor Domestic	100	250
Agricultural	50	250
Minor Non-discharging	50	175
Permit Renewals		
A. With Significant Permit Changes		
Major Industries	50	500
Minor Industries	50	250
Major Domestic	50	250
Minor Domestic	50	125
Agricultural	50	125
Minor Non-discharging	50	100
B. Without Significant Permit Changes		
Major Industries	0	250
Minor INdustries	0	150
Major Domestic	0	100
Minor Domestic	0	100
Agricultural	0	100
Minor Non-discharging	0	100
Permit Modifications		
A. With Effluent Limit Changes		
Major Industries	50	500
Minor Industries	50	250
Major Domestic	50	250
Minor Domestic	50	125
Agricultural	50	100
Minor Non-dischargers	50	100
B. Without Effluent Limit Changes or Other Controversial Issues		
Major Industries	0	50
Minor Industries	0	50
Major Domestics	0	50
Minor Domestic	0	50
Agricultural	0	50
Minor Non-discharging	0	50
C. All Department Initiated Modifications	0	25

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, May 25, 1979, EQC Meeting

Request for Authorization to Conduct Public Hearings on Proposed Rules for the Control of Airport Noise

Background and Problem

In October 1978, the Environmental Quality Commission was petitioned by the Oregon Environmental Council and members of the public to include airports within existing noise control rules. These rules were inappropriate to control airport noise, so the Commission denied the petition and directed staff to develop proposed rules designed specifically to address airport/aircraft noise. Draft rules were submitted to the Commission at the February meeting with the recommendation that staff undertake further discussions and that informational hearings or "workshops" be held to provide a discussion period for all affected parties.

A discussion meeting was held in March with specific interested parties invited. Those attending were representatives from the following organizations:

- Oregon Department of Transportation
- Oregon Aeronautics Division
- Federal Aeronautics Administration - Northwest Region
- Port of Portland
- City of Portland
- Multnomah County

Some changes in the form and content of the draft rule were made as a result of that discussion.

Four "airport noise workshops" were held during April to discuss the draft rule and gather public comments. These meetings were held at the following locations and times:

Pendleton - April 17 - 7:00 p.m.

Salem - April 19 - 7:00 p.m.

Medford - April 23 - 7:00 p.m.

Portland - April 25 - 7:00 p.m.

Alternatives and Evaluation

The draft rule used during the discussion meetings and the informational workshops was the result of several revisions of the original draft. The final proposal incorporates a methodology of describing airport/aircraft noise impact that is widely accepted in this subject area. The proposal utilizes a single A-weighted decibel level which represents an annual average day. It is expressed as a day-night noise level description, L_{dn}, which weights nighttime events more heavily. Analytical models are readily available to calculate L_{dn} values for any airport under any existing or proposed conditions.

The Federal Aeronautics Administration accepts this methodology along with other similar methods. The Environmental Protection Agency prefers the proposed methodology. The Oregon Aeronautics Division also recommends the proposed methodology over others acceptable to FAA. The Department has therefore concentrated on drafting a proposal that uses this existing method of describing airport noise impacts. Other alternatives may be available, however it was believed that large amounts of developmental work would be necessary to propose a new methodology.

Summary of Comments Received

The Oregon Aeronautics Division submitted specific recommended amendments to the draft. A summary of their comments follows:

1. The draft implies that airport noise problems are more widespread and greater than Aeronautics perceives it to be. A decision by the Director could affect each or all of the 337 airports and heliports in the State.

2. The federal government, although moving slowly in this area, has some preemptive rights and a State rule may be a duplication of effort.

3. The proprietor should not be held responsible for land use problems beyond his control and there is no apparent provision for funding.

4. The proposed L_{dn} 55 dBA airport noise criterion is too low except to define a study area.

5. The decision to require noise abatement on any airport should be shared between DEQ, Aeronautics Division and the Department of Land Conservation and Development.

Written comments from the Port of Portland on the discussion draft included the following:

1. When sound insulation is chosen as an abatement technique, there should be standards for determination and enforcement of requirements.

2. The draft would provide interior noise levels 5 - 10 dBA lower than guidelines developed by several federal agencies.

3. The U.S. Department of Housing and Urban Development will provide mortgage funds for housing at sites not exceeding L_{dn} 65 dBA without special approvals or requirements. This rule may limit HUD approved housing.

4. The responsibility for implementation of land use measures is not identified and the rule should be revised to place direct responsibility for land use controls on the jurisdictions with the powers to control land uses.

5. Some operational measures are under the jurisdiction of the federal government.

6. The draft does not distinguish between severity of noise impacts within the L_{dn} 55 dBA contour. The 55 decibel contour should identify the study area boundary and 65 dBA as the criteria for "significant" noise impact.

7. Field monitoring should only be conducted for calibration of computer models for noise contours.

8. Criteria are needed to determine when a noise abatement program or a program revision is required.

Comments from the Northwest Region of FAA were as follows:

1. FAA is requiring reduction of aircraft noise through replacement of aircraft or modification of engines.

2. FAA policy is to confine severe noise (L_{dn} 75) to the airport boundary and attempt to reduce noise sensitive areas within the L_{dn} 65 dBA contour.

3. Operational noise abatement procedures would not, in all cases, reduce noise to 55 dBA.

4. Oregon Aeronautics land use guidelines should be used, however land use controls will not successfully reduce noise to L_{dn} 55 in all cases.

5. Airport noise monitoring is potentially very costly in terms of the purpose it would serve.

Additional FAA comments are presented in the attached summary of testimony gathered during the airport noise workshops.

A representative of United Airlines in Pendleton did not believe that any of the air carrier airports except Portland had noise problems. He stated that Pendleton had only two commercial jet flights per day and therefore noise impacts couldn't exist. He also noted that the air carriers may quit serving the area if noise control restrictions become a burden.

The City of Portland submitted written comments requesting additional information regarding clarification basis for specific language and implementation measures.

A summary of comments gathered during the four public meetings in Pendleton, Salem, Medford and Portland is attached to this report. Many of the people in attendance at these meetings were general aviation pilots. Their main concern is the potential impact of rules on general aviation flying and general aviation airports. Most believe that these small airports do not have significant noise problems and that little can be done to operate the airport in a quieter manner. Some pilots believe that land use control measures should be encouraged near these small airports.

Airport managers and commissioners did not favor any EQC noise control rules. Although at least one agreed that land use controls were needed to prevent noise sensitive uses near airports, most suggested that the present guidelines from FAA and the Aeronautics Division were adequate.

Comments from members of the public impacted by airport noise supported controls. Typical noise impacts such as interference with communication activities, both inside and outside, and sleep disturbance were noted. Some people stated the airport proprietor and the FAA tower staff were not responsive to their noise complaints. One Salem resident noted that when the FAA and the local government (airport proprietor) are not responsive, a lawsuit is the only option open to the public.

The airport noise rule petitioners added the following comments:

1. General support of the draft.

2. Several specific amendments that would add more public protection from airport noise impacts.

Response to Comments

1. The proposed rule could apply to any of the 337 existing airports in the State, however staff believes that many of these facilities would not exceed the L_{dn} 55 dBA criterion at surrounding noise sensitive property. In any event, the rule is not applied until the Director has reasonable cause to believe a noise abatement program is necessary after a public information hearing.

2. The proposal holds the airport proprietor responsible to develop both an operational and a land use plan to control noise impacts although the proprietor may not be directly involved in land use decisions. The Department believes the best plan would be one developed and coordinated by the proprietor. The affected local government shall have the opportunity to participate in the plan development process.

3. An airport noise criterion of L_{dn} 55 dBA was selected because this level is recognized as a division between "minimal" or no impact and "moderate" impact. The Department will recommend that any noise abatement plan address all noise impacts rather than just the most severe. It is acknowledged that not all airports will achieve the criterion noise level, however the noise abatement plan must be based upon a criterion that will fully protect all noise sensitive activities.

4. Both the Oregon Aeronautics Division and the Federal Aviation Administration have noise abatement policies for airports. In most instances these policies, and the recommendations of the two agencies, are sufficient to resolve noise problems. In some cases, however, avoidable noise problems remain, either because the policies are not sufficiently protective, or because the policies are not mandatory.

   To the extent that the policies and procedures of FAA and the Aeronautics Division are effective this rule will have no impact. Only when an unresolved problem is identified, and other means of resolution have proved unsuccessful, would the Director require the proprietor of an existing airport to bring an abatement program before the Commission.

Rule Draft Modification

The definitions section has changed little since the February 23 draft, but some definitions, (e.g. 11 and 14) have been simplified in an effort to improve readability. The definition of "New Airport" has been broadened to include expansion of a runway. Definition 18, Sound Transmission Loss has been changed to Sound Level Reduction to more accurately reflect the original intent of that definition.

The Statement of Purpose has been reworked and expanded. The new section makes clear that the primary responsibility of the airport proprietor is to mitigate noise impacts through operational measures. It is clear that effective reduction of airport noise impacts requires the cooperative efforts of many entities. The new language indicates an awareness that not all measures are within the control of the proprietor.

Wording has been added to the statement of purpose and to Section (2) to make clear that the airport noise criterion is intended to define a study area, and has no legal significance outside the scope of these rules.

Section (3) is new material, and indicates the Department's belief that many perceived airport noise problems can be resolved through an informal process without resorting to other substantive provisions of the rule.

Section (4) has been moved forward from the prior draft to improve readability. The requirements for existing non-air carrier airports have been lessened to be more consistent with their capabilities.

Although Section (5) includes wording changes to clarify its intent, there are few substantive changes. Subsection (f) has been added to set standards for the Director in determining the need for a revised program.

Section (6), Noise Sensitive Use Deviations, is intended as a guideline only. The appropriateness of the listed noise sensitive uses should be evaluated on a case-by-case basis, and the new wording of this section reflects the view that the Commission should determine what uses are appropriate in any impacted area, based upon available information.

The section on airport noise monitoring refers to a procedure manual that is not yet complete. As with other noise control rules, the procedure manual for this rule will only specify methods and procedures to ensure minimum standards of accuracy and repeatability. A draft procedure manual will be available for public comment 30 days before any public hearing on the rule is scheduled.

Director's Recommendation

It is recommended that the Commission authorize public hearings to take testimony on the Proposed Noise Control Regulations for Airports.

Bill

WILLIAM H. YOUNG

John Hector:sjt
(503) 229-5989
5/9/79
Attachments (4)

1. Summary of Testimony Gathered During Airport Noise Workshops
2. Draft Statement of Need for Rulemaking
3. Draft Hearings Notice
4. Proposed Airport Noise Control Regulations for Airports

Attachment #1
Agenda Item G,
May 25, 1979
EQC Meeting

Summary of Testimony Gathered During Airport Noise Workshops

Pendleton - April 17, 1979 - Attendance 24

1. John R. O'Brien - Airport Manager - Sunriver

   Stated that airports are now using the Oregon Aeronautics "Airport Compatibility Planning" guidelines and these will solve any noise problems. Opposed to any DEQ airport rules.

2. Michael C. Stratton - Pendleton Airmotive (Fixed Base Operator)

   Opposed to any rules, stated that rules would result in higher costs.

3. Ted A. Smith - Pendleton Airport Commission

   Thought DEQ was reacting to a problem in Portland. Stated that there is a need for methods to prevent noise sensitive construction next to airports. Noted that Pendleton airport owns commercial and residential uses in vicinity and requires a noise impact release in their rental agreements.

4. Jack Tillman - Athena - Pilot

   Stated that airports were there first and have "grandfather" rights. Airport noise, if a problem, should be handled by local government.

5. Barrett Tillman - Umatilla County Planning Commission

   Written statement delivered by Jack Tillman. Airport noise problem often due to poor planning. Solution should be by local government to balance economic impact against environmental benefits. Each airport problem should be examined individually, on its own faults and merits, before a realistic solution may be found.

6. Harper Jones -

   Objects to governmental interference.

7. Bill Krigbaum - United Airlines

   Doesn't think Pendleton has an airport noise problem with only two jet flights per day. Thought that regulations would be too expensive.

8. R. Whitford - Chairman, Pendleton Airport Commission

   Concerned that the draft rule may interfere with seasonal agricultural aircraft operations.

9. Harold Nelson - Pendleton Airport Service (Fixed Base Operator)

   Expressed concern that noise abatement procedures may require additional flight time and thus increase the amount of fuel burned, thus expensive. He also noted that there are too many regulations to protect the people on the ground and that noise abatement is unsafe.

10. Larry O'Rourke - Pendleton Citizen

    No noise problems from Pendleton Airport. Only problem is at Portland. DEQ should deal only with "problem" airports rather than all air carrier airports. Do so on a case-by-case basis.

11. Betty Shoun - Round-Up Air Service (Pendleton Fixed Base Operator)

    Thought that FAA was taking care of noise problems. Noted that military has low level flights (1500 feet) throughout eastern Oregon.

12. John Sadon - FAA Tower Chief - Pendleton

    Didn't think Pendleton had any "real" noise problems. He has received complaints that he refers to Headquarters. Most of the noise complaints are due to agriculture aircraft.

Salem - April 19, 1979 - Attendance 12

13. C. Gilbert Sperry - Oregon Pilots Association

    The draft is too encompassing by covering all airports. The proprietor has no control over zoning and can't resolve those problems. He believes that future FAA rules will preempt DEQ. Thought there is little or no noise problem in Oregon in comparison to other places. Until problems do become evident, it should be handled by Aeronautics. He concurred with the "Aeronautics Draft".

14. R. H. Severance - Independence (Pilot)

    He resides within 500 feet of a small airport and has no aircraft noise problem. Noted that FAA rules apply to aircraft. Thought that Portland was now using corridors to solve noise problems. Suggested that compatible uses be encouraged around airports. Stressed that air traffic is interstate and thus not within State jurisdiction.

15. Myron Bish - Independence (Pilot)

    Aircraft noise is not a problem and he lives within 200-300 feet from the airport. Vehicle traffic is worse than aircraft. He is opposed to any rules by State as the "pilots would end up paying". FAA is making aircraft quieter with better props and operating at lower engine speeds.

16. A. R. Hampton - Salem Airport Manager

Noise problems don't exist at Salem and complaints are rare. Have only two jet aircraft per day and thus they are not in the same category as Portland. Public wants air carrier service. Concerned with FAA preemption and he doesn't think the proprietor can tell pilots what to do. Concerned with funding and the Ldn 55 level is too low. Thinks there are many other sources of noise, rather than airports.

17. Tom Newton - Dallas

Noted that "Purpose" section of draft states airport noise "may" threaten health and welfare, therefore DEQ should prove that it "does". DEQ is taking a "shotgun" approach. Small airports (Dallas) have economic problem and will close if costs are added.

18. Art Leppin, Jr. - Dallas - Polk County Representative, Oregon Pilots Association

Stated that aircraft produce less noise than automobiles.

19. Anthony J. George, Jr. - Salem Resident

Doesn't live under Salem Airport flight path but is impacted by their aircraft noise. Lives about two miles from airport. Has complained to tower about practice activities of business jets, especially on weekends. He has also complained to FAA and the response from both was that nothing could be done. He has also been awakened at night by aircraft. Supported a rule that would limit some of the airport noise. Although Salem has only two commercial flights per day, it is still a problem. He thought that General Aviation airports should have better land use controls as operational controls would be difficult, especially those with no control tower. Noted that when FAA and local government are not responsive to the problem, lawsuits are the only option. He stated that the Ldn 55 criteria is reasonable, however most small airports will not indicate impacts within this contour.

Medford - April 23, 1979 - Attendance Approximately 20

20. George E. Milligan - Mercy Flights, Inc. (Air Ambulance Service)

Concerned with any restrictions on his air ambulance operations. He needs to operate day and night and doesn't believe that power reduction after take off should be used. He doesn't want any changes in approach procedures at Medford. Suggested that noise control by exclusion of excessively noisy aircraft types was acceptable. He thought that the total rights of the community should take precedent over the rights of individual rights of adjacent land owners.

21. R. A. Netterfield - Jefferson Flight Center - Grants Pass

Agreed with Mr. Milligan. Didn't think the threat to health and welfare was proved. He evaluated all sixteen operational abatement options and found most unacceptable.

22. Robert Sloat - Rogue Air Inc. - Shady Cove

Supports Aeronautics position. Should exclude "private" airports. There needs to be guidelines for DEQ Director to improve the rule. See need for cooperation from local government and noted that many small airports are nonconforming uses and local government wants the airport eliminated. He didn't think any new airports would be developed. Suggested that local government should have a mandatory role in the proposed rule.

23. Janice Redding - Interim Manager - Medford Airport

Read statement signed by Carol Doty, Chairwoman, Jackson County Commissioners. Opposed to use of L_{dn} 55 due to large amount of work based on L_{dn} 65. Concerned with responsibility role of airport owner. Supports Aeronautics position and likes the "team" effort approach.

24. Charles Ashwood - Central Point Citizen

Lives near Medford Airport and stated that the noise has gotten worse over the past five years. Supports the DEQ draft and is in favor of zoning controls within one-mile from airport. Suggested that impacted property should be used for industrial and commercial activities.

25. Gary Grimes - Director of Energy and Environment Affairs - Northwest Division of Southwest Forest Industries

Submitted written statement. Offices within one-half mile of Medford Airport and they are not impacted by noise. Concerned with any rule that may reduce air service in Medford. He also is concerned with any abatement options that would make aircraft operations unsafe. Do not approach airports on a statewide basis, if a problem exists, deal with specific airports. He noted that he once lived near the Medford Airport and a disclosure clause was included in the deed.

26. James Higgs - Central Point Citizen

Should have some noise concern within about one-mile from airport but the Ldn 65 level is adequate. The FAA is making great strides in solving the problem and any rules should be nationwide. DEQ should ignore the minority and listen to the majority. He doesn't think DEQ should be involved in this matter.

27. Rod Stevens - Ashland Airport Committee

Supports the Aeronautics position and doesn't believe there is any problem.

28. Terry C. Connell - Manager - North Bend Airport

Not opposed to noise control, but does not trust DEQ Director and hasn't received "assistance" from DEQ staff in the past. He foresees problems in land use controls and believes there could be significant costs without funding avenues. Thought the criteria was too stringent. Doesn't like duplication in government and wants FAA to have the total responsibility.

29. Roger Taylor - Josephine County Airport Board

Opposes any DEQ rule. Noted that their airport is just beginning a master plan.

Portland - April 25, 1979 - Attendance Approximately 40

30. Michael O'Malley - President of Oregon Pilots Association

He thought DEQ has little or no expertise on airports and the "experts" should be involved rather than DEQ. Suggested that Aeronautics, FAA and LCDC were adequately taking care of any noise problems. Noted that Ldn 55 is too low.

31. Mrs. Rose Hill - Lake Oswego

Lives near area of seaplane activity. Neighbor has seaplane that has expanded into flying lessons, repair work and attraction of additional seaplanes. Causes mental anguish and sleep disturbance. Conversation interruption both indoors and outside.

32. Gary Gregory - Rule Petitioner

Supports the DEQ draft. Suggests some modifications to the noise insulation guidelines to be more stringent. Recommended a six-month implementation rather than 12-month. Noted that the changed operations at Portland Airport are not helping the problem.

33. E. Clarke Hill, Jr. - Corporate Pilot

Represents the business aviation interests and operations from Hillsboro Airport with a Lear Jet. Noted that the business aviation fleet is 25% greater than the air carrier fleet. Cited the FAA preemption of interstate commerce and other preemption issues. Noted that Santa Monica Airport banned jets but is being fought. Business needs airports.

34. David R. Mandish - Citizen

Lives in N.W. Portland above St. John's Bridge. Since the patterns have changed at Portland Airport, they have been impacted by jets over their residence at approximately 1500 feet above ground. He noted that the Port and FAA did not consult the public prior to changing the pattern. Supports DEQ draft proposal.

35. David Hinson - President - Flightcraft, Inc.

Fixed base operator at Portland Airport. Submitted written comments. His comments were:

1) No need for any rule and complaints will always exist.

2) FAA and Aeronautics guidelines are adequate.

3) No cost-benefit consideration.

4) Universal rule for all airports is not acceptable.

5) The military operations are the largest noise generators and they are "totally outside the jurisdiction of the proposed legislation".

6) Airports are needed and a rule could be an obstacle for new or expanded airports.

7) If the problem is with Portland, deal on a local basis.

36. Terry M. Sasser - Citizen

Stated that there is continual airport noise in N.E. Portland. The Port and FAA have not been responsive to their noise complaints. He didn't think the problem existed six or seven years ago. The present patterns have not helped. He thought that the major problem is the Port as they "Pass-the-buck".

37. Annette Farmer - Citizen N.E. Portland

Stated that she is in contact with many people in her area and the airport causes a noise problem. She noted the aircraft fly low over the Argay Terrace area instead of flying down the Columbia River. She stated the noise causes children to "wake up screaming". General aviation and helicopter are also part of the noise problem. She concluded with "the public will want to know the cost of airport noise abatement."

38. Wayne Bower - Citizen - N.E. Portland

Supports airport noise controls. He suggested that controls are needed to ensure that flight paths are followed to very close tolerances. He noted that aircraft disperse rapidly after take-off rather than maintaining the bearing of the runway. He added that any rule proposal would need the ability to monitor airport activities to ensure aircraft are following the noise abatement procedures.

Testimony Submitted in Writing

39. W. R. Sloan - N.E. Portland Citizen

Complaint about military helicopter operations. They sometimes fly until 8:30 p.m. and his wife suffers from high blood pressure and this noise adversely affects her.

40. North Portland Citizen Committee - Letter to Port of Portland dated April 18, 1979

Concern that noise measurements taken by Port consultant were not representative of a "residential area", and they thus were "a misrepresentation of actual noise generated in a residential area".

Concern over the FAA deadline of 1985 that it will be extended and "therefore think it is more than appropriate for the DEQ to set noise guidelines for the State of Oregon regardless of what any Federal Agencies have done."

The changed flight patterns have not decreased noise in North Portland and they don't believe that the commercial aircraft are at 3000 feet prior to turning. The military are not at 4000 feet either.

41. W. L. Hornberger - Resident, Vancouver, Washington

Lives across the river from Portland Airport. The big noise problem is the National Guard jets. They ruin weekends and weekday evenings up until 10:30 p.m. The next major problem are Boeing 727 aircraft with noisy engines. The newer 747's and Douglas DC-10's aren't as bad.

42. Riverside East Condominium Association, Vancouver, Washington

Represents 18 families directly north of Portland Airport. They have a significant noise impact. Object to flights outside daytime hours of 7 a.m. to 10 p.m. They have measured noise in excess of 90 dBA when older (DC 8) aircraft use the north runway. Recommend phase out of old aircraft types; or, as an interim solution, a limitation on hours of operation. Their program would establish specific dates for progressively lower noise levels achievable by replacement of noisy aircraft in addition to curtailment of night flights between 11 p.m. to 7 a.m.

Military operations are a major problem and should be phased out completely. The military should at least meet the same standards as commercial aircraft.

43. O. M. Payne - North Portland Citizen

Since United Airline strike, the noise has become more livable, but still have some noise. Now most noise is from trucks, cars and motorcycles.

44. David W. Pugsley - Corvallis Citizen

Aircraft noise suppression devices would sacrifice power needed for takeoff. Major noise near his residence (2-3 miles from Corvallis Airport) are OSU football games, motorboat races, emergency equipment, railroad and aircraft. He would rather have aircraft noise than underpowered "quiet" airplanes.

45. FAA N.W. Region

Primary concerns are:

1) Ldn 55 criteria is not justified and recommend 65.

2) A cooperative effort between DEQ, Aeronautics and FAA should be used to identify problem airports.

3) Problems with Federal preemption and ability of proprietor to control land use.

In their attachment, they note that "Ldn 55 is not feasible in all cases". They gave amounts of FAA funding during past eight years to Oregon airports. A total of $1,168,223 was given for planning programs at air carrier airports (all eight) and $13,050,000 was shared by Portland, Medford and Redmond for the purpose of acquiring land for compatibility.

FAA recommends reference to their "Policy" document in the draft rule, and that FAA approval of operational plans should be required.

46. Earl E. Heimel - Lake Oswego

Supports airport noise regulations. Has noise problems with a commercial seaplane operation about one-fourth mile away. Noise caused by plane repair and instruction flying. During takeoff, noise prohibits conversation inside house.

47. Marjorie Briggs - Lake Oswego

Supports DEQ noise control efforts. She is concerned about a proposed heliport in Mountain Park and the seaplane activities on the Willamette River nearby.

48. Lacy Zenner - Lake Oswego

Moved from North Portland to Lake Oswego and is now impacted from seaplane noise. The seaplane activity has increased to as many as eleven aircraft stored at the facility.

49. James D. Walsh - N.E. Portland

Family and neighbors experience continual noise levels sufficient to interrupt all conversations outside the home. Frequently, the same is true inside, even with all windows and doors closed and full double glazing on the windows. Noise has increased since this Spring's routing change. The Portland Airport Master Plan optimistically describes future noise impact, but he is "skeptical" of their mitigation and control measures. Urges DEQ regulations.

50. John C. Platt, Executive Director - Oregon Environmental Council

General support of draft. Recommends that following points be considered in a final draft:

a) Sites should be monitored if complaints indicate that fly-over noise exceeds 90 dBA.

b) Measurements should be taken instead of using published noise emission data on specific aircraft types.

c) Comprehensive planning at the county level should be required to include actual projected noise contours.

d) Airports should insulate or purchase properties where noise exceeds 65 dBA inside structures. Insulation should reduce noise to 45 dBA on both existing and new construction of residential and industrial buildings.

e) Schools, hospitals and convalescent facilities should not be permitted within 65 dBA contours.

John Hector:sjt
5/3/79

Attachment #2
Agenda Items G, May 25, 1979,
EQC Meeting

Draft Statement of Need for Rulemaking

Pursuant to ORS 183.335(7), this statement provides information on the Environmental Quality Commission's intended action to adopt a rule.

(1) Legal Authority

The proposed rule may be promulgated by the EQC under authority granted in ORS 467.030.

(2) Need for the Rule

Airport noise is exempt from existing Commission noise control regulations and testimony indicates public exposure to excessive aircraft noise. This rule would provide a method to evaluate noise exposure and to order an abatement program if deemed necessary.

(3) Principal documents relied upon in the rulemaking include:

a) Petition for rule amendment submitted by Oregon Environmental Council and others received October 27, 1978.

b) Summary of Testimony Gathered During Airport Noise Workshops dated May 3, 1979.

c) Airport-Land Use Compatibility Planning U.S. DOT - FAA, dated 1977.

d) Airport Compatibility Planning - Recommended Guidelines and Procedures for Airport Land Use Planning and Zoning Oregon DOT - Aeronautics Division, dated 1978.

e) Aviation Noise Abatement Policy U.S. DOT - FAA dated November 12, 1976.

Attachment: #3
Agenda Item G,
May 25, 1979,
EQC Meeting

DRAFT

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NOTICE OF PUBLIC HEARING

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DEQ SOLICITS INFORMATION ON AIRPORT/AIRCRAFT NOISE IMPACTS

The Oregon Department of Environmental Quality (DEQ) has been directed to develop proposed noise control regulations for airports that would mitigate aircraft noise impacts. Rulemaking hearings on the matter will be held in [locations and dates].

WHAT IS THE DEQ PROPOSING?

Interested parties should request copies of the proposed regulations. Some of the highlights are:

*** The air carrier airports (presently eight in Oregon) must define the magnitude of noise impacts.

*** Other airports must define the noise impacts after direction from DEQ.

*** If DEQ determines the noise impact to be significant, the airport must develop an Airport Noise Abatement Program.

*** Each abatement program shall primarily focus on airport operational measures to prevent increased, and to lessen existing, noise levels. The program shall also include the effects of aircraft noise emission regulations and land use controls.

WHO IS AFFECTED?

Airport proprietors are directly affected, aircraft owners and operators and local government may be affected. Persons residing near airports are affected by noise levels.

HOW TO SUBMIT YOUR INFORMATION

Written comments should be sent to the Department of Environmental Quality, Noise Control Program, P.O. Box 1760, Portland, Oregon 97207, and should be received by [date].

Oral and written comments may be offered at the following public hearings:

(Times and Locations)

WHERE TO OBTAIN ADDITIONAL INFORMATION

Copies of the draft rule may be obtained from:

Department of Environmental Quality
Noise Control Program
P. O. Box 1760
Portland, Oregon 97207
(503) 229-6085

WHAT IS THE NEXT STEP?

The results of these rulemaking hearings will be brought to the Environmental Quality Commission prior to adoption. It is expected that the Commission would consider final rule adoption at their (date) meeting to be held in (location).

Department of Environmental Quality
Proposed Noise Control Regulations for Airports
Chapter 340, Oregon Administrative Rules

May 15, 1979

35-015 Definitions. As used in this Division:

(1) "Air Carrier Airport" means any airport that serves air carriers holding Certificates of Public Convenience and Necessity issued by the Civil Aeronautic Board.

(2) "Airport Master Plan" means any long-term development plan for the airport established by the airport proprietor.

(3) "Airport Noise Abatement Program" means a Commission-approved program designed to achieve noise compatability between an airport and its environs.

(4) "Airport Proprietor" means the person who holds title to an airport.

(5) "Annual Average Day-Night Airport Noise Level" means the average, on an energy basis, of the daily Day-Night Airport Noise Level over a 12-month period.

(6) "Class I Property" means schools, hospitals and nursing homes.

(7) "Class II Property" means residential uses.

(8) "Class III Property" means churches, libraries and transient lodging.

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

(10) "Day-Night Airport Noise Level (L_{dn})" means the Equivalent Noise Level produced by airport/aircraft operations during a 24-hour time period, with a 10 decibel penalty applied to the level measured during the nighttime hours of 10 p.m. to 7 a.m.

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

(12) "Director" means the Director of the Department.

(13) "Equivalent Noise Level (L_{eq})" means the equivalent steady state sound level in A-weighted decibels for a stated period of time which contains the same acoustic energy as the actual time-varying sound level for the same period of time.

(14) "New Airport" means any airport for which installation, construction, or expansion of a runway commenced after January 1, 1980.

(15) "Noise Impact Boundary" means a contour around the airport, any point on which is equal to the airport noise criterion.

(16) "Noise Sensitive Property" means real property normally used for sleeping, or normally used as a school, church, or public library. Property used in industrial, commercial or agricultural activities is not Noise Sensitive Property unless it meets the above criteria in more than an incidental manner.

(17) "Sound Level Reduction" means the difference in A-weighted decibels between aircraft noise levels in free space outside the Noise Sensitive Property and the corresponding noise levels in noise sensitive living areas within the structure.

35-045 Noise Control Regulations for Airports

(1) Statement of Purpose. The Commission finds that noise pollution caused by Oregon airports may threaten the public health and welfare of citizens residing in the vicinity of airports. To mitigate airport noise impacts a coordinated statewide program is desirable to ensure that effective Airport Noise Abatement Programs are developed and implemented. An abatement program includes measures to prevent the creation of new noise impacts or the expansion of existing noise impacts to the extent necessary and practicable. Each abatement program will primarily focus on airport operational measures to prevent increased, and to lessen existing, noise levels. The program will also analyze the effects of aircraft noise emission regulations and land use controls.

The principal goal of an airport proprietor who has responsibility for developing an Airport Noise Abatement Program under this rule should be to shrink the noise contours which reflect aircraft operations, and to address in an appropriate manner the conflicts which occur within the higher noise contours.

The Airport Noise Criterion is established to define a perimeter for study and for noise sensitive use planning purposes. It is recognized that some or many means of addressing aircraft/airport noise at the Airport Noise Criterion Level may be beyond the control of the airport proprietor. It is therefore

necessary that abatement programs be developed with the cooperation of federal, state and local governments to ensure that all potential noise abatement measures are fully evaluated.

This rule is designed to cause the airport proprietor, aircraft operator and government at all levels to cooperate to prevent and diminish noise and its impacts. These ends may be accomplished by encouraging compatible land uses and controlling and reducing the airport/aircraft noise impacts on communities in the vicinity of airports to acceptable levels.

(2) Airport Noise Criterion. The criterion for airport noise is an Annual Average Day-Night Airport Noise Level of 55 dBA. The Airport Noise Criterion is not designed to be a standard for imposing liability or any other legal obligation except as specifically designated within this Section.

(3) The Director shall consult with the Oregon departments of Transportation, Land Conservation and Development and any affected local government in an effort to resolve informally a noise problem prior to issuing a notification under Section (4)(b), (5)(b) and (5)(f) of this Section.

(4) Airport Noise Impact Boundary.

(a) New Airports. Prior to the construction or operation of any New Airport, the Airport Proprietor shall submit to the Department, and receive Department approval of, an analysis, using applicable acoustical calculation techniques, to estimate the airport Noise Impact Boundary.

(b) Existing Non-Air Carrier Airports. Within twelve months of receipt of written notification from the Director, the proprietor of any existing non-air carrier airport shall submit for Department approval, all information reasonably necessary for the calculation of the airport Noise Impact Boundary, as specified in the Department's Airport Noise Control Procedure Manual (NPCS - 37), as approved by the Commission.

(c) Existing Air Carrier Airports. Within twelve months of the adoption of this rule, the proprietor of any existing Air Carrier Airport shall submit for Department approval, the airport Noise Impact Boundary.

(d) Airport Master Planning. Any non-air carrier airport proprietor who obtains funding to develop an Airport Master Plan shall analyze the noise impact of the airport using the Airport Noise Criterion and submit the analysis for Department approval.

(5) Airport Noise Abatement Program and Methodology

(a) New Airports. The proprietor of any New Airport shall, prior to construction or operation, submit a proposed Airport Noise Abatement Program for Commission approval.

(b) Existing Airports. The proprietor of an existing airport whose airport Noise Impact Boundary includes Noise Sensitive Property or may include Noise Sensitive Property because of proposed physical or operational changes shall submit a proposed Airport Noise Abatement Program for Commission approval within 12 months of notification, in writing, by the Director. The Director shall give

such notification when he has reasonable cause to believe that an abatement program is necessary to protect the health, safety, and welfare of the public following a public informational hearing on the question of such necessity.

(c) Program Elements. An Airport Noise Abatement Program shall consist of all of the following elements, but if it is determined by the Department that any element will not aid the development of the program, it may be excluded.

(A) A map of the airport and its environs, identifying:

(i) Projected airport noise contours from the Noise Impact Boundary to the airport property line in 5 dBA increments:

(I) Under current operations with proposed operational noise control measures designated in subsection (5)(c)(B), and

(II) At periods of five, ten, and twenty years into the future.

(ii) All existing Noise Sensitive Property within the airport Noise Impact Boundary.

(iii) Present zoning and comprehensive land use plan permitted uses and related policies.

(B) An airport operational plan designed to reduce airport noise impacts at Noise Sensitive Property to the Airport Noise Criterion to the greatest extent practicable. The plan shall include an evaluation of the appropriateness and effectiveness of the following noise abatement options by estimating potential reductions in the airport Noise Impact Boundary and numbers of Noise Sensitive Properties impacted within the boundary, incorporating such options to the fullest extent practicable into any proposed Airport Noise Abatement Program:

(i) Takeoff and landing noise abatement procedures such as thrust reduction or maximum climb on takeoff;

(ii) Preferential and priority runway use systems;

(iii) Modification in approach and departure flight tracks;

(iv) Rotational runway use systems;

(v) Higher glide slope angles and glide slope intercept altitudes on approach;

(vi) Dispaced runway thresholds;

(vii) Limitations on the operation of a particular type or class of aircraft, based upon aircraft noise emission characteristics;

(viii) Limitations on operations at certain hours of the day;

(ix) Limitations on the number of operations per day or year;

(x) Establishment of landing fees based on aircraft noise emission characteristics or time of day;

(xi) Rescheduling of operations by aircraft type or time of day;

(xii) Shifting operations to neighboring airports;

(xiii) Location of engine run-up areas;

(xiv) Times when engine run-up for maintenance can be done;

(xv) Acquisition of noise suppressing equipment and construction of physical barriers for the purpose of reducing aircraft noise impact;

(xvi) Development of new runways or extended runways that would shift noise away from populated areas or reduce the noise impact within the Airport Noise Impact Boundary.

(C) A proposed land use and development control plan, and evidence of good faith efforts by the proprietor to obtain its approval, to protect the area within the airport Noise Impact Boundary from encroachment by non-compatible noise sensitive uses and to resolve conflicts with existing unprotected noise sensitive uses within the boundary. Affected local governments shall have an opportunity to participate in the development of the plan, and any written comments offered by an affected local government shall be made available to the Commission. Appropriate actions under the plan may include:

(i) Changes in land use through non-noise sensitive zoning and revision of comprehensive plans, where appropriate;

(ii) Influencing land use through the programming of public improvement projects;

(iii) Purchase assurance programs;

(iv) Voluntary relocation programs;

(v) Soundproofing programs;

(vi) Purchase of land for airport use;

(vii) Purchase of land for airport related uses;

(viii) Purchase of land for non-noise sensitive public use;

(ix) Purchase of land for resale for airport noise compatible purposes;

(x) Noise impact disclosure to purchaser.

(d) Federal Aviation Administration Concurrence. The proprietor shall use good faith efforts to obtain concurrence or approval for any portions of the proposed Airport Noise Abatement Program for which the airport proprietor believes that Federal Aviation Administration concurrence or approval is required. Documentation of each such effort and a written statement from FAA containing its response shall be made available to the Commission.

(e) Program Renewal. No later than six (6) months prior to the end of a five year period following the Commission's approval, each current airport Noise Abatement Program shall be reviewed and revised by the proprietor, as necessary, and submitted to the Commission for consideration for renewal.

(f) Program Revisions. If the Director determines that circumstances warrant a program revision prior to the scheduled five (5) year review, the Airport Proprietor shall submit to the Commission a revised program within twelve (12) months of written notification by the Director. The Director shall make such determination based upon an expansion of airport capacity, increase in use, or change in the types or mix of various aircraft utilizing the airport. Any program revision is subject to all requirements of this rule.

(6) Noise Sensitive Use Deviations. The airport noise criterion is designed to provide adequate protection of noise sensitive uses based upon out-of-doors airport noise levels. Certain noise sensitive use classes may be acceptable within the airport Noise Impact Boundary provided that all necessary and practicable measures approved by the Commission are taken to protect adequately interior activities. The following noise sensitive use classes may be acceptable within the airport Noise Impact Boundary.

(a) Existing Class III Property at Annual Average Day-Night Airport Noise Levels between L_{dn} 70 to 75 dBA with a minimum of 30 dBA sound level reduction and between 65 to 70 with a minimum of 25 dBA sound level reduction. At impacts below L_{dn} 65 dBA no extraordinary treatment is needed.

(b) Existing Class II Property at Annual Average Day-Night Airport Noise Levels between L_{dn} 60 to 65 dBA with a minimum of 25 dBA sound level reduction. At impacts below L_{dn} 60 dBA no extraordinary treatment is needed.

(c) Existing Class I Property at Annual Average Day-Night Airport Noise Levels between L_{dn} 60 to 65 dBA with a minimum of 25 dBA sound level reduction and between L_{dn} 55 to 60 dBA with a minimum of 20 dBA sound level reduction.

(d) New Class III Property at Annual Average Day-Night Airport Noise Levels between L_{dn} 70 to 75 dBA with a minimum of 30 dBA sound level reduction, between L_{dn} 65 to 70 dBA with a minimum of 25 dBA sound level reduction. Below L_{dn} 65 dBA no extraordinary treatment is needed.

(e) New Class II Property at Annual Average Day-Night Airport Noise Levels between L_{dn} 60 to 65 dBA with a minimum of 25 dBA sound reduction level and between L_{dn} 55 to 60 with a minimum of 20 dBA sound reduction level.

(f) New Class I Property at Annual Average Day-Night Airport Noise Levels between L_{dn} 60 to 65 dBA with a minimum of 25 dBA sound reduction level and between L_{dn} 55 to 60 dBA with a minimum of 20 dBA sound reduction level.

(7) Airport Noise Monitoring

(a) Measurement points shall be selected in a manner so that non-airport noise sources will not significantly contribute to the Day-Night Airport Noise Level.

(b) All field noise measurements shall be based upon an intermittent monitoring schedule designed to allow a realistic statistical determination of the Annual Average Day-Night Airport Noise Level to be taken at any location within the airport Noise Impact Boundary. As a minimum, the schedule shall specify that measurements be taken continuously for 24-hour periods during four 7-day sample periods throughout the year, chosen such that for each sample, each day of the week is represented, the four seasons of the year are represented and the results account for the effect of annual proportion of runway utilization.

(c) Sound measurements shall also conform to the requirements and procedures set forth in the Department's Sound Measurement Procedures Manual (NPCS-1), its Requirements for Sound Measuring Instruments and Personnel Manual (NPCS-2), and its Airport Noise Control Procedure Manual (NPCS-37), as approved by the Commission.

(8) Sound Level Reduction Determination. For the purposes of subsection (6), Noise Sensitive Use Deviations, the determination of a sound level reduction in excess of 20 dBA shall be in accordance with the procedures specified in the Department's Airport Noise Control Procedure Manual (NPCS-37), as approved by the Commission.

(9) Exceptions. Upon written request from the Aiport Proprietor the Department may authorize exceptions to this Section, pursuant to Section 35-010, for:

(a) unusual or infrequent events,

(b) noise sensitive property owned or controlled by the airport,

(c) noise sensitive property located on land zoned exclusively for industrial or commercial use.

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. H, May 25, 1979, EQC Meeting
Field Burning Public Hearing and
Proposed Rule Adoption - Revision
of Rules Pertaining to Experimental
Field Burning (OAR 340, 26-013(6))

Background

Experimental open field burning beyond the acreage limitations established for issuance of permits was authorized by Oregon Law in 1977. The Environmental Quality Commission (EQC) adopted temporary rules in 1977 and 1978, pursuant to Oregon Revised Statute 468.490, allowing up to 7,500 acres to be burned each year under Department regulation and oversight. Such acreages have been burned experimentally in programs designed to assess field burning emissions, the effectiveness of large acreage rapid burns, rapid ignition techniques and equipment, and the effects of strip-lighting and back-firing on crops.

The experimental field burning rule establishes an upper limit on the amount of acreage which may be burned outside the normal permitting process as part of an experimental program. By identifying a single year for which authorization is granted the present rule requires annual review by the EQC of proposed experimentation. In addition, in order to closely control such unpermitted burning, the rule requires the Department to specifically approve each operation.

When the current rules were submitted to the Environmental Protection Agency (EPA) for review as part of a one year control strategy for field burning during 1979, it was noted that the limitations on experimental burning which applied for 1978 had not been updated. The EPA was concerned that there was, therefore, no limitation on burning of experimental acreages in the coming season. Without an expressed limitation, the EPA indicated it could not approve either a one year strategy or a regular State Implementation Plan (SIP) revision.

As a result of the EPA review, the need for a rule revision was identified and a Statement of Need for Rulemaking is attached. (Attachment 1.)

Alternatives and Evaluation

Review of Oregon Administrative Rule (OAR) 340-26-013(6), indicates that simple oversight by staff resulted in the date not being changed and that it should be revised from 1978 to 1979. Prior to drafting the proposed rule which would specify 7,500 acres to be burned during 1979, staff received comment from the City of Eugene, the Oregon Seed Council, and the EPA and, as a result, considered two other alternative rules:

1. Establish no limitation on experimental burning acreage.

   Supported by the seed industry, this option did not seem realistic considering the concern over acreage limitations and the EPA's refusal of a one year strategy containing no limitation. The EPA's rejection indicates an upper limit must be established.

2. Set a seasonal acreage limitation, but not limit the season for which it is applicable.

   Though such a rule might eliminate the need for an annual rule revision, inclusion of the year of applicability insures for all interested parties that the Commission will review the need for and amount of experimental burning prior to each season. In addition, through a rule revision the opportunity for public input is provided.

The proposed rule (Attachment 2) would maintain the 7,500 acre limitation which is sufficient for the Department's proposed 1979 experimental burning program. The proposed burning activities with associated acreage estimates include the following:

1. Analysis of improved lighting techniques by Oregon State University (5,000 acres),

2. Emission factor determination, if completed in 1979 (1,000 acres),

3. Custom burning crew training (500 acres),

4. Unspecified experimental burning (1,000 acres),

The 1,000 acres of experimental burning listed for, as yet, unspecified programs is provided to allow the Department an acreage contingency for addressing promising concepts which become apparent during the season. This contingency is also important because, though the Commission is capable of expeditious action to revise this acreage limit (as might be appropriate during the relatively short summer season), the SIP revision approval process makes a timely mid-season revision nearly impossible.

To provide for this level of experimentation and not delay SIP processing, it is proposed to correct this erroneous date in our submission to the EPA immediately through a technical amendment. The amendment would satisfy the EPA for this season and would be eventually incorporated as part of the SIP revision upon submittal of an adopted rule. However, since the current rules have already been filed with the Secretary of State, the Department has been counseled to seek a revision to correct our rules prior to the 1979 burning season. To this end, it is proposed, if warranted by testimony at the May 25, 1979, EQC meeting and public hearing, to adopt the rule change at the meeting. This schedule is proposed so that field burning rules will be in order prior to the season start and to avoid further crowding of the Commission's June meetings agenda. Upon filing with the Secretary of State the proposed change would also be filed with the EPA for incorporation in Oregon's SIP.

Summation

In order to identify an upper limit on experimental burning during 1979, it is necessary to revise sub-section 26-013(6) of the field burning rule to incorporate the appropriate year. The change of year from 1978 to 1979 was inadvertantly overlooked in previous rule revisions.

After consultation with interested parties and review of this season's (1979) proposed experimental burning activities, staff would propose adoption of rules retaining the current 7,500 acre limit for the 1979 season.

In order to adopt, submit, and gain approval of this revision prior to the field burning season, the public hearing and adoption should be completed prior to July. Adoption of the revised rule is thus proposed after public hearing at the May 25, 1979, regular EQC meeting.

Director's Recommendation

Based upon the Summation and the testimony in the record of the May 25, 1979, public hearing, it is recommended that the Environmental Quality Commission:

1. Adopt, as a permanent rule, the proposed rule set forth in Attachment 2 to the Director's Staff Report, such rule to become effective upon its prompt filing (along with the Statement of Need for Rulemaking) with the Secretary of State.

2. Instruct the staff to submit the rule revision set forth in Attachment 2 of the Director's Staff Report to EPA pursuant to Federal rules as a revision to the Oregon Clean Air Act State Implementation Plan.

Bill

WILLIAM H. YOUNG

Attachments: (1) Statement of Need for Rulemaking - Proposed Rule Revision, OAR, Chapter 340, Section 26-013
(2) Proposed Field Burning Rule Revision, OAR, Chapter 340, Section 26-013 (6)

SAFreeburn:pas
686-7837
May 10, 1979

ATTACHMENT 1
Agenda Item H, May 25, 1979, EQC Meeting

STATEMENT OF NEED FOR RULEMAKING

Pursuant to ORS 183.335(7), this statement provides information on the Environmental Quality Commission's intended action to adopt rules.

(1) Legal Authority.

Oregon Revised Statutes 468.020, 468.460, 468.490

92) Need for the Rule.

Proposed amendment of OAR 340, 26-013(6) is needed to establish an acreage limitation on experimental open field burning (which is conducted outside the normal permitting process) for 1979, such limitation being required by the Environmental Protection Agency for acceptance of a field burning State Implementation Plan revision.

(3) Principle Documents Relied Upon in this Rulemaking.

a. Staff reports from William H. Young, Director, Department of Environmental Quality, presented at the December 15, 1978, February 23, 1979, and April 27, 1979, EQC meetings.

b. Letter from Donald P. Dubois, Regional Administrator, Region X, U.S. EPA, to William H. Young, Director, Department of Environmental Quality, March 29, 1979.

c. Personal communication with David S. Nelson, representing the Oregon Seed Council, April 26 and May 10, 1979.

d. Personal communication with Robert Elfers representing the City of Eugene, April 11, 1979.

e. Record of the Public Hearing conducted on May 24, 1979, before the Environmental Quality Commission.

ATTACHMENT 2

Oregon Administrative

Rules

Chapter 340, Section 26-013(6)

(6) Notwithstanding the acreage limitations under 26-013(1), the Department may allow experimental open burning pursuant to Section 9 of the 1977 Oregon Laws, Chapter 650, (HB 2196). Such experimental open burning shall be conducted only as may be specifically authorized by the Department and will be conducted for gathering of scientific data, or training of personnel or demonstrating specific practices. The Department shall maintain a record of each experimental burn and may require a report from any person conducting an experimental burn stating factors such as:

1. Date, time and acreage of burn.
2. Purpose of burn.
3. Results of burn compared to purpose.
4. Measurements used, if any.
5. Future application of results of principles featured.

(a) Experimental open burning, exclusive of that acreage burned by experimental open field sanitizers, shall not exceed 7500 acres during [1978] 1979.

(b) For experimental open burning the Department may assess an acreage fee equal to that charged for open burning of regular acres. Such fees shall be segregated from other funds and dedicated to the support of smoke management research to study variations of smoke impact resulting from differing and various burning practices and methods. The Department may contract with research organizations such as academic institutions to accomplish such smoke management research.

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. I, May 25, 1979, EQC Meeting

Response to Petition Requesting Promulgation of Rules Requiring Offsets for Increased Field Burning Emissions

BACKGROUND AND PROBLEM

Representatives Nancy Fadeley and Grattan Kerans have filed a petition (Attachment 1) requesting the EQC to promulgate an emission offset rule for increased field burning emissions. This rule would require reductions in particulate emissions from existing sources in the Willamette Valley in an amount equivalent to the increased particulate emissions that may result from an additional 70,000 acre allowance contained in SB 472A. The projected increase in particulate emissions from the 70,000 acre increase is estimated to be as high as 10,500 tons/year.

The rule proposed by Representatives Fadeley and Kerans would require the following three step process:

1. By July 1, 1979, require all permit holders in the Willamette Valley to identify actual and allowed particulate emissions and projected reductions that could be achieved by July 1, 1980 and associated costs.

2. By December 1, 1979, adopt regulations requiring reduction of particulate emissions from permit holders in the Willamette Valley by at least 10,500 tons per year or the maximum reductions possible.

3. By April 1, 1980, adopt regulations requiring particulate emission reductions from other sources to make up the difference, if any, between reductions achieved through the December 1, 1979, action and the required 10,500 tons/year.

Under OAR 340-11-047, within 30 days after the date of submission of a petition, the EQC must initiate rule making proceedings or deny the petition. In the case of a denial, the EQC must issue an order setting forth in detail the reasons for denial.

EVALUATION AND ALTERNATIVES

Federal Requirement for Offsets

It is clear that the Clean Air Act intends that increased emissions must not interfere with attainment or maintenance of National Ambient Air Standards nor cause Prevention of Significant Deterioration (PSD) increments to be exceeded. Specifics of the Clean Air Act and supporting EPA regulations, however, become quite complex when trying to identify 1) the actual source type and size that must be directly regulated, 2) specific requirements considering the location of the source, with respect to the actual non-attainment areas and 3) sources and operations that might be exempt. When identifying regulations applicable to increased field burning emissions, the issue is even more clouded since regulations are normally written to reflect conventional operating characteristics of industrial processes.

The Department has throughly reviewed all applicable regulations, testimony and comments from interested parties on the field burning issue and has concluded the following with respect to increased field burning emissions and necessity of offsets:

1. Until July 1, 1980, the EPA Emission Offset Interpretative Rule (44 FR 3282) is applicable to the Portland-Vancouver and Eugene-Springfield non-attainment areas for Total Suspended Particulate (TSP).

2. After July 1, 1980, the effect of increased emissions on TSP non-attainment areas must be addressed in the growth management strategy of the Air Quality Standards Attainment Plan submitted to EPA as required in Section 173 of the Clean Air Act. The growth management strategy can either provide a built in growth margin or provide an offset provision similar to the current Interperative Ruling with the exception that growth from minor sources must be taken into account when evaluating the offset requirements of major sources.

3. Major sources having a potential to emit 100 tons per year of any pollutant are subject to review under the Interperative Ruling.

4. Increases of approximately 750 acres in field burns (equivalent to approximately 100 tons/yr. potential TSP emissions) located on one or more contiguous properties and under one ownership would be considered by EPA's Region X a major source under the Interperative Ruling.

5. Major sources with increased allowable emissions exceeding 50 tons/year or 1,000 pounds per day and located in the actual non-attainment area must provide a greater than one for one emission offset under the Interperative Ruling.

6. Major sources with increased allowable emissions exceeding 50 tons/year or 1,000 pounds per day and located in an attainment area need not provide offsets under the Interperative Ruling if they don't exceed specific significant increment criteria. If impacts exceed the significant increment criteria, offsets only have to be provided to the extent necessary to produce a net positive air quality benefit in the affected non-attainment area.

In consideration of the above conclusion and the preliminary Willamette Valley monitoring project results (which indicate that field burning has a minor impact on non-attainment areas in the Valley) it appears clear that if particulate offsets are needed to compensate for increased field burning, the necessary offsets would likely be considerably less than on a one for one basis. This would be the case since emission reductions from other sources would likely give much greater air quality benefits than equivalent emission reductions from field burning due to the closer proximity of some sources to the non-attainment area and because their emissions impacts are not mitigated by a smoke management-dispersion control program. The specific offsets that may be needed to mitigate increased field burning emissions will not be clearly identified until January or February, 1980. This is the time frame set forth in the Department's schedule to EPA regarding finalization of the TSP control strategy for the Eugene-Springfield non-attaiment area and addressing the increased field burning acreage in 1980. The Department's recent State Implementation Plan Revision submitted to EPA for 1979 field burning acreage addresses the schedule in detail. (Attachment 2)

If the EQC grants the petition, it would appear that considerably more offsets and resulting burden and costs would be imposed on existing Willamette Valley sources than may actually be necessary. Denial of the petition, however, would not lessen the state's responsibility nor work program to develop offsets for increased field burning as required under the Clean Air Act and State Implementation Plan before the 1980 burning season.

Permit Holder Update on Emissions

As a preparation for developing offsets, the rule proposed in the petition would require all Willamette Valley permit holders to supply certain information about present and projected particulate emissions. Generally this type of information will be needed to identify potential offsets. The Department believes, though, that current authority under ORS 468.320 and OAR 340-20-005 through 015 provides adequate authority to obtain this information.

Additionally, requiring such information from all permit holders appears an unnecessary burden since small sources would likely not provide much if any net air quality improvement in the non-attainment areas even if

their emission were drastically curtailed. A 50 ton/year actual emission cut point appears to be a reasonable cut point for obtaining needed information from sources that could provide some offsets and net air quality improvement, as smaller sources, when modeled, normally would not show a significant air quality impact. The Department should pursue obtaining such information as soon as possible.

Smoke Management - Dispersion Technique

Some concern has been raised that smoke management credit for reducing impacts of field burning can not be taken when calculating offset and other requirements in light of the Clean Air Act provisions. The Department believes and EPA informally concurs that, among other things, since smoke management was in existence prior to 1970, it qualifies for the exemption from being classified as a dispersion technique provided in Section 123 in the Clean Air Act.

Prevention of Significant Deterioration Requirements

Not mentioned in the petition but likely of much greater significance than offset requirement for non-attainment areas is the Clean Air Act requirement to prevent significant deterioration in attainment areas.

The Department believes that:

1. Increase of approximately 1900 acres (equivalent to approximately 250 tons/yr. potential TSP emissions) in field burning located on one or more contingous properties and under one ownership would be considered a major source under PSD.

2. All increases in emissions from field burning (both major and minor) and other source growth above a baseline as of August 7, 1977 must be counted against the applicable PSD increments.

It is clear that field burning has much greater impacts on attainment areas than non-attainment areas as indicated by preliminary results of the special Willamette Valley monitoring program. Therefore, it would appear that increased field burning will use a significant portion of PSD increments over a broad area of the Willamette Valley and could even exceed allowable increments. The result would be severe limitations on other source growth and development and possibly substantial offsets to keep from exceeding the increments. The determination of PSD increments that may be used by increased field burning will also be identified on the same schedule proposed for non-attainment area work.

Other Air Pollutants

Growth management requirements discussed for TSP also apply to Carbon Monoxide and Ozone non-attainment areas. Therefore, the impact of

increased field burning and necessity for offsets will also have to be evaluated with respect to these pollutants as well as TSP.

Summation

1. A petition has been filed requesting the EQC to promulgate rules to provide 10,500 tons of particulate offsets for increased field burning emissions.

2. Clean Air Act and related EPA regulations relating to nonattainment areas do not require a one for one (10,500t/yr.) particulate emission offset for projected increased field burning. Offsets only to the extent necessary to produce a net air quality improvement in the non-attainment area are required for sources such as field burning that are external to the actual non-attainment area.

3. Granting of the petition could likely result in considerably more than necessary offsets and costs being borne by Willamette Valley sources than is necessary or required under the Clean Air Act.

4. Denial of the petition does not relieve the state from its obligation under the Clean Air Act and State Implementation Plan of developing offsets not only for TSP but for pollutants unaddressed by the petition, if needed, to accomodate 1980 increased field burning emissions.

5. Information on potential offsets can be obtained from Willamette Valley permit holders under current statute and rule authority. Therefore, the specific provision of the rule proposed in the petition to require such information is unnecessary.

6. Increased emissions from field burning above 1977 baseline must be counted against prevention of significant deterioration increments.

7. While it is not addressed in the petition it is possible that offsets may be needed to mitigate increased field burning emission impacts on carbon monoxide and ozone nonattainment areas.

8. Growth restrictions and need for offsets from increased field burning would likely be significant and most severe in the attainment portions of the Willamette Valley (entire valley except Portland, Salem and Eugene urban areas) due to Clean Air Act prevention of significant deterioration requirements.

9. The Department believes credit can be taken for smoke management-dispersion methods of mitigating field burning impacts when assessing needed offsets and affects on PSD increments.

10. Soliciting should begin as soon as possible for potential emission offset information from appropriate Willamette Valley sources.

Directors Recommendation

Based upon the findings in the Summation, it is Directors Recommendation that the Commission deny the petition requesting establishment of the specifically requested emission offset rule for increased field burning emissions and issue and serve the attached order on the Petitioners.

It is further recommended that the Commission direct the Department to immediately pursue gathering information on potential offsets from major permit holders in the Willamette Valley. And finally it is recommended that the Commission direct the Department to identify the specific offset, that may be needed to accomodate increased field burning and identify the portion of the PSD increments that would be used.

Bill

William H. Young

JFKowalczyk:jl
229-6459
May 22, 1979
A4074.41

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

Representative Nancy Fadeley Representative Grattan Kerans Petition to Promulgate Rule Requiring 10,500 tons of Particulate Offsets for Increased Field Burning	)	ORDER OF DENIAL AND REASONS THEREFORE

The Commission hereby denies the petition to establish a specific rule requiring offsets for increased field burning for the following reasons:

1. While the intent of the petition is valid, it does not cover all the offset requirements that may be necessary as the result of increased field burning emission, including requirements for offsets in carbon monoxide and ozone non-attainment areas and requirements for Prevention of Significant Deterioration in attainment areas.
2. Clean Air Act and related EPA regulations relating to non-attainment areas do not require a greater than one for one or up to 10,500 tons/year TSP emission offsets for an increase of 70,000 acres of field burning. With respect to non-attainment areas only offsets resulting in a net air quality improvement are required.
3. Granting of the petition would likely result in considerably more than necessary offsets and costs being borne by existing Willamette Valley sources than is necessary.

4. Information on existing source emission and potential offsets can be obtained under authority of ORS 468.320 and OAR 340-20-005 through 015.

5. Development of necessary emission offsets or other growth management methods to accomodate increased field burning emissions must be sought by the Department under federal requirements. A special rule is not needed to provide the authority to do so.

So ordered this 25th day of May, 1979.

_____

Joe B. Richards, Chairman

ATTACHMENT 1

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF PROMULGATION OF RULE 340-21-032 RELATING TO PARTICULATE EMISSIONS	)	PETITION TO PROMULGATE RULE 340-21-032

I.

The Petitioners' names and addresses are Representative Nancie Fadeley, 260 Sunset Drive, Eugene, Oregon, and Representative Grattan Kerans, 1015 Willa Street, Eugene, Oregon.

II.

The petitioners are elected officials from Lane County and reside therein. The petitioners represent industry and other particulate emitters in Lane County and are therefore concerned with the particulate emission standards for those emitters. The petitioners are likewise concerned with the overall economic effects of severe particulate emission curtailments on directly affected industries, on affected constituents, and on the overall economic climate of Lane County.

III.

Rule 340-21-032, as the petitioners propose, would read as follows:

340-21-032. Particulate Emission Reductions to Accommodate Increased Field Burning.

(a) Prior to July 1, 1979, each source of particulate emissions in the Willamette Valley holding an Air Contaminant Discharge Permit issued under OAR 340-20-140 through 340-20-185 shall report to the Department the daily, monthly, and annual particulate emissions (in pounds) currently being discharged, the emissions authorized to be discharged under the permit, and (if different from the foregoing) the emissions planned to be discharged in the future under any emission reduction schedule. Each such source shall also report By July 1, 1979, the amount of maximum further reduction which could be achieved by July 1, 1980, while continuing to operate and the projected cost of such reduction.

(b) Prior to September 1, 1979, the Commission shall propose regulations which, in the aggregate, reduce emissions in the Willamette Valley from sources other than field burning at least 10,500 tons per year exclusive of present reduction schedules. Such reductions shall, to the extent possible, distribute the burden of such reductions throughout the Willamette Valley.

(c) Prior to December 1, 1979, the Commission will adopt reduction schedules for the maximum amount possible from the Department's proposed regulations. If the reductions adopted under this rule do not total at least 10,500 tons per year, the Commission shall by January 1, 1980, propose additional regulations to reduce emissions from other sources by the needed amount, and the Commission will adopt reduction schedules by April 1, 1980.

IV.

We hereby petition for promulgation of OAR 340-21-032 to require that the Environmental Quality Commission revise the State Implementation Plan to obtain pollution reductions of at least 10,500 tons of particulate distributed evenly throughout the Willamette Valley between the Portland area and the Eugene-Springfield area.

This offsetting reduction is required by the imminent adoption of SB 472A, which will expand permissible field burning emission by 70,000 acres per year or 10,500 tons per year.

According to testimony by officials of the U. S. Environmental Protection Agency, a law professor from the University of Oregon, and a law professor from Willamette University on May 1, 1979, EPA will not be able to approve SB 472A without reduction from other particulate sources.

Professor Ross R. Runkel of Willamette University College of Law, in a legal opinion obtained by the Oregon Seed Council, stated:

> "A new major stationary source in an adjoining attainment area may not significantly contribute to the air quality problem within a non-attainment area <u>without offsets for its contribution</u>."

(Memorandum from Ross R. Runkel to House Committee on Agriculture and Natural Resources, May 1, 1979, page 5.) Mr. Douglas Hansen, Director of the Air and Hazardous Materials Division, EPA Region X, Seattle, testified that whatever EPA staff members may have thought in the past, "as a strictly legal matter" field burning must be considered a major stationary source. Elsewhere, Professor Runkel says:

"The State must also make reasonable further progress on an annual basis. No deterioration of air quality is allowed." (Ibid, page 2.)

Professor John E. Bonine of the University of Oregon School of Law was even more direct:

"No expansion in the total amount of pollution will be approvable by EPA. However, if the state makes the policy decision to allow expansion in one category of pollution sources, that choice could be approved by EPA if either the state Department of Environmental Quality (DEQ) or EPA imposed equivalent reductions on other pollution sources at the time of approval."

(Bonine statement, pages 2-3.)

The increased air pollution which would be encountered with the 70,000-acre increase in field burning acreage must be offset by reductions in air emissions of other polluters affecting the non-attainment area. If the Environmental Quality Commission is to retain jurisdiction over these offset programs, it must start with the offset programs now.

When asked where the reduction in pollution must occur to compensate for expanded burning, Mr. Hansen said that because of the nature of particulate pollution the reductions would probably have to occur in the same general area, rather than in only one part of the valley. For that reason, we petition for reduction to be evenly distributed throughout the valley. The proposed rule will ensure that all industries other than field burning will be treated ~~equably~~ EQUITABLY to the maximum extent possible and that the hardships on industries affecting the non-attainment air maintenance area are spread throughout the Willamette Valley.

During a hearing of the House Committee on Agriculture and Natural Resources on May 1, 1979, Mr. Donald Haagensen, attorney for the Oregon Seed Council, stated that Oregon's smoke management program would prevent violations of the air quality standards. Professor Bonine pointed out that Section 123 of the Clean Air Act and EPA policy statement prohibit any "credit" for "dispersion techniques" and concluded that smoke management was a dispersion technique because, in the words of Section 123, it calls for emission to vary with "atmospheric conditions."

Mr. Haagensen said that since smoke management had been in effect before the date of the 1970 Clean Air Act it was exempt from the provision disallowing credit for dispersion techniques. Professor Bonine pointed out that the smoke management plans had been significantly altered since 1970. The current smoke management plan includes techniques such as moisture and lighting restriction, improved meteorological forecasting, and other

techniques not in practice prior to 1970. Therefore, the significant alteration in the smoke management plan does not allow it to be used to circumvent the provisions of the Clean Air Act which disallow dispersion techniques.

Therefore, it appears that the use of smoke management does not provide a basis for avoiding the need for offsetting reduction from other industries. Mr. Hansen put it succinctly, saying the state "cannot depend on smoke management alone, is the advice of our lawyers." Yet relying on smoke management alone is precisely the wording and intent of SB 472A, at least up to 250,000 acres of burning. Therefore, other particulate emissions must be reduced to counterbalance at least the increase from 180,000 acres to 250,000 acres. According to figures available to DEQ, this increase represents approximately 10,500 tons per year of new pollution.

As factual evidence for this petition, we attach the legal opinions of Professors Runkel and Bonine and refer EQC to data in its own files, including:

(1) SJO Report, "Emissions Inventory for Eugene," February, 1978.

(2) Interim Report, "Willamette Valley Field and Slash Burning Impact," November 1978.

(3) Draft report of the 1978 summer study for field burning emissions.

The reduction of 10,500 tons was arrived at by multiplying the additional 70,000 acres burned times 3.0 tons straw per acre times 100 pounds particulate per ton of straw. (Figures provided by Department of Environmental Quality.)

V.

Interested parties, as determined by the petitioners, are all holders of air contaminant discharge permits in the Willamette Valley who emit particulates (whose addresses may be found in the files of the Department of Environmental Quality), all holders of slash burning permits during 1977 or 1978 (whose addresses may be found in the files of the Department of Forestry), Associated Oregon Industries, the City of Eugene, and the Oregon Seed Council.

Therefore, in accordance with ORS 183.390 and pursuant to OAR 34-11-047 as adopted by the Environmental Quality Commission, we request that within 30 days of the date noted below hearing on our petition be announced by the Environmental Quality Commission.

Dated May 3, 1979.

Rep. Grattan Kerans

Rep. Nancie Fadeley

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TO: House Committee on Agriculture and Natural Resources

FROM: Ross R. Runkel
Professor of Law
Willamette University

RE: Committee Questions Posed Regarding Field Burning in the Willamette Valley (April 20, 1979).

This testimony is submitted at the request of the Oregon Seed Council. The testimony represents my independent professional opinion on the questions posed by the Committee, and does not necessarily reflect the opinion of my employer or any other person or group.

* * * * *

1. The current Oregon SIP contains a field-burning acreage allowance of 50,000 acres. The interim strategy of 180,000 acres has not been formally approved. What showing would be necessary for EPA approval of a SIP revision to 250,000 acres?

A. Attainment Areas and Nonattainment Areas.

EPA approval will be based upon showing that Clean Air Act requirements are met as to both types of areas. In Oregon nonattainment areas for particulates are Eugene-Springfield Air Quality Maintenance Area (AQMA) (primary standards), Portland-Vancouver AQMA (secondary standards), and Medford-Ashland AQMA (secondary standards). All the rest of the State is an attainment area. 43 Fed. Reg. 9028.

(1) Attainment Areas. In these areas the CAA requires prevention of significant deterioration (PSD) of air quality. The allowed deterioration is objectively determined by the increments spelled out in CAA Section 163. For example, as to particulates, Section 163 allows a maximum increase of 19 micrograms (annual mean) and 37 micrograms (daily maximum) per cubic meter. Therefore, the State must show that these increments will not be exceeded. In addition, of course, the State must have an approved SIP which ensures that primary and secondary air quality standards will be maintained as required by CAA Section 110.

(2) Nonattainment Areas. For these areas the CAA requires attainment of primary and secondary standards as expeditiously as practicable, but not later than December 31, 1982, for the primary standard. CAA Section 172. The State also must make reasonable further progress on an annual basis. No deterioration of air quality is allowed.

B. 180,000 Acres.

EPA has advised DEQ that information based upon 1978 field burning can be used to show that 180,000 acres can be burned without violating the primary national ambient air quality standard in the Eugene-Springfield area. Regional EPA Administrator Dubois has said:

> "With the preliminary determination that the proposed rules, allowing 180,000 acres to be burned, are an acceptable SIP component, it would be appropriate for the State to proceed on the assumption that provisional approval of the SIP revision would be granted before actual acreage burned reached 50,000 acres." (Letter from EPA Regional Administrator Donald P. Dubois to DEQ Director William H. Young, March 22, 1979.)

C. 250,000 Acres.

I have insufficient technical data to form a judgment on this issue, but the answer again would depend upon whether there is significant deterioration in attainment areas and whether there will be attainment of national primary and secondary standards in nonattainment areas.

* * * * *

2. If the 250,000 acreage allowance is not approved by the EPA, what acreage figure for field-burning may be approved by the EPA under current federal law?

This question cannot be answered with a precise number, although EPA has indicated that a figure of 180,000 acres would be approved. The maximum number of acres which EPA would approve would depend upon the factors discussed under Question 1.

* * * * *

3. Is the present SIP restriction of 50,000 acres enforceable by any citizen bringing suit under Section 304(a) (2) in federal court?

CAA Section 304(a) (2) does permit anyone to sue the Administrator in federal court to attempt to enforce the 50,000 acre limitation in the present SIP. Specifically, Section 304(a) (2)

requires an allegation that the Administrator has failed to perform some nondiscretionary act or duty. CAA Section 113(a) (1) provides that whenever the Administrator finds a SIP violation he shall notify the person in violation. But the same section says that the Administrator may issue a compliance order or may bring a civil action. The word "shall" (as opposed to "may") indicates that only the notification procedure is "nondiscretionary." The Administrator's powers to issue a compliance order and bring a suit are wholly discretionary and not enforceable by a citizen under Section 304(a) (2).

* * * * *

4. Given recent EPA regulations redefining "major stationary source", would field-burning fall under the new definition?

A. Redefinition Confusion.

Considerable confusion has been caused by recent EPA regulations. This confusion is understandable, but should be corrected.

Statutory definitions of "major stationary source" and "major emitting facility" are all based in part upon whether the actual or potential emission rate exceeds 100 tons per year (or, as to some sources in attainment areas, 250 tons per year). See CAA Sections 302(j), 169(1), 169A(g) (7). In January the EPA published a new regulation which discusses "major new source with allowable emissions exceeding 50 tons per year, 1000 pounds per day, or 100 pounds per hour." (40 C.F.R. Part 51 Appendix S, Section II, C; 44 Fed. Reg. page 3283.) In June 1978 the EPA published a new regulation dealing with attainment areas which also uses the term "50 tons per year, 1000 pounds per day, or 100 pounds per hour." (40 C.F.R. Section 51.24(k); 43 Fed. Reg. 26385.) Some persons have stated that these new regulations redefine "major stationary source." They do not.

What happened is that EPA defined "potential" emissions in terms of uncontrolled emissions, and retained the 100 tons provision. Then, EPA decided that some major sources should be granted an exemption from certain requirements (e.g., air quality reviews, air quality related tests, and part of the emission offset ruling). To distinguish those major sources which are exempt, the EPA set cutoff points of 50 tons per year, 1000 pounds per day, or 100 pounds per hour of allowable emissions. Thus, the 50-1000-100 standard is not a redefinition of major stationary source, but it is a means for granting exemptions.

For good official explanations of the 50-1000-100 cutoff points, see 43 Fed. Reg. 26381, 26391-2; 44 Fed. Reg. 3276.

B. Meaning of "Stationary Source."

For field burning to be a "major stationary source," it must be a stationary source. It appears that EPA regulations classify it as an "area source." 40 C.F.R. Section 15.1(1) defines "area source" by listing such things as fuel combustion operations and transportation facilities, and then refers to "other miscellaneous sources such as those listed in Appendix D." Appendix D specifically lists "agricultural burning." However, it is not clear that "area source" and "stationary source" are mutually exclusive.

For purposes of preventing significant deterioration (PSD) in attainment areas, and requiring offsets in nonattainment areas, EPA regulations are rather clear. A "source" is "any structure, building, facility, equipment, installation or operation . . ." 40 C.F.R. Section 51.24(b) (4); 40 C.F.R. Part 51 Appendix S, Section II, A, 1. (emphasis added.) A "facility" is "an identifiable piece of process equipment." And a "stationary source" is "composed of one or more pollutant-emitting facilities." 40 C.F.R. Section 51.24(b) (5); 40 C.F.R. Part 51 Appendix S, Section II, A, 2. Thus, a stationary source is one or more pollutant emitting pieces of process equipment. It would be very difficult to fit field burning into that definition.

C. Meaning of "Major."

The CAA and EPA regulations are clear on the meaning of what makes a stationary source major. For purposes of nonattainment areas, a major stationary source is one which either directly emits, or has the potential to emit 100 tons per year of a specified pollutant. CAA Section 302(j). For purposes of attainment areas, it is one which either (1) emits or has the potential to emit 100 tons and is one of 28 specifically listed sources (e.g., kraft pulp mills, petroleum refineries), or (2) any other source with the potential to emit 250 tons per year of a pollutant. In making the tonnage calculation, EPA regulations define "source" as a facility "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)." 40 C.F.R. Section 51.24(b) (2).

* * * * *

5. If the EPA were to approve the 250,000 acre expansion, could reduction or offsets of pollution be required in existing or proposed industries? If offsets were required, would those offsets be required throughout the valley -- in attainment as well as nonattainment areas -- rather than in the nonattainment area in the south valley alone?

Offsets would not be required in an attainment area so long as the primary and secondary air quality standards are not exceeded, and the air pollutant increments (see Question 1) are

not exceeded. Offsets would be required only if either the standards or the increments would be exceeded if there were no offsets. The choice of means would be left to the State. CAA Section 163.

In nonattainment areas, such as the Eugene-Springfield area, no air quality deterioration will be permitted if the source is within the nonattainment area.

The effect of attainment area new major stationary sources upon nonattainment area air quality must also be considered. A new major stationary source in an adjoining attainment area may not significantly contribute to the air quality problem within a nonattainment area without offsets for its contribution. The EPA has defined the levels of significance in measurable terms. For example, for total suspended particulates (TSP) it is 1 microgram (annual average) or 5 micrograms (daily average) per cubic meter. 40 C.F.R. Part 51 Appendix S, Section II, E.

* * * * *

6. Who would decide where the offsets would occur? If the offset determinations are to be made by the State of Oregon, would its determinations be subject to review by the EPA?

In attainment areas the offset decision is made by EPA through its new major stationary source preconstruction permit process, after the State has issued a permit. Thus, determinations made by the State are reviewed by EPA. EPA's authority may be delegated to the State under 40 C.F.R. Section 52.21(v).

In nonattainment areas the State decides whether to issue a preconstruction permit for new major stationary sources, subject to the requirements of 40 C.F.R. Part 51 Appendix S. After June 30, 1979, the State may use its own revised SIP instead of the requirements of Appendix S. The revised SIP must meet the requirements of CAA Sections 171 through 178. 40 C.F.R. Part 51 Appendix S, Section I.

* * * * *

7. Should an offset program be required, can pollution rights be sold and purchased?

Yes, if the State chooses to establish such a program. It should be emphasized that EPA has left significant discretion in the hands of the State. First, the State may decide whether or not to use a banking system in the first place. Second, the State may decide how to use the banked emissions. (An official EPA comment says: "In essence, the State becomes the banker and must decide how to allocate the banked emissions.") Third, the State may decide whether to allow banked emissions to be bought and sold, and may determine the terms of their purchase and sale. (An official EPA comment says: "The State is free to govern

ownership, use, sale, and commercial transactions in banked emission offsets as it sees fit.") A useful official discussion is contained in 44 Fed. Reg. page 3280. The regulation itself is 40 C.F.R. Part 51, Appendix S, Section IV, C, 5. There is no requirement that banking be used or that banked emissions be subject to purchase and sale.

The Senate is considering the issue of banking. S.B. 915.

* * * * *

8. Could the issuance of new standards, such as those for visibility, fine particulates or polycyclic organic matter, require a downward revision of current SIP limitations on field-burning? Could these standards require a downward revision of a SIP allowance of 180,000 acres? Of 250,000 acres?

The new standards could have an impact on field burning and other pollution sources, or they could have no impact.

As to visibility standards, CAA Section 169A provides for EPA to promulgate regulations relating to visibility impairment in Class I areas. The Act makes clear that it is primarily for the State to determine the means to be used in reaching visibility goals.

The EPA is behind schedule in promulgating visibility regulations. Proposed regulations are expected in September or November of 1979. (9 BNA Env. Reptr. 1922.)

As to fine particulates, EPA is conducting a review of health, environmental, and other effects. Review could result in no new standards or in revised standards which -- if made --would be made in December 1980. Particulate standards primarily affect metal industries, utilities, and heavy users of fossil fuels. (44 Fed. Reg. 11405.)

Clean Air Act Section 122 directs EPA to study polycyclic organic matter (POM) to determine whether emissions increase mortality or serious illness. The EPA has not announced a publication schedule for POM regulations.

* * * * *

9. Does the Clean Air Act allow a state to revise its SIP by adopting a pollution control strategy adequate to satisfy the Clean Air Act but less stringent than a strategy previously approved by the EPA as part of that state's SIP?

Yes. The Act requires that the SIP comply with the Act. The Act does not prevent a state from adopting a less stringent SIP than it has had in the past. An EPA General Counsel Opinion of April 30, 1973, specifically makes this point, and explains that the Act permits a less stringent SIP provided

the new SIP complies with the Act. There is nothing in the 1977 amendments which suggests any change in this concept.

* * * * *

10. What is EPA policy with respect to preservation of agricultural lands, and how does that policy correspond with or contrast with the EPA's policy regarding field-burning?

EPA has published a Policy relating to protection of "environmentally significant agricultural lands." EPA memorandum dated September 8, 1978. The published Policy is intended to guide EPA actions, regulations, program guidance, and technical assistance. EPA's policy is to protect such lands from "irreversible conversion to uses which result in its loss as an environmental or essential food production resource."

It is difficult to make any precise prediction of the effect of this EPA Policy. However, it should be expected that implementation of EPA regulations should be sensitive to the risk of conversion of these lands to industrial or residential developments which may have a net negative impact on pollution of all kinds: air, water, and land.

* * * * *

TESTIMONY BEFORE THE HOUSE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES - May 1, 1979

John E. Bonine, Associate Professor
University of Oregon School of Law

You have asked me to testify before the House Committee on Agriculture and Natural Resources on May 1, 1979, in order to provide answers to ten questions propounded by the Committee on April 20, 1979.

I am at present a professor at the University of Oregon School of Law and have held that position since January 1978. Among the courses which I teach is Pollution Control Law. A copy of my biography prior to coming to the University of Oregon is attached. Briefly, it reflects that my prior work has included doing consumer law work for the Governor's Office of Oregon, serving as a legislative assistant in the U.S. Senate, and working for the U.S. Environmental Protection Agency for 5 1/2 years, most recently as the Associate General Counsel in charge of air quality law for the Agency, where I supervised a staff of 10 lawyers. My resume also reflects references from current EPA officials, the former EPA Administrator, and lawyers representing private industry.

My testimony will be as legally accurate as is possible. I am not speaking for any client or for the University of Oregon but because I have been invited by the Committee.

My discussion of the ten questions follows:

1. The current Oregon SIP contains a field-burning acreage allowance of 50,000 acres. The interim strategy of 180,000 acres has not been formally approved. What showing would be necessary for EPA approval of a SIP revision to 250,000 acres?

The showing necessary for EPA approval of a state implementation plan (SIP) revision to 250,000 acres would be the same as would be required for an upward revision to 180,000 acres, namely that all conditions of section 110 of the Clean Air Act and certain other sections be met. The most important of these is that the SIP must "insure" attainment and maintenance of the national air quality standards. This must be shown by comparing current air quality to the level mandated by the air quality standards, determining what percentage reduction in emissions is needed to get the pollution load down to the acceptable level, and calculating whether existing state regulations are going to achieve the needed reductions. EPA is required to use the best available data and methods to reach this decision and is not bound by what the state submits in the way of technical data Texas v. EPA, 499 F.2d 289 (5th Cir. 1974); Cleveland Elec. Illum. Co. v. EPA, 572 F.2d 1150 (6th Cir. 1978). Since the Portland and Eugene-Springfield areas are currently listed as not meeting the air quality standards, 43 Fed. Reg. 9028 (March 3, 1978), reductions are legally required; no expansion in the total amount of pollution will be approvable by EPA. However, if the state makes the policy decision to allow expansion in one category of pollution sources, that choice could be approved by

EPA if either the state Department of Environmental Quality (DEQ) or EPA imposed equivalent reductions on other pollution sources at the time of the approval. This point is discussed in greater detail in answer to Question #5.

It may be asked whether the emissions from burning 250,000 acres must be "counted" by EPA if they do not show up on certain kinds of air quality sampling equipment. The answer is found in section 172(b)(4) of the Clean Air Act, which requires SIPs to be accompanied by "a comprehensive, accurate, current inventory of actual emissions from all sources." The key word is "actual" emissions, which is not restricted to those measured by some kinds of equipment. The construction of an emissions inventory is universally understood to be different from the conduct of air quality sampling. Technical studies are ordinarily used, such as the calculation of total automotive emissions in a region by factoring in the types of vehicles, their ages, the amounts emitted by different model years, and the miles driven by vehicles of various types and ages. In the same way, emissions from field burning would be calculated from technical studies, such as the 1978 summer study which apparently determined that emissions were in the range of 100 pounds of particulate per ton of straw, with 2-4 tons of straw per acre. Emissions which are outside an air quality region must be counted if they can intrude into a region.

40% vs. ½% of 78 figure out-dated by 78 study.

Another question is whether emissions must be counted if no air quality violations occurred on the day of those emissions.

The answer is that they must. In fact, even an area which appears to meet the air quality standards must be labeled a "non-attainment area" if its success in meeting the standards was due to the use of dispersion techniques, relying on atmospheric conditions. CAA §123. As EPA said last year, "Areas relying on dispersion in this way must be viewed as not attaining the standards." 43 Fed. Reg. 40414 (September 11, 1978). The implication of this would seem to be that any air quality readings obtained under conditions in which dispersion techniques were in use must be revised upward to reflect what they would have been if burning occurred without regard to whether the weather was favorable or unfavorable. This does not say that dispersion techniques cannot be used; a state may wish to use them as an additional measure. But no "credit" can be given for them in EPA's consideration of whether to approve an SIP revision. In addition, if the four most recent quarters of monitoring data show no standards violations, "then the previous four quarters of monitoring data [must] be examined to assure that the current indication of attainment was not the result of a single year's unrepresentative meteorological conditions." 43 Fed. Reg. 8962 (March 3, 1978).

One swallow does not a spring make.

Finally, what if the emissions from a source appear to be minuscule when averaged over an entire year? In the case of particulate emissions, the air quality standard of concern is for a 24-hour period. 40 C.F.R. §50.7 (1978). Therefore, the

emissions in a 24-hour period must be examined in determining whether a SIP revision is approvable, not annual emissions. If a source emits a great deal at a particular time of the year, the emissions during the worst days of that period must be calculated for their contribution to the total emissions on those days. EPA has made it clear that it will take necessary steps to "ensure that a source that operates seasonally or intermittently is adequately dealt with regarding its impact on short-term air quality." 44 Fed. Reg. 3276 (January 16, 1979)(regulations establishing cut-off points for new source review on daily and hourly basis).

Answer Kerans on what the daily provision in SB47 means.

In addition to determining whether a proposed SIP revision will "insure" attainment and maintenance of the national air quality standards, EPA is legally required to withhold approval unless a number of statutory requirements are met. These in- include the requirement that SIPs provide for the "installation of equipment by owners or operators of stationary sources to monitor emissions from such sources," CAA §110(a)(2)(F), that any board which approves permits have at least a majority of members who represent the public interest, CAA §128, and that each SIP or SIP revision provide for the implementation of "all reasonably available control measures" on other sources. See CAA §172(b)(2); §110(a)(2)(B). Cf. §110(e). I understand that EPA is granting the state of Oregon an additional 18 months to submit its overall "non-attainment plan revisions," pursuant to the extension authority in section 110(b) of the Clean Air Act.

Trad. Source

In most situations that might also allow a delay in meeting some of the stringent, new conditions of sections 171-172 of the Clean Air Act relating to other sources. However, if DEQ asks for a piecemeal revision of one part of the SIP it would appear that this could trigger the non-attainment plan requirements at an earlier date. Last year, EPA headquarters said, "Any suspension or discontinuance of an existing SIP provision must be submitted for EPA approval. This should be done as part of the [nonattainment] revision submitted in January 1979." 43 Fed. Reg. 21674 (May 19, 1978). EPA then listed twelve "requirements of all 1979 SIP revisions." Id. I would expect that EPA would require any relaxation of a SIP provision to meet all of these requirements and that, in any case, a court would hold that they must be met, whether or not the revision is submitted before the remainder of the nonattainment package is submitted. These regn. include the imposition of controls on other sources.

2. If the 250,000 acreage allowance is not approved by the EPA, what acreage figure for field burning may be approved by the EPA under current federal law?

The answer is: whatever figure would result in no net increase in particulate emissions, would be based on a comprehensive inventory of actual emissions for the worst-case 24-hour period, and would be accompanied by controls on other particulate sources not currently controlled. In other words, the same procedures described in the answer to Question #1 would apply.

3. Is the present SIP restriction of 50,000 acres en-

forceable by any citizen bringing suit under section 304(a)(2) in federal court? Would enactment of SB 472 affect this?

Yes. An example of such a suit is Friends of the Earth v. Potomac Elec. Power Co., 419 F.Supp. 428 (D.D.C. 1976). Such suits can also be brought against state governments as defendants where they are alleged to be in violation of a SIP. Friends of the Earth v. Carey, 535 F.2d 165 (2d Cir. 1976), cert. denied, 98 S.Ct. 296 (1977). Also by cities as "citizens."

Of equal interest is the fact that EPA approval of a SIP revision can be challenged in the United States Court of Appeals for the Ninth Circuit through the simple judicial review proceeding of section 307(b)(1) of the Clean Air Act. The 1977 amendments added a provision, section 307(f), for courts to award attorneys fees and even expert witness fees in such litigation, although review under section 307 is not particularly expensive since it is based upon the administrative record already compiled. Both private industry and environmental groups have used section 307 review freely in the past because of its ease and because failure to raise issues at that time will foreclose them later.

Finally, it is worth noting that the requirement for offset permits for major stationary sources (e.g., slash burning) has been made enforceable not only by EPA but by citizen suits, in another 1977 amendment. CAA §304(a)(3). Again, attorneys fees and expert witness fees are allowed to be awarded. CAA §304(d).

4. Given recent EPA regulations redefining "major stationary source," would field burning fall under the new definition?

This depends upon whether the owner of a grass seed field emitted more than the designated amounts. EPA looks at "uncontrolled emissions" for certain purposes, that is the amount that would be emitted without any attempt at limiting emissions from that source. This brings more sources under regulation. In addition, EPA has established daily and hourly cut-offs, as well as the previous annual figure. A source is exempt from certain types of control requirements only if allowable emissions "would be less than each" of the cut-off points. Exempted sources may be home free as far as their own concerns go, but every exempted source uses up a portion of the allowable pollution load which some other source might like to have used. EPA said earlier this year:

> It should be noted that any source with allowable emissions less than the above amounts which is exempted from the offset requirements will use up part of the State's allocation for growth . . . . Thus, a State plan may need to require additional control of existing sources (or more rapid compliance) in order to achieve the "annual reasonable further progress toward attainment" required by the Act.

44 Fed. Reg. 3276 (January 16, 1979)(emphasis added). This explains why some industries may favor a low number of exemptions from the offset program rather than a high number.

In addition to the possibility that grass seed fields may fall into the offset or prevention of significant deterioration (PSD) permit requirements, slash burning would also be covered if a company's operations exceeded 1000 pounds per day or 100 pounds per hour (the amounts set out in the Federal Register, above).

5. If the EPA were to approve the 250,000 acre expansion, would reductions or offsets of pollution be required in existing or proposed industires? If offsets were required, would those offsets be required throughout the valley--in attainment as well as non-attainment areas--rather than in the non-attainment area in the south valley alone?

Yes, reductions would be required from existing sources. The amount of the reduction would have to be calculated from the daily emissions of field burning, not the annual emissions. If, on a daily basis, field burning contributes large tonnages than large reductions would be required. It might seem that a large field which is far from the Eugene-Springfield area could be offset by reductions from a small source in the Eugene-Springfield area, since the large source's emissions are diluted by the time they reach the south valley. But that assumes there only place you have people or an monitors is the valley. But this ignores the possibility that the field emissions could also impact the Portland non-attainment area if they are sufficiently far north, that they would have a large impact on Eugene if they are sufficiently far south, and that their effect in the apparent attainment areas in the middle such as Albany and Salem would have to be calculated without regard to the success of dispersion techniques, as previously stated. Goulding: as a practical matter, offsets for particulate must be obtained near the source. The actual amount of the reductions needed would have to depend upon actual burning tonnages, location of the majority of fields, and other variables, but the reductions would have to come at the time of EPA approval of the SIP revision because it does not appear that the current SIP provides for an excess of reductions over the amount needed for attainment. Again, the 1978 summer study of tonnage emissions would seem to be of central relevance.

6. Who would decide where the offsets would occur? If the offset determinations are to be made by the State of Oregon, would its determinations be subject to review by the EPA?

In the first instance, the state has some discretion to determine where to get its offsets. That discretion is bounded, however, by geographical, emission, and air quality data showing the actual effect of increased emissions on a number of different areas, not simply one area of the valley. (The state could also leave sources to fend for themselves in finding offsets.)

Review by EPA or citizens is possible in two ways. First, the offsets (emission reductions from sources other than the new source) must be "legally binding before such permit is issued." CAA §173. This would most likely be accomplished through a SIP revision, which would be subject to EPA review and citizen review under section 307. See 44 Fed. Reg. 3285 (January 16, 1979). Second, the permit itself cannot be issued unless the SIP "is being carried out." CAA §173(4). If this were not the case, a court might hold that the permit has been violated and permit violations are subject to section 304 of the Act. If the offset is technically defensible, EPA would be expected to defer to the policy choices of the state.

If, instead of an offset program, we are talking about a reduction in existing sources achieved at the time of EPA approval of the 250,000 acre limitation, that reduction would have to be included in a SIP revision and its technical adequacy would be subject both to EPA disapproval or approval, under section 110, and to court review, under section 307.

7. Should an offset program be required, can pollution rights be sold and purchased?

There is no question of whether an offset will be required or not. It was established by EPA in 1976, confirmed by Congress in 1977, and has been set out in revised EPA regulations in 1979. 41 Fed. Reg. 55524 (December 21, 1976); section 129 of Public Law 95-95 (1977); 44 Fed. Reg. 3274 (January 16, 1979).

Pollution rights can be sold and purchased under this program. EPA's only concern is that the resulting allocation be "enforceable" and "subject to a new SIP requirement to ensure that [the] emissions will be reduced by a specified amount in a specified time." 44 Fed. Reg. 3285 (January 16, 1979).

8. Could the issuance of new standards, such as those for visibility, fine particulates or polycyclic organic matter, require a downward revision of current SIP limitations on field burning? Could these standards require a downward revision of a SIP allowance of 180,000 acres? Of 250,000 acres?

The answer to all questions is "Yes." To take one example, EPA was required by August 7, 1978, to determine whether polycyclic organic matter (POM) air pollution might endanger public health. If it may result in an increase in mortality or irreversible illness, the most stringent provision of the Clean Air Act, section 112, must be invoked. It will be relatively difficult for EPA to avoid reaching a positive conclusion on POM because the House Committee Report on the 1977 amendments quoted the National Academy of Sciences as having labeled POM as a cause of human cancer and cited an EPA report agreeing with the NAS. H.Rep. No. 95-294, 95th Cong., 1st Sess. 40 (1977).

EPA is subject to a citizen suit under section 304 of the Act whenever it fails to meet a mandatory deadline. If a suit were brought, it would probably have relatively quick results, in light of the legislative history cited for the POM section, CAA §122.

9. Does the Clean Air Act allow a state to revise its SIP by adopting a pollution control strategy adequate to satisfy the Clean Air Act but less stringent than a strategy previously approved by the EPA as part of that state's SIP?

Yes. Whether the strategy is adequate to satisfy the Clean Air Act must be evaluated according to the standards and procedures set out in my answer to Question #1. In the final analysis, EPA has the authority to decide whether a strategy "insures" attainment, should EPA and the state disagree as a technical matter. Texas v. EPA, 499 F.2d 289 (5th Cir. 1974).

EPA can answer 10.

10. What is EPA policy with respect to preservation of agricultural lands, and how does that policy correspond with or contrast with the EPA's policy regarding field burning?

EPA does encourage the preservation of agricultural lands. EPA does not appear to have a separate policy with regard to field burning, but instead applies the standards of section 110 to all SIP revisions.

May 1, 1979
Environmental Protection Agency
Region 10

The Federal Clean Air Act And Its Relationship to Oregon Grass Seed Field Burning

By Douglas C. Hansen
Director, Air & Hazardous Materials Division

Oregon has a national reputation for its commitment to preserve and enhance the quality of life and the environment of its citizens. The substantial fulfillment of that commitment makes the reputation legitimate, and we applaud you for your effort and your success.

Protecting the people's health from environmental threats is rarely easy. Public policy -- at all levels of government -- seeks nevertheless, to do so, and to do so without sacrificing other high social goals, such as a healthy economy. We believe a healthy environment and a healthy economy are compatible goals and suggest that Oregon's record attests to this belief.

Air pollution control is a major element in overall environmental protection. The Federal Clean Air Act is the charter under which states have developed their own laws and regulations. These legislative and regulatory initiatives come together in the form of State Implementation Plans (SIP's). The regulation of smoke emissions from burning of grass seed fields have been in Oregon's SIPs from the beginning.

We have been asked to respond to a number of specific questions of interest to the Committee as it deliberates over the latest legislative attempt to deal with the field burning air pollution problem (SB 472A). I would like now to address those questions, and then to respond to other questions, that might arise.

1. The current Oregon SIP contains a field burning acreage allowance of the 50,000 acres. The interim strategy of 130,000 acres has not been formally approved. What showing would be necessary for EPA's approval of the SIP revision to 250,000 acres?

The state must demonstrate that the burning of 250,000 acres would not

(1) cause or contribute to any violation of a NAAQS;

(2) impair or significantly delay attainment of NAAQS in any non-attainment area; and

(3) cause or contribute to any violation of applicable PSD increments.

In other words, the state must be able to make a reasonable showing that basic requirements of the Clean Air Act will be met.

2. If the 250,000 acreage allowance is not approved by the EPA, what acreage figure for field burning may be approved by the EPA under federal law?

As a legal matter, EPA can and will approve with limited exceptions any regulatory scheme that can satisfy the showing just discussed. However, the burden of proof is on the State, and we recognize that the burden is not a light one in this case.

It is our impression from last year's field study that the state may be able to demonstrate the adequacy of a control program allowing 150,000 to 180,000 acres as part of the SIP control strategy for the Primary TSP ambient standard. Whether or not the study will provide any basis to allow the field burning acreage limit to be set above 180,000 or to eliminate the seasonal acreage limit altogether, with reliance instead on the smoke management regulation to effectively limit acreage on a daily basis, will not be known until the State completes its assessment of the study results.

Related points arise in response to questions 4, 5, and 9.

3. Is present SIP restriction of 50,000 acreage enforceable by any citizen bringing suit under Section 304(a)(2) in Federal Court? Would enactment of SB 472A effect this?

Yes, the present SIP is enforceable by any "citizen" bringing suit under Section 304(a)(2), and enactment of SB 472A would not affect this.

4. Given recent EPA regulations redefining "major stationary source" would field burning fall under the new definition?

A major stationary source (major emitting facility or major source) as now defined in the CAA and by EPA is 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) which emits, or has the potential to emit 100 tons per year or more of any pollutant regulated under the CAA (250 TPY for some programs). Therefore any field or group of adjacent or contiguous fields under one ownership which totals approximately 750* acreas could be considered a major stationary source.

*The exact number depends on the quantity of straw per acre, and the particulate emissions per ton of straw burned.

5. If the EPA were to approve the 250,000 acreage expansion would reduction or offsets of pollution be required in existing or proposed industries. If offsets were required, would those offsets be required throughout the valley -- in attainment as well as non-attainment areas -- rather than in the non-attainment area in the south valley alone?

This is not a "yes" or "no" question. The ability of a State to allow an existing source, already regulated in the SIP, to increase its emissions -- and the effect that that action (if allowable in the first place) would have on other, already-existing sources or new industry in the future -- depends on specific circumstances. Offsets, either source specific or in the broad sense of balancing the overall control strategy for an area, may be required, or they may not. If required, they would be from sources that impact the non-attainment area.

The attached schematics identify the three fundamental circumstances that can occur in relation to the Clean Air Act. I would like to come back to this question after completing the testimony.

6. Who would decide where the offsets would occur? If the offset determinations are to be made by the State of Oregon, would those determinations be subject to review by the EPA?

The general expectation on the offset procedure is as follows: The new source owner or the State (or both) would be involved in the identification of the offset; the new source would be authorized to construct by the State and the existing source's new allowable emission level would be made an enforceable part of the SIP. Thus, while two sources are involved in the "transaction", the State would make the initial determinations and decisions, subject to EPA review.

7. Should an offset program be required? Can pollution rights be sold and purchased?

The means by which a state decides to accommodate new sources is optional, though the Clean Air Act envisions only two practical choices: (a) existing sources can be controlled enough to create a margin for new sources; or (b) Offsets can be used on a case-by-case basis. EPA has encouraged consideration of any number of approaches to the offset process, such as banking, but again it is a State prerogative. Unless, a State expressly provides some other mechanism, emission reductions are "banked" in the public domain and administered by the cognizant air agency. This has been the case in the past -- we just didn't call it offsetting and banking.

8. Could the issuance of new standards such as those for visibility, fine particulates or polycyclics organic matter (POM) require a downward revision of current SIP limitations on field burning? Could these standards requiring a downward revision of SIP allowance of 180,000 acres? of 250,000 acres?

Yes on all counts. Of course, the risk of this occurring becomes more likely with higher acreage limitations.

Field burning is a large emission source of fine particulate and organic matter. Fine particles are a health concern, and they also have a much greater impact on visibility than large particles. Future standards for fine particulates and programs to protect visibility in key recreational and wilderness areas adjacent to the Willamette Valley are likely to impact field burning as well as other sources, though the degree of impact is unknown at this time.

Studies by DEQ during the 1978 burning season measured high emissions of organic particulates. This is a real pot-pourri of organic compounds. While our information is not complete, these emissions undoubtedly contribute to the ozone smog problems of the valley. We are presently working with DEQ to develop ozone control strategies as required by the Clean Air Act. Increases in organic emission from any source will have to be incorporated in the ozone control strategy for the valley non-attainment areas.

In summary, there will be changes, additions and refinements in air quality standards that will impact the emission from field burning. It behooves Oregon and the seed growing industry to continue with expediency to find ways and alternatives to reduce emissions from field burning.

9. Does the Clean Air Act allow a state to satisfy its SIP by adopting a pollution control strategy adequate to the Clean Air Act but less stringent than a strategy previously approved by the EPA as part of that state SIP.

Yes, as long as the State makes the showing which was discussed under question number 1. But, as pointed out under No. 2, the State carries the burden of proving that the limitation on allowable emissions can be raised without exceeding the Clean Air Act. Rarely is this a simple thing to do, and there are only a limited number of fairly specific circumstances under which control strategies can be relaxed. The circumstances I refer to are best understood in connection with the graphic illustrations attached to this statement. They will be discussed in a moment.

10. What is EPA's policy with respect to preservation of agricultural lands and how does that policy correspond with or contrast with the EPA's policy regarding field burning?

EPA's policy on preservation of agricultural lands was stated by Douglas Costle in a memorandum of September 8, 1978 which I am providing to the committee. Quoting from that memo

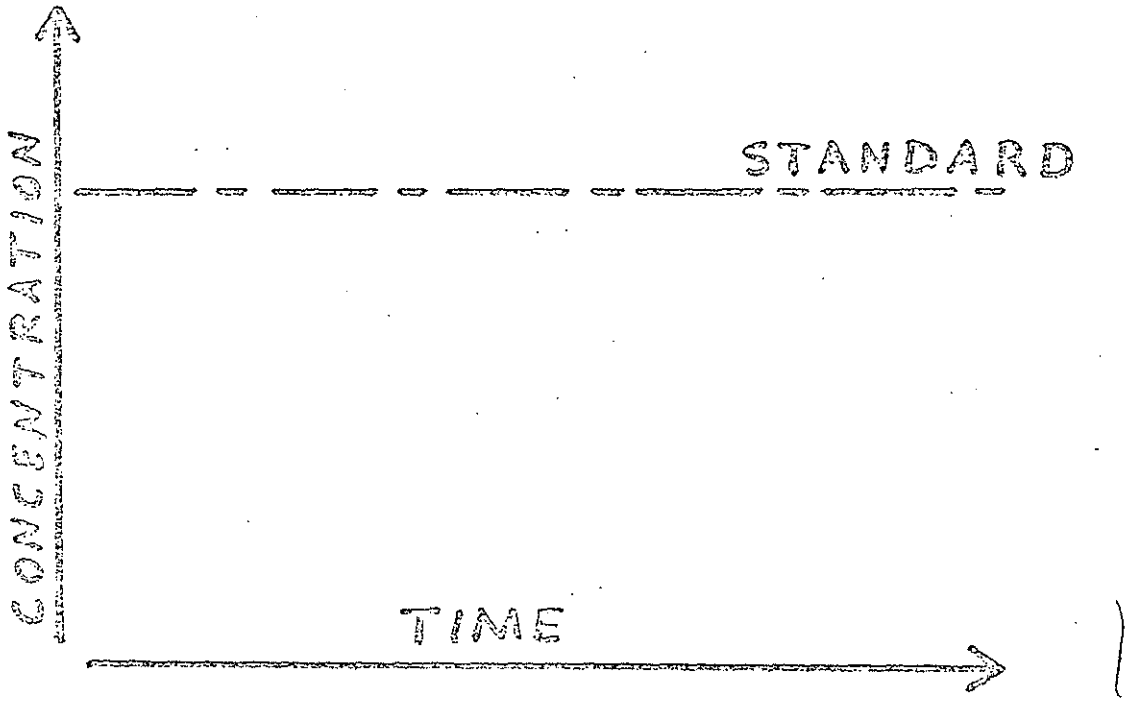
> "It is EPA's policy to protect, through the administration and implementation of its programs and regulations, the Nation's environmentally significant agricultural land from irreversible conversion to uses which result in its loss as an environmental or essential food production resource."

EPA has no specific policy regarding field burning. It is only one of many sources of air pollution that the State must recognize and address in its plan to meet CAA requirements.

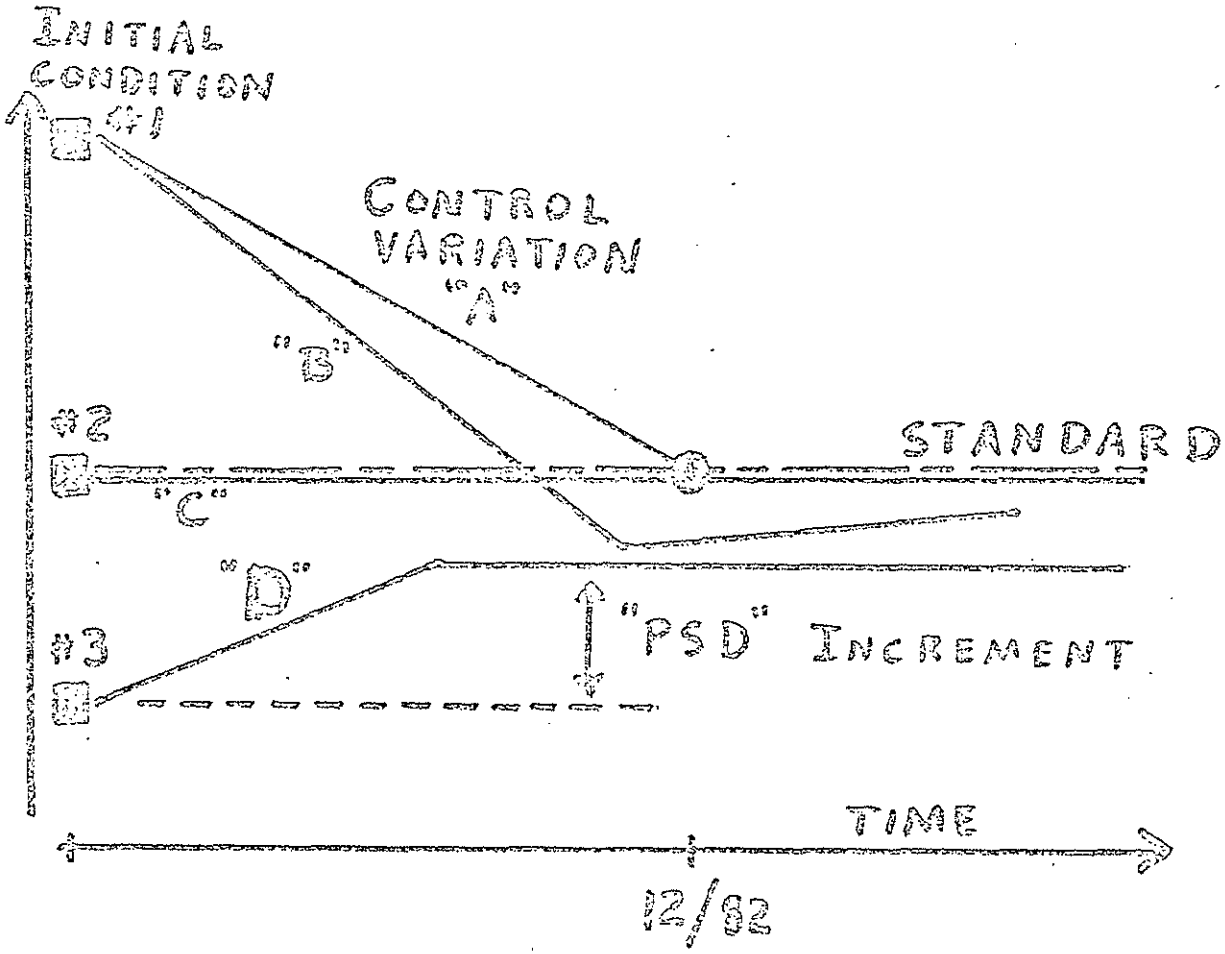
If and when it is demonstrated to EPA that CAA requirements can only be met by control actions that will indeed result in irreversible conversion of environmentally significant agricultural land, our decisions on the issue will reflect consideration of the policy on the preservation of agricultural lands.

Let me conclude my testimony with a brief discussion of the five attached charts, which bear on a number of the questions asked.

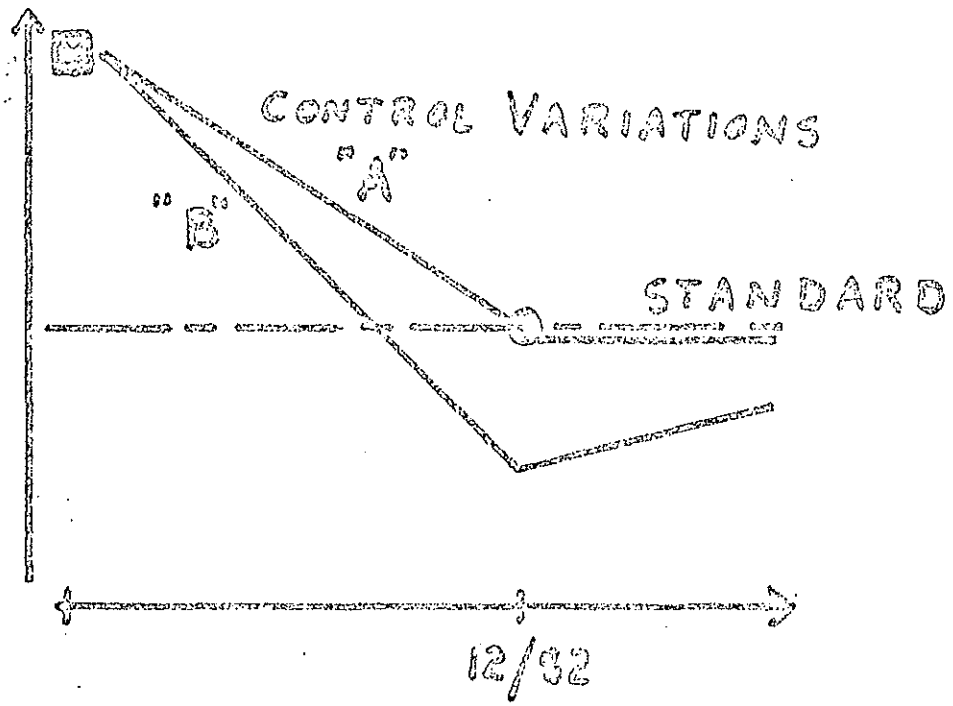
PRINCIPAL FACTORS UNDER FEDERAL CLEAN AIR ACT



MAJOR VARIATIONS FOR CONTROL UNDER THE FEDERAL CLEAN AIR ACT



INITIAL CONDITION #1:
AMBIENT STANDARD VIOLATED

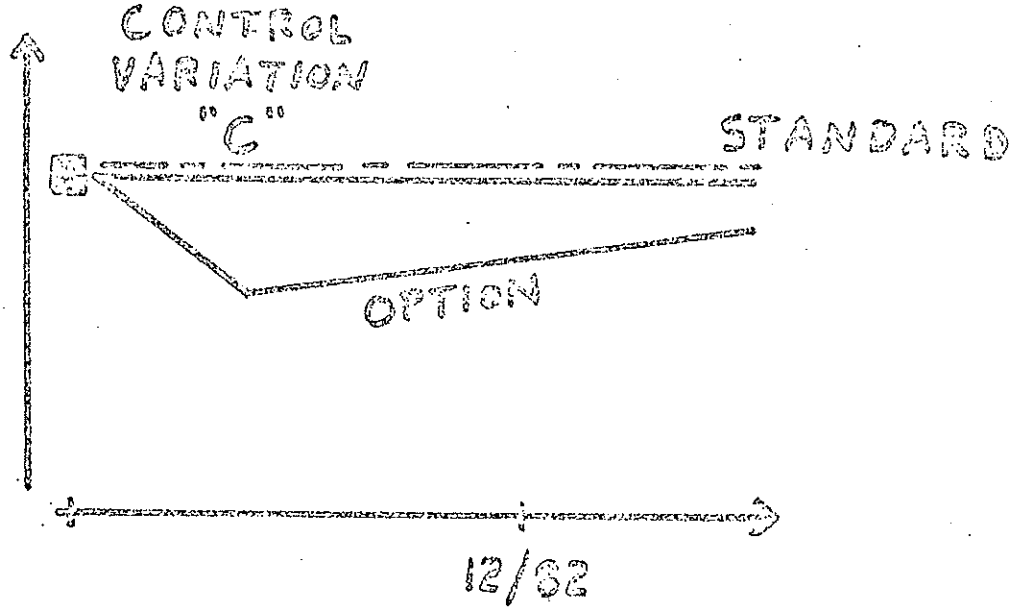


"A" - REDUCE CURRENT AGGREGATE EMISSIONS; OFFSET NEW EMISSIONS

"B" - REDUCE CURRENT EMISSIONS TO PROVIDE MARGIN FOR GROWTH

INITIAL CONDITION #2:

AMBIENT STANDARD MET

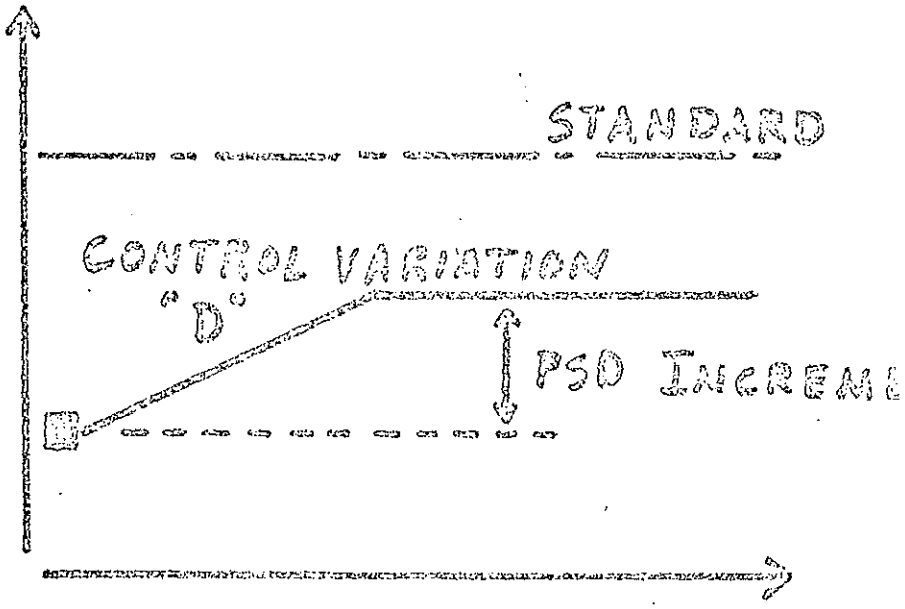


"C" - OFF-SET NEW EMISSIONS

OPTION - NEW CONTROL OF EXISTING SOURCES TO PROVIDE MARGIN FOR GROWTH

INITIAL CONDITION #3:

AIR QUALITY BETTER THAN STA



"D" - BEST AVAILABLE CONTROL TECHNOLOGY (BACT)

ATTACHMENT 2

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. H, April 27, 1979, EQC Meeting Consideration for Submission of Field Burning Rules to EPA as a Revision to the State of Oregon Clean Air Act Implementation Plan

Background

In complying with current field burning law, the Environmental Quality Commission (EQC) adopted rules, in December, 1978, establishing an acreage limitation for open field burning during 1979 and 1980. Since the State of Oregon was also required by Federal law to file revisions to its State Implementation Plan (SIP) prior to July, 1979, the Department followed notification, hearing, and adoption procedures necessary to meet Federal requirements and thereby allow pertinent field burning rule changes to be incorporated as part of a SIP revision.

In December, the EQC approved a proposal to discuss with interested parties, methods whereby Oregon's submittal might be simplified so as to minimize the need for additional revisions and the possibility of future conflict between state and Federal laws. Such discussions were concluded with the City of Eugene and seed industry representatives without agreement on a suitable submittal. Both parties preferred to await 1979 legislative action.

Without any substantive agreement regarding a more appropriate form of submittal and with the legislature considering revisions to the field burning law which would remove acreage limits altogether, the Commission authorized the Department to submit the adopted rules as part of a one-year interim control strategy. This approach was proposed to allow flexibility in dealing with possible legislative action as it might affect a SIP submittal yet establish a 180,000 acreage limitation for 1979. The interim strategy was submitted in early March, 1979.

In late March, 1979, the Environmental Protection Agency rejected the proposed one-year strategy suggesting instead that the DEQ submit a regular State Implementation Plan revision. (See Attachment 1.) As a result of consultations with the EPA two points of concern were identified within the proposed field burning rules submitted as part of the one-year strategy:

1. The regulations regarding experimental burning did not specifically limit the acreage to be so burned during 1979.

2. Subsection 26-013(1)(c) of the rules provides for establishement of an acreage limitation by the Commission every two years. The EPA was concerned that the Commission would adopt higher acreage limitations which might be construed to have EPA approval simply by the inclusion of this subsection of the rules in an approved SIP revision.

Discussion

The staff believes the documentation presented to the EPA as part of our proposed one-year control strategy is sufficient to justify approval of this package as a revision to Oregon's SIP. The Department is well prepared, therefore, to submit this package (probably with adjustment of the experimental burning acreages) for approval. Submission and approval of this package would then incorporate a 180,000 acre limitation in the SIP.

There has been concern expressed by the seed industry that such a submittal would "lock" us into a firm 180,000 acre limit which might be difficult to change upward. Further, with legislation pending which would set 250,000 acres as an upper limit, it has been suggested that the lower 180,000 acre limit not be incorporated in this SIP revision at all. If current legislation becomes law and the Commission approves a SIP submittal containing a 180,000 acre limitation, another SIP revision will be mandatory prior to the 1980 season.

Unfortunately, the staff believes it cannot, prior to this burning season, develop supporting documentation adequate for EPA approval of significant acreage increases such as that associated with the 250,000 acres currently under legislative consideration. Proper documentation of such an increase must include:

1. The development of the capability to model and identify the effects of such emission (acreage) increases on air quality. Suitable modeling capability using an adapted version of the LIRAQ simulation model is not expected until early next year.

2. The completion of the analysis on both daily and annual bases of 1978 field burning impacts as monitored last summer. Currently, analysis on a daily basis is not expected to be completed until June and the annual impact analysis until December of this year.

3. The identification of the Eugene-Springfield Air Quality Maintenance Area control strategy for obtaining National Ambient Air Quality standards in that area. Tentative strategies are not expected to be available for review until early 1980.

In light of this schedule for development of SIP revision documentation adequate to support acreage limits greater than 180,000 acres, the Department believes it is appropriate, and would propose to submit the rejected one-year interim control strategy package as a SIP revision for the 1979 season. This, of course, would establish a 180,000 acre limitation this year supplanting the 50,000 acre limitation currently in the SIP. The Department believes such a move to be

appropriate because an approved submittal including a 180,000 acre limitation would better serve the interests of the State than a rejected submittal requesting higher acreage limits.

In making such a submittal, staff would propose to address the concern of the EPA, regarding experimental burning limitations, by adoption of a rule revision to identify an acreage limitation on experimental burning for 1979. With regard to Commission revision of the annual acreage limitation, the EPA is prepared to condition its approval of Oregon's SIP so that proposed further increases in acreage limitation would require additional EPA review and approval.

In the event of new legislation increasing the 180,000 acre limitation by any substantial amount, the Department would propose to proceed, prior to the 1980 burning season, with another SIP revision supported by the documentation now unavailable for such a submittal. A rough schedule for the development of such documentation would be as follows:

June 1979	- Receive completed analysis of <u>daily</u> field burning impacts of 1978 season
June-September 1979	- Convert LIRAQ simulation model for use by the DEQ
July 1979	- Receive firm legislative direction with regard to field burning
July-September 1979	- Conduct the field burning smoke management program under currently adopted rules (180,000A limitation). Monitor air quality impacts and burning accomplished during the season
August 1979-February 1980	- Analyze 1979 field burning impacts
September 1979-February 1980	- Using modeling procedures, assess the impacts of various burning scenarios including those identified in 1979 legislation
December 1979	- Complete analysis of the <u>annual</u> impact of field burning during 1978
January-February 1980	- Finalize the Eugene-Springfield AQMA control strategy; adopt field burning rules for 1980
February-March 1980	- Assemble SIP Revision Package
March 1980	- Submit SIP Revision Package
June 1980	- Receive approval from the EPA

Adhering to this schedule and the notification and public input procedures implied therein would result in the DEQ's SIP submittal being conditioned by input from the Oregon Legislature, the Eugene-Springfield AQMA Advisory Committee, results of field burning impact analyses for 1978 and 1979, including extrapolations of those impacts through modeling, and participants in the field burning rule revision process.

Because of the uncertainty regarding the fate of currently proposed legislation, the Department would propose to inform EPA immediately as part of the proposed SIP revision or supplemental thereto of the provisions of the law and DEQ's proposed plans to modify the SIP to assure compatability. Staff would propose to update the Commission on the status of field burning legislation at its April 27, 1979 meeting, and seek direction on submitting such information to EPA.

Summary

After reviewing various methods for submitting field burning regulations as a partial revision to Oregon's State Implementation Plan (SIP), the DEQ proposed existing field burning rules, incorporating a 180,000 acre limitation, as a one year interim control strategy. Though this program was rejected by the Environmental Protection Agency (EPA) in late March, 1979, it is believed that these regulations, if submitted as a SIP revision prior to June 1, 1979 would gain timely EPA approval.

The staff would propose to make such a submittal and thereby supplant the current 50,000 acre limit with a 180,000 acre limitation on field burning, and inform EPA of current status of field burning legislation, provisions of the proposed law, and the Department's proposed plans and schedule. If an increase in the acreage limitation beyond the 180,000 acre limit is deemed appropriate either through Environmental Quality Commission or legislative review, it is believed the Department would need to develop additional supporting documentation in order to gain EPA approval. This process would require completion of on-going analysis, enhancement of current DEQ modeling capabilities to estimate the effects of burning increased acreage, identification of the Eugene-Springfield Air Quality Maintenance Area Strategy and input from various interested parties. Using current schedule estimates these functions could be completed and the SIP revision could be submitted by spring, 1980, for approval by June, 1980.

Director's Recommendation

Based upon the information set forth in pages one through four of this, the Director's April 27, 1979, staff report to the Commission and information presented with regard to the status of current field burning legislation, it is recommended that the Environmental Quality Commission instruct the staff to:

1. Submit the current field burning rules previously adopted and set forth as Attachment 1 to the Director's Staff Report of December 15, 1978, and other appropriate documents as required, to the Environmental Protection Agency pursuant to Federal rules and request that these submitted rules

be promulgated as a State Implementation Plan revision. Further inform EPA as to the status of new legislation and the Department's proposed plan and schedule to respond thereto.

2. Develop a State Implementation Plan revision as may be appropriate in light of legislation adopted prior to the 1980 field burning season and in substantial compliance with the schedule set forth in this staff report.

Bill

WILLIAM H. YOUNG
Director

SAF:pas:nlb

Attachments: Letter to William H. Young Director, Department of Environmental Quality from Donald P. Dubois, Regional Administrator, Region X Environmental Protection Agency, March 29, 1979

Attachment 1

U.S. ENVIRONMENTAL PROTECTION AGENCY

REGION X

1200 SIXTH AVENUE

SEATTLE, WASHINGTON 98101

REPLY TO ATTN OF: M/S 629

MAR 29 1979

Mr. William H. Young
Director
State of Oregon
Department of Environmental Quality
P. O. Box 1760
Portland, Oregon 97207

Dear Mr. Young:

I appreciate receiving your letter dated March 2, 1979 in which you provide information on the status of State Implementation Plan (SIP) revision activities.

The letter requests formal EPA action on a number of items. Our review is underway on these requests, and we will keep your staff advised. The purpose of this letter is to respond to the requests listed under the Eugene-Springfield -- Total Suspended Particulate section of your letter.

Three separate requests are made: (1) redesignation of the area from Primary and Secondary standard non-attainment to Secondary standard non-attainment only; (2) an 18 month extension of the due date for submission of the Secondary standard non-attainment SIP revision (i.e., from January 1, 1979 to June 30, 1980); and (3) approval of field burning rules which allow 180,000 acreas to be burned in 1979 as an interim strategy.

We anticipate approval of the first two requests, but do not believe there is a valid basis to agree to an interim strategy for 1979 field burning. If the State of Oregon wants to allow 180,000 acres to be burned instead of 50,000 acres, a formal SIP revision request should be made to that effect. It appears from information available to me that last year's field burning experience and associated study results can be used by the State to demonstrate that 180,000 acres can be burned without causing a violation of the

RECEIVED
APR 6 1979
DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION
FIELD BURNING OFFICE

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
APR 2 1979
OFFICE OF THE DIRECTOR

Primary National Ambient Air Quality Standard in the Eugene-Springfield area. We are aware that the rules already adopted for '79 vary in some respects from those followed last year, and our approval of a SIP revision containing this year's rules would have to contain the provisos listed in Enclosure I.

In your request you asked for an immediate response since acreage registration is required to be completed by April 1 and action needs to be taken on permits by June 1. With the preliminary determination that the proposed rules, allowing 180,000 acreas to be burned, are an acceptable SIP component, it would be appropriate for the State to proceed on the assumption that provisional approval of the SIP revision would be granted before actual acreage burned reached 50,000 acres. To facilitate that arrangement, the SIP revision should be submitted by June 1.

Sincerely,

Donald P. Dubois
Regional Administrator

Enclosure

Enclosure I

The following provisos would accompany the EPA approval of Environmental Quality Commission (EQC) adopted field burning rules:

1. Unless the experimental burning provision is either modified so as to be included in the 180,000 acreage limitation or fixed at some reasonable maximum acreage in addition to the 180,000, the Administrator could not approve the experimental burning provision of the rules.

2. The EQC adopted rules allow the acreage limitation to be reestablished every two years. An approval of these rules would be conditioned to allow the EQC the flexibility to adjust the acreage limitation downward at their discretion. However, any increase in the allowable acreage limitation would have to be shown, through a formal SIP revision, to be consistent with attainment and maintenance of the National Ambient Air Quality Standards. Therefore, the average limitation could not be increased beyond 180,000 acreages unless there was a documented showing of consistency in an approved SIP revision of standards attainment and maintenance.

ATTACHMENT 3

ROBERT W. STRAUB
GOVERNOR

Department of Environmental Quality

522 SOUTHWEST 5TH AVE. PORTLAND, OREGON

MAILING ADDRESS: P.O. BOX 1760, PORTLAND, OREGON 97207

May 14, 1979

Donald Dubois
EPA Region X Administrator
1200 Sixth Avenue
Seattle, WA

Dear Mr. Dubois,

As suggested in your letter of March 29, 1979, I am submitting field burning rules adopted on December 15, 1978 (Attachment 1) as a revision to the Oregon State Clean Air Act Implementation Plan (SIP). I believe the documentation sent to you on March 2, 1979 will adequately support this request. An amendment to the rule limiting experimental burning not to exceed 7500 acres is scheduled for public hearing and adoption on May 25, 1979 (Attachment 2).

As you know, the Oregon legislature has passed an amendment to the state field burning law which would increase the annual acreage authorization to 250,000 acres. This legislation would not become effective until the 1980 burning season. In light of this happening, it would be the Department's intent to propose a SIP revision with appropriate documentation prior to the 1980 burning season to address this issue and how it would affect attainment and maintenance of national ambient air quality standards.

A rough schedule for the development of such documentation would be as follows:

June 1979	- Receive completed analysis of <u>daily</u> field burning impacts of 1978 season
June-September 1979	- Convert LIRAQ simulation model for use by the DEQ
July 1979	- Receive firm legislative direction with regard to field burning
July-September 1979	- Conduct the field burning smoke management program under currently adopted rules (180,000A limitation). Monitor air quality impacts and burning accomplished during the season

August 1979-February 1980	- Analyze 1979 field burning impacts
September 1979-February 1980	- Using modeling procedures, assess the impacts of various burning scenarios including those identified in 1979 legislation
December 1979	- Complete analysis of the annual impact of field burning during 1978
January-February 1980	- Finalize the Eugene-Springfield AQMA control strategy; adopt field burning rules for 1980
February-March 1980	- Assemble SIP Revision Package
March 1980	- Submit SIP Revision Package
June 1980	- Receive approval from the EPA

I trust you will be able to approve this SIP revision before present SIP limits would constrain field burning during the 1979 season.

Sincerely,

WILLIAM H. YOUNG
Director

JFK:kmm

Attachments 1 & 2

cc: Governor Atiyeh
City of Eugene
Oregon Seed Council

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. J, May 25, 1979, EQC Meeting

Proposed Repeal of OAR 340-62-060(2)

Background

On January 26, 1979, the Department received Commission approval to conduct a public hearing on repealing the subject rule. This rule was first 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. It 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. However, upon review of the rule, both the Legislative Counsel Committee and the Department of Justice concluded that it goes beyond the Department's rule-making authority.

A public hearing was held on March 20, 1978, in Portland. No one attended the hearing, but one written comment was received (See Attachment 1).

Statement of Need for Rulemaking

(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 relevant 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 are seeking legislative authority (SB 76) 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 repeal OAR 340-62-060(2).

Bill

WILLIAM H. YOUNG

Fred Bromfeld:dro
229-6210
5/2/79
Attachment (1) Hearing Officer Report

Attachment 1
Agenda Item J
5/25/79 EQC Meeting

Department of Environmental Quality

522 S.W. 5th AVENUE, P.O. BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229- 6210

To: Environmental Quality Commission

From: Hearing Officer

Subject: Hearings Report: March 20, 1979 Public Hearing on Proposed Repeal of OAR 340-62-060(2)

Summary

Pursuant to public notice, the hearing commenced before the undersigned hearing officer at 8:30 a.m. on March 20, 1979 in the Department's conference room 511, Portland, Oregon.

Over 200 hearing notices were mailed. No one attended the hearing. One written comment was received.

Summary of Testimony

Ms. Carol Steele of Portland recommended against repeal.

Recommendation

No recommendation based on the hearing testimony.

Respectfully submitted,

Fred Bromfeld

Fred S. Bromfeld
Hearing Officer

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, May 25, 1979, EQC Meeting

Proposed Amendments to the Administrative Rules for Hazardous Waste Management (OAR Chapter 340, Division 63).

Background

On January 26, 1979, the Department received Commission approval to conduct a public hearing on amending the subject rules. These amendments deal primarily with expanding the list of designated hazardous wastes, establishing a manifest system to track hazardous wastes from generation to disposal, and requiring hazardous waste generators to identify themselves to the Department and to meet certain minimum standards for waste management. In essence, it is proposed to expand the existing hazardous waste rules, which are aimed primarily at disposal, to a comprehensive program that also considers waste generation, storage, and transportation (see Attachments 1 and 2).

A public hearing was held on March 20, 1978, in Portland. Twelve persons attended, of whom one testified. Written comments were received from fifteen persons not in attendance and are included in the Hearing Officer Report (Attachment 3).

Prior to the public hearing, the Department hosted three informational meetings with interested members of both industry and the public. They were held on December 22, 1977, December 13, 1978 and March 5, 1979, with an estimated total of 40 - 50 persons attending.

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. Pursuant to an April 12, 1977 Memorandum of Understanding, this Part is scheduled for adoption by the Public Utility Commissioner in late May, 1979, as OAR 860-36-060 to 36-066.

(b) The need for these rules is twofold:

(1) To classify ignitable, corrosive, reactive, and certain toxic wastes as hazardous based on their commonly acknowledged threat to human health and the environment if mismanaged.

(2) To establish a comprehensive hazardous waste management program to ensure that such wastes are properly transported, stored, treated and disposed.

(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 their generation through 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 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.

Summation

The proposed rules are designed to:

(a) Classify ignitable, corrosive, reactive, and certain toxic wastes as hazardous based on the finding that they pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

(b) Replace the existing hazardous waste rules, which are aimed primarily at disposal, with a comprehensive program that also considers waste generation, storage, and transportation.

They have been offered for review to over 200 persons and have generally been well received.

Although the Department is unaware of any present or potential threat concerning the improper disposal of hazardous waste, it believes that the "cradle-to-grave" control provided by these rules is necessary to ensure that such a threat does not arise in the future.

Director's Recommedation

Based upon the Summation, it is recommended that the Commission repeal the present Rules Pertaining to Management of Environmentally Hazardous Wastes, adopted April 30, 1976, and adopt Parts A, B, C, and E of the attached rules for Hazardous Waste Management.

Bill

WILLIAM H. YOUNG

Fred Bromfeld:dro
229-6210
5/2/79
Attachments (3)

1. Proposed Rules
2. Present Rules
3. Hearing Officer's Report

OREGON ADMINISTRATIVE RULES

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

Table of Contents

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 the number of hazardous waste disposal sites be a minimum and that their operation be closely controlled.

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) "Aeration" means a specific treatment for an empty volatile material container consisting of removing the closure and placing in an inverted position for at least 5 days.

(2) "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, indigenous fish or their food supply. Aquatic TLm and aquatic LC_{50} are expressed in milligrams of the substance per liter of water.

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

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

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

(6) "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.

(7) "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.

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

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

(10) "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.

(11) "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. A "hazardous material" is a substance that meets this same definition except that it is not a waste.

(12) "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.

(13) "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.

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

(15) "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.

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

(17) "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.

(18) "Jet rinsing" means a specific treatment for an empty pesticide container 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 an appropriate diluent for at least 30 seconds.

(19) "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.

(20) "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.

(21) "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.

(22) "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.

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

(24) "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.

(25) "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.

(26) "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.

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

(28) "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.

(29) "Triple rinsing" means a specific treatment for an empty container repeating the following procedure three times:

(a) A volume of an 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, allowing at least 30 seconds after drips start.

(30) "Volatile" means having an absolute vapor pressure of greater than 78 mm Hg at 25°C. For the purpose of these rules, all fumigants are considered to be volatile.

(PART B: HAZARDOUS WASTES)

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 the rules of this Division.

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) (See Appendix).

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

(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) A generator may dispose of up to 25 pounds of ignitable waste per month in accordance with Section 63-135 of this Part.

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 2 or less or of 12 or greater.

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

(2) A generator may dispose of up to 200 pounds of corrosive waste per month in accordance with Section 63-135 of this Part.

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) Reactive waste shall be managed as hazardous or as otherwise approved by the Department.

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

63-125 TOXIC WASTE.

(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) A generator may dispose of up to 10 pounds of waste containing pesticide or pesticide manufacturing residue per month in accordance with Section 63-135 of this Part.

(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) A generator may dispose of up to 200 pounds of waste containing halogenated hydrocarbons or halogenated phenols per month (excluding polychlorinated biphenyls and pesticides) in accordance with Section 63-135 of this Part.

(ii) Polychlorinated biphenyls shall be managed as hazardous or as otherwise approved by the Department.

(A) 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) A generator may dispose of 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 month in accordance with Section 63-135 of this Part.

(c) Mining wastes are exempt from the rules of this Division.

(4) Carcinogens.

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

(b) The identified carcinogenic wastes shall be managed as hazardous or as otherwise approved by the Department.

NOTE: Several of the above wastes have relatively low acute toxicity but are classified hazardous because of their persistence and propensity toward bioaccumulation in the environment.

63-130 EMPTY CONTAINERS.

(1) Discarded, useless or unwanted empty containers 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 in accordance with the following procedures:

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

(i) Decontamination consists of:

(A) Jet or triple rinsing:

(B) Aeration of volatile materials;

(C) Other procedures as may be approved by the Department.

If the rinsings cannot be used for the same purpose as the substance being rinsed, it shall be considered a hazardous waste unless exempted under Part B of these rules. In particular, pesticide rinsings shall be added to the spray or mix tank; ULV container rinsings shall be used to clean equipment or otherwise disposed as instructed on the container label. NOTE: It is recommended that the bottom of small containers (5 gal. and under) be punched to prevent their reuse for storage.

(ii) Certifying consists of providing a signed and dated statement to the disposal site or recycle facility operator that the containers have been decontaminated.

(A) This statement may be made by means of the Pesticide Container Disposal Certificate, the Pesticide Container Disposal Record, or any similar written declaration.

(B) The Department may waive the certification 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 the waiver is necessary for the operation of a local pesticide container management program.

(iii) Disposal consists of:

(A) Containers from DANGER or POISON label pesticides or other materials identified as POISON by 49CFR 172.101, shall be taken to an authorized solid waste landfill. These containers may not be recycled without specific permission from the Department. Such permission will be granted only if the proposed recycle does not endanger the public health or the environment.

(B) Containers from WARNING or CAUTION label pesticides or other non-POISON hazardous materials, may be taken to any recycle facility or solid waste landfill, however, acceptance of such containers is at

the discretion of the facility operator or landfill permittee. NOTE: In certain instances the Department may prohibit a specific disposal site 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 and paper-laminated bags and drums, need not be decontaminated or certified, but shall be disposed by:

(i) Taking to an authorized solid waste landfill; however, acceptance of such containers is at the discretion of the landfill permittee.

(ii) Burning in an incinerator or solid fuel fired furnace which has been certified by the Department to comply with applicable air emission limits.

(iii) Open burning 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 pesticide containers on the farm to which the pesticide was applied, provided that surface and groundwater are not endangered. NOTE: This generally means not in a drainageway and above groundwater at least 500 feet from surface water or a drinking water well.

(4) Empty or decontaminated containers shall not be used to store food or fiber intended for human or animal use.

63-135 SMALL QUANTITY MANAGEMENT. Small quantities of hazardous wastes, as specified in Sections 63-110, -115, and -125, need not be disposed through a hazardous waste management facility if they are handled in accordance with the following procedure:

(1) The waste shall be securely contained to minimize the possibility of waste release prior to burial.

(2) The waste may then be put into a storage container for waste collection or taken directly to a permitted solid waste landfill.

(3) The waste collector or landfill permittee shall be informed of the presence of the hazardous waste.

In the event that the waste collector or landfill permittee refuses acceptance, the Department shall be contacted for alternative disposal instructions.

(PART C: GENERATION)

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) Persons who generate only empty containers, small quantities managed under Section 63-135, or whose waste is subject to a State or local waste discharge permit are exempt from the rules of this Part;

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

(2) Generators who dispose of hazardous waste on their own plant site shall also comply with the applicable Sections of Part E.

(3) 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 leachate, 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 promote its reuse, recycle, recovery, or treatment prior to disposal. Oils and solvents shall be landfilled only after ensuring 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 necessary measures to assure that hazardous waste shipped off his plant site is transported by a person in compliance with OAR 860-36-060 to 36-066 and taken to a hazardous waste management facility operating in compliance with Part E of these rules.

(6) A generator may designate his waste for temporary storage at a hazardous waste collection site operated in compliance with Part E 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 be jointly responsible with the collection site operator for assuring that the waste reaches a hazardous waste treatment or disposal facility within the time specified in Section 63-420(4).

(7) A generator shall not ship hazardous waste off his plant site without having received prior assurance 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 by 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.

(8) A generator shall not store hazardous waste for longer than 6 months without specific approval from the Department. Such approval will be based upon a determination that a practicable means of transportation, treatment, or disposal is not available, or that there is a good potential for reuse or recycle within a reasonable time frame.

(9) 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.

(10) Hazardous waste that is volatile or may be expected to release hazardous gases, mists, or vapors shall be handled, stored, or treated in leakproof, tightly covered containers so that there is no waste release 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), and other applicable local, State or Federal regulations.

(11) 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.

(12) 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)) and other applicable State and 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, and the waste name or manifest number.

(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 of waste generation, 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 types of containers;

(iv) Physical state (solid, liquid, or sludge);

(v) Appropriate classifications 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 give the remaining copies to the waste transporter.

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 of waste generation, 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 types of containers, physical state, and classification;

(iv) Name and identification number of each transporter;

(v) Name and identification number of each hazardous waste management facility that received 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.

PART D

P.U.C.

PROPOSED RULES

TRANSPORTATION OF HAZARDOUS WASTE MATERIALS

860-36-060 General Provisions; Definitions:

(1) These rules are in addition to the requirements of rules adopted by the Oregon Department of Environmental Quality (OAR 340-63-006 through 340-63-435).

(2) As used herein:

(a) "transporter" means a motor carrier engaged in the transportation of 2,000 pounds or more of hazardous waste material, but does not include persons who transport only empty containers or small quantities managed under OAR 340-63-135.

(b) "manifest" shall have the meaning given that term in ORS 459.410.

(c) "generator" shall have the meaning given that term in ORS 459.410.

(d) "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, Division 62 and 63.

(e) "incident" includes, but is not limited to, a spill during loading, transport, or unloading of hazardous waste, breakage or leakage of a container, or fire.

(f) "~~environmentally~~ hazardous wastes" include those commodities defined in ORS 459.410(6).

(g) "volatile" means having an absolute vapor pressure of greater than 78 mm Hg at 25°C. For the purpose of these rules, all fumigants are volatile.

860-36-061 Transporter Identification:

(1) Upon application by a transporter, the Public Utility Commissioner shall issue a hazardous waste identification number to that transporter.

(2) The 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.

860-36-062 Identification and Placarding of Vehicles:

(1) Any truck or truck-tractor transporting in excess of 2,000 pounds of hazardous waste shall have painted

on each side thereof, or displayed by attached decals, placards or signs, the business name of the transporter, and the city or community in which the transporter maintains his principal office.

(2) The decals, placards or signs required by subsection (1) above shall be letters and figures in sharp contrast to the background and shall be of 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 legible.

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

860-36-063 Waste Management:

(1) A transporter shall not accept a shipment of hazardous waste in containers (excluding reusable bulk cargo tanks) unless the containers are marked or labeled either with the generator's name or identification number ~~or~~ and with the waste name or manifest number.

(2) A transporter shall not accept containers which are or appear to be damaged, or are not in compliance with 49 CFR 173, 178, or 179.

(3) Containers 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.

(4) Containers either not identified by 49 CFR 172.101 or classified herein as ORM (other regulated material) shall be marked or labled Ignitable, Reactive, or Toxic, as appropriate.

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

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

~~(7) Hazardous waste in the form of a powder, dust, or fine solid shall be transported in closed or covered containers.~~

(7) Hazardous waste that is volatile or finely powdered or may be expected to release hazardous gases, mists or vapors shall be transported in leakproof, tightly covered containers suitably equipped to facilitate filling or emptying.

(8) All containers of hazardous waste shall be reasonably secured against movement while in the transport vehicle.

(9) Hazardous wastes capable of reacting with other commodities shall be separated.

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

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

(12) Containers and tanks provided by the transporter shall be ~~adequately~~ constructed, ~~to fully contain the hazardous waste being transported.~~ loaded, and operated so as to prevent dropping, leaking, sifting, blowing or other escapement of hazardous waste.

860-36-064 Compliance With Manifest:

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

(2) The transporter shall sign and date the manifest at the time he accepts a shipment of hazardous waste. At least one copy of the manifest shall be given to the generator.

(3) At least three copies of the manifest shall be retained by the transporter and be carried in the truck or truck-tractor transporting the hazardous waste.

(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 delivery and shall leave at least two copies with the representative.

(5) The transporter shall retain at least one copy of the manifest for at least three (3) years from the date of delivery to the managment facility.

(6) If a manifest is lost, the transporter shall make a new manifest immediately and shall obtain the signatures required by subsections (2) and (4) above within 30 days.

(7) No transporter shall deliver a shipment of hazardous waste, or any part thereof, to any location other than that designated on the manifest by the generator.

860-36-065 Inspection:

A 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. Tank rinsings shall be considered a hazardous waste unless exempted under OAR 340-63-100 to 63-135.

860-36-066 Incidents:

(1) In the event of an incident, the transporter shall immediately notify all of the following:

(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 note on the manifest the time and location of the incident and the type and amount of the hazardous waste which has spilled.

(3) Within fifteen (15) days after the incident, the transporter shall file a Hazardous Materials Incident Report (DOT form F5800.0) with the Public Utility Commissioner.

(4) The transporter is responsible for alleviating the conditions caused by the emergency and shall take such steps as may be directed by local, State, or Federal emergency personnel to that end.

(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 small quantities managed under Section 63-135; 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, are exempt from the rules of this Part;

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 leachate, 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 six months without specific approval from the Department. Such approval will be based upon a determination that a practicable means of treatment or disposal is not available, or that there is a good potential for reuse or recycle within a reasonable time frame.

(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 that is volatile or may be expected to release hazardous gases, mists, or vapors shall be handled, stored, treated or disposed in leakproof, tightly covered containers so that there is no waste release 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), and other applicable local, State or Federal regulations.

(7) 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 Section 63-230 and by the transporter in accordance with OAR 860-36-060 to 36-066.

(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 transmit the remaining copies as follows:

(a) Collection site operators shall give the manifest to the second transporter when the waste is shipped 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 20th 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 each transporter;
(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 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.

APPENDIX

The following regulations appear in condensed form and are presented for guidance only. The reader is referred to the appropriate Code of Federal Regulations for the full text.

(1) CFR Title 29, Labor, Part 1910, Occupational Safety and Health Administration, U.S. Department of Labor.

(2) CFR Title 49, Transportation, Parts 100 - 199, U.S. Department of Transportation.

29 CFR 1910.93c Carcinogens: A carcinogen means any of the substances listed below, or compositions containing such substances, but does not include compositions containing less than 1 percent by weight of the listed carcinogens:

Compound No.	Chemicals	Chemical Abstracts Registry No.
1	2-Acetylaminofluorene	53963
2	4-Aminodiphenyl	92671
3	Benzidine (and salts)	92875
4	3,3'-Dichlorobenzidine (and salts)	91941
5	4-Dimethylaminoazobenzene	60117
6	alpha-Naphthylamine	134327
7	beta-Naphthylamine	91598
8	4-Nitrobiphenyl	92933
9	N-Nitrosodimethylamine	62759
10	beta-Propiolactone	57578
11	bis-Chloromethyl ether	542881
12	Methyl Chloromethyl ether	107302
13	4,4'-Methylene(bis)-2-chloroaniline	101144
14	Ethyleneimine	151564
15	Vinyl chloride	75014
16	Coal tar pitch (proposed)	MX8001589

49 CFR 173.24 Standard Requirements for all Packages.
(a) Each package used for shipping hazardous materials shall be so designed and constructed, and its contents so limited, that under conditions normally incident to transportation:
(1) There will be no significant release of the hazardous materials to the environment;
(2) The effectiveness of the packaging will not be substantially reduced; and
(3) There will be no mixture of gases or vapors in the package which could, through any credible spontaneous increase of heat or pressure, or through an explosion, significantly reduce the effectiveness of the packaging.
(b) Materials must be securely packaged in strong, tight packages meeting the requirements of this section.

(c) Packaging used for the shipment of hazardous materials shall, unless otherwise specified or exempted, meet all of the following design and construction criteria:
(1) Steel used shall be low-carbon, commercial quality steel. Stainless, open hearth electric, basic oxygen, or other similaquality steels are acceptable.
(2) Lumber used shall be well seasoned, commercially dry, and free from decay, loose knots, knots that would interfere with nailing and other defects that would materially lessen the strength.
(3) Welding and brazing shall be performed in a workmanlike manner using suitable and appropriate techniques, materials, and equipment.
(4) Packaging materials and contents shall be such that there will be no significant chemical or galvanic reaction among any of the materials in the package.
(5) Closures shall be adequate to prevent inadvertent leakage of the contents under normal conditions incident to transportation. Gasketed closures shall be fitted with gaskets of efficient material will not be deteriorated by the contents of the container.
(6) Nails, staples, and other metallic devices shall not protrude into the interior of the outer packaging in such a manner as to be likely to cause failures.
(7) The nature and thickness of the packaging shall be such that friction during transport does not generate any heating likely to decrease the chemical stability of the contents.
(8) Polyethylene used must be of a type compatible with the lading and must not be permeable to an extent that a hazardous condition be caused during transportation and handling.

(d) For specification containers, compliance with the applicable specifications of 49 CFR Parts 178 and 179 shall be required in all details except as otherwise specified or exempted.

49 CFR 173.151 Oxidizer. An oxidizer is a substance such as a chlorate, permanganate, inorganic peroxide, or nitrate, that yields oxygen readily to stimulate the combustion of organic matter.

49 CFR 173.151a Organic Peroxide. An organic peroxide is a substance containing the bivalent -O-O- structure and which may be considered a derivative of hydrogen peroxide where one or more of the hydrogen atoms have been replaced by organic radicals. This excludes Forbidden, Class A or Class B explosive or materials specifically exempted by the DOT.

49 CFR 173.240 Corrosive Material. A corrosive material is a liquid or solid that causes visible destruction or irreversible alterations in human skin tissue at the site of contact, or in the case of leakage from its packaging, a liquid that has a severe corrosion rate on steel.
(a) A material is considered to be destructive to or cause irreversible alteration in human skin tissue if, when tested on the intact skin of the albino rabbit, the structure of the tissue at the site of contact is destroyed or changed irreversibly after an exposure period of 4 hours or less.

(b) A liquid is considered to be corrosive if its corrosion rate exceeds 0.250 inch per year on steel (SAE 1020) at a test temperature of 130°F.

49 CFR 173.300 Gases.
(a) A compressed gas is any contained material or mixture having a pressure exceeding 40 p.s.i.a. at 70°F. or, regardless of the pressure at 70°F., having a pressure exceeding 104 p.s.i.a. at 130°F.; or any liquid flammable material having a vapor pressure exceeding 40 p.s.i.a. at 100°F.
(b) A compressed gas is flammable if a mixture of 13 percent or less (by volume) with air forms a flammable mixture or the flammable range with air is wider than 12 percent regardless of the lower limit. These limits shall be determined at atmospheric temperature and pressure.

PRESENT

Attachment 2
Agenda Item K
5/25/79 EQC Meeting

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 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.

(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
Agenda Item K
5/25/79 EQC Meeting

Department of Environmental Quality

522 S.W. 5th AVENUE, P.O. BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229- 6210

To: Environmental Quality Commission

From: Hearing Officer

Subject: Hearings Report: March 20, 1979, Public Hearing on Proposed Amendments to the Administrative Rules for Hazardous Waste Management (OAR Chapter 340, Division 63).

Summary

Pursuant to public notice, the hearing commenced before the undersigned hearing officer at 9:00 a.m. on March 20, 1979, in the Department's Conference Room 511, Portland, Oregon.

Over 200 hearing notices were mailed. Twelve persons were present at the hearing, of whom one testified. Written comments were received from fifteen persons not in attendance.

Summary of Testimony

Testimony was given by Mr. Roger W. Emmons, a Salem attorney representing the Oregon Sanitary Service Institute. His concerns were twofold:

(1) Objection to the rules that permit small quantities of certain hazardous wastes to be disposed as ordinary solid waste and requested that hazardous wastes, in any quantity, be given special handling.

(2) A request that there be specific immunity from liability for persons who unknowingly collect, transport, recycle or dispose of hazardous wastes.

The Department subsequently added Section 63-135 SMALL QUANTITY MANAGEMENT and recommended certain changes to Part D: TRANSPORTATION, which are believed to address Mr. Emmons' concerns in a mutually satisfactory manner.

A summary of the written comments, together with the Department's response thereto, is also attached.

Recommendation

No recommendation based on the hearing testimony.

Respectfully submitted,

Fred S. Bromfeld
Hearing Officer

Contains Recycled Materials

DEQ-1

Attachment: Comments on Proposed Rules

PUBLIC HEARING
ATTENDANCE LIST

Date: 3/20/79 9 AM

PROPOSED RULES ADOPTION : OAR CH 340 DIV 63 -
HAZARDOUS WASTE MANAGEMENT

NAME AND ADDRESS	REPRESENTING
Chuck Williams	TEKTRONIX, INC
STOEL RIVES WATERMAN	INDUSTRIAL CHEMIST
DALE TEURIS	Sup. Ct. Mgr. Pc.
George Bissonnette	Precision Castparts Corp.
HARDY P CAVE	OREGON PUC
Paul B. Henry	" "
Darin L. Heffard	Pennwalt Corp
LEWIS WIRDEWITSCH	PENNWALT CORPORATION
Jerry Palmer	Simpson Timber Co.
Judith A. Cichowicz	Citizen
S. M. Lepp	Pioneer Marketing - Seepage Control
ROGER EMMONS	OSSI

ATTENDANCE: 12

COMMENTS PERTAINING TO THE JANUARY 9, 1979 DRAFT RULES FOR HAZARDOUS WASTE MANAGEMENT (OAR Chapter 340, Division 63)

The following is a summary of the written comments received in response to the Notice of Public Hearing distributed February 5, 1979. Both these comments and the Department's response thereto are included as a part of the public hearing record.

GENERAL

* As far as I can determine the proposed regs are reasonable and proper.

* [The EPA] will not attempt a detailed comparison of [its proposed regulation with the State's] since you have reviewed EPA's proposal and are generally aware of where any differences may lie. The EPA regulations will not be effective until the summer of 1980 at which time the state could apply for interim authorization. Based upon the proposed regulation, the state would be in a good position to receive such authorization. During the following two years the state could address any differences between the state and Federal program so that final authorization could be granted.

  We know you are anxious to move forward with the program your legislature has authorized. We look forward to working with you in developing the program over the next several years.

* The proposed regulations on hazardous waste appear to meet the needs of the state and to meet the Federal Guidelines for State Hazardous Waste Programs (40 CFR Part 250) Federal Register February 1, 1978 Part iv.

* I concur with your proposed hazardous waste management regulations with the following suggestions and/or questions.

* The proposed rules appear reasonable enough for industry compliance, yet complete enough to ensure safety for the environment and the public.

* It seems every phase of this has been covered.

* I read the draft copy and find it very clear and well written. I, personally, feel that DEQ is taking on too much. What statistics does DEQ have as to deaths or serious health problems in Oregon to cause more infringements upon personal liberties?

* Overall the regulations seem suitable as safeguards to the public and environment.

* New Section 63-0XX should be added to indicate what reporting DEQ will do for the EQC and the public. We suggest a semi-annual compilation of data received from hazardous waste generators, transporters and treatment/collection/disposal facility operators. We suggest that public access to DEQ records be ensured by written rule.

  Department Response: ORS 192.410-192.500 specifies that the public has access to most of the Department's records. We routinely provide a monthly summary of the new wastes received at the Arlington hazardous waste disposal site and various other data upon request.

* New Section 63-0XX should be added to describe the DEQ violation notification and enforcement plans. Penalties should be specified.

  Department Response: Enforcement and notification procedures are spelled out in ORS 459.650-459.690 and penalties in ORS 459.992-459.995.

PART A

* 63-006--I would like to see the sources of hazardous waste operation decrease quantities, therefore lowering the threat of public health and safety risks.

  Department Response: Agreed. By requiring the maximum practicable treatment for hazardous waste, adequate record keeping, and adequate disposal sites, the cost of disposal will tend to be fairly high. This will give generators a good economic reason for continually attempting to decrease the amount of hazardous waste that they generate.

* 63-011(9)--Add "residual amount not to exceed one percent of total original net contents by weight or volume."

  Department Response: OSU Extension Service data indicate this to be the usual case, but there is really no practicable way to determine this in the field.

* Neither State nor Federal landfill guidelines differentiate between liquid, semi-solid or solid, and do not classify sludges except by source of origin only. Operation of a landfill and handling materials of different liquid consistency demands different operational procedures. It is therefore necessary to more clearly differentiate between liquid, semi-solid and solid waste, especially in Hazardous Waste. [It is recommended that] the following should be added to 63-011(11): "Material containing less than 30 percent of solids, by weight, shall be considered a liquid."

  Department Response: It is agreed that materials of different consistencies demand different operational procedures and we provide for this by our authority to recommend disposal procedures on a case-by-case basis. However,

knowing the wide variation in the consistency of industrial sludges, we do not have sufficient data to more fully define "liquid" at this time.

* 63-011(11) "Hazardous Waste." We support a refining of this definition to indicate usefulness, relative only to the generator. If a material has no immediate or real use to the generator, it is a waste. The use to others, or the value to others, does not change its inclusion as a waste, or the demand for proper management. The Corvallis solid waste ordinance (#78-102) defines waste as follows: "material that is no longer directly useable by the source, generator or producer of the material and which material is to be disposed of or be resource recovered by another person".

  Department Response: We have used the statutory definition for hazardous waste and that it is the generator who is discarding or not wanting the material is implied in the definition. Note that this same definition is used in the Federal Resource Conservation and Recovery Act.

* Definition 14 shouldn't refer to sanitary landfills. The DEQ has not certified sites as such.

  Department Response: Agreed. Will use "solid waste landfill".

* Several of the definitions, particularly 18, 19, and 29, are actually regulations in part. Descriptions of required actions should not be included in the definitions section. In particular, the last sentence under 18 should be dropped.

  Department Response: Agreed. Indicated actions added to appropriate rules sections.

* (18) and (29) Final sentences should read: "If the Hazardous Pesticide rinsate cannot be . . .". Rationale: If the pesticide originally contained was non-hazardous, it is illogical to consider the rinsate to be hazardous.

  Department Response: Agreed. Added to Section 63-130(3).

* (24) Add the sentence: "Does not mean Farms, Ranches, or other Agricultural or Horticultural generation sites."
  Rationale: By definition a site is "a plot of ground set aside for a particular use"; a plant is "a set of machines necessary to conduct a manufacturing enterprise, such as a chemical plant". The proposed use of the words "plant site" is correct for urban generation sites, but not for farms. Furthermore, the problems encountered in agriculture are very minor and should be excluded.

  Department Response: We agree that the problem of waste disposal encountered in agriculture is usually minor as compared to that in an industrial setting, but do not feel that a blanket exemption of agriculture is appropriate.

PART B

* Definitely the list of hazardous wastes should be expanded to include ignitable, corrosive, reactive and other toxic wastes. These can be just as dangerous as pesticides and PCB's.

* It is noted that the State guidelines go beyond the Federal regulations and specify that small amounts of specified wastes may be deposited at landfills other than hazardous waste sites if deposited at certain intervals and with knowledge and acceptance of the landfill operator. This is a necessary requirement.

* Section 63-011, - 125, et al should specify that the concentration limits which define treatment and disposal controls are to be applied at the source of generation--before any dilution or mixing with less hazardous wastes which might lead to weaker controls on the hazardous material.

  Department Response: Agreed. Section 63-215(11) prohibits diluting a waste so as to declassify it.

* The proposed state regulations specify that small amounts of waste may be deposited at "sanitary landfills". Because the determination of a "sanitary landfill" is not clear either on the state or federal level, and because some "sanitary" landfills may not be operated any better than some other plain landfills, especially in handling hazardous waste, it is suggested that the term "sanitary landfill" be dropped. [It is recommended that you] substitute for the term "sanitary landfill" the phrase "in landfills which have a state permit to do so and at the discretion of the landfill permitee."

  Department Response: Agreed. Will use "permitted solid waste landfill".

* 63-110(1)(e): Would this cover all wood and paper wastes as found in garbage?

  Department Response: No.

* 63-115(1)(a): Some furnace and flue ash is over 12 pH. Would it have to be transported to a hazardous waste disposal site?

  Department Response: OAR 340-62-100 permits the Department to authorize the disposal of a specified hazardous waste at a specified solid waste disposal site. The cited waste appears to be only marginally hazardous and should be considered for local disposal.

* 63-115(1): The proposed limits are questionable inasmuch as some innocuous substances such as vinegar and hydrated lime would have to be treated as corrosive.

  Department Response: Agree to the extent of lowering the acidity limit to pH 2. This gives a pH of 5 units around neutrality. We feel that any material having a pH of 2 or less or 12 or greater is corrosive and should be singled out for special handling.

* The introductory statement [in 63-125] is flawed and misleading. Oral toxicity of LD_{50} is in no way a criterion of persistence, bio-accumulation or threat to the environment. Organophosphates, carbamates and other highly toxic pesticides (like Paraquat) are rapidly and completely degraded to harmless compounds when exposed to soil, sunshine and air. Lindane is a halogenated hydrocarbon that has been incorporated into the soil for years without damage to anything but insects.

  To single out pesticides and not mention other equally or more hazardous substances used by our society is unwarranted. It creates a false prejudice in the minds of the public and adversely affects the use of legitimate tools of agricultural production.

  Department Response: Agreed. The statement was meant to apply to all of the identified classes of toxic wastes and has been moved for clarity.

* 63-125(1) Should read: "A waste is toxic if it has any one or more of the following properties:

  (a) Oral Toxicity: Material with an oral LD_{50} of 50 mg/Kg or less, and which must be branded with the signal word "DANGER" and the Skull and Crossbones emblem."

  Five hundred mg/Kg is too restrictive. The cutoff should be at the point where the POISON and Skull and Crossbones is required on labels. It is the only means the public (farmers) have of distinguishing between hazardous and slightly or non-hazardous products.

  Department Response: Possibly, but in the absence of evidence that 500 mg/Kg is too restrictive, we propose to stick with our present limit.

* 63-125(3): As proposed, these rules would require extra handling of a number of non-hazardous chemicals; some rules are ambiguous. "Cyanide" can mean any of several cyanide compounds of differing toxicity. Certain organo-mercury and organo-arsenate compounds are not hazardous, such as phenyl mercuric acetate and mercurochrome. The metharsonate weed killers (MSMA) are not hazardous. Lead sulfide certainly need not be considered toxic. Concentrations of 101 ppm (one part in 10,000) appears to be an arbitrary and unreasonable minimum limit for requiring hazardous waste treatment.

  Department Response: Inorganic cyanide pertains to the ionic species CN^-. It is quite possible that some inorganic cyanides may be less toxic than others, but it is believed that those commonly encountered are extremely toxic and require special handling.

  The compounds cited above are pesticides and should be measured against the toxicity standards in 63-125(1)(a).

* 63-125(3)(c): Mining wastes should not be exempt from this proposal. Currently there are plans to do extensive uranium mining in Southeast Oregon and exclusion of mining from the regulations could prove disastrous. Are we going to allow radioactive tailings to blight Oregon as they have so many other states?

  Section 63-125(3)(c) should be modified to call for submittal and approval of an on-site confinement plan for hazardous wastes associated with mining. Mining hazardous wastes shipped off-site should be subject to the rules of OAR 340, Division 63.

  Department Response: Agreed. Mining wastes need to be looked at more closely, but we are unable to make concrete proposals at this time. The Environmental Protection Agency's proposed hazardous waste guidelines, released December 18, 1978, has some concrete proposals for handling mining wastes. Should we be faced with such a situation at this time, we would most likely use their recommended procedures, which include site selection, containment and monitoring.

* 63-125(4): Is there an overwhelming necessity to bar carcinogens from sanitary landfills? Since carcinogenicity is a property related only to human inhalation or ingestion of a substance, the DEQ should demonstrate a plausible route by which carcinogens buried in a landfill can enter the human alimentary tract. Who eats garbage? This prohibition might better be dropped.

  Department Response: The cited compounds are proven industrial carcinogens. Although we are not aware of their industrial use in Oregon, they are occasionally used for laboratory experiments. Their classification as a hazardous waste is in accordance with 29CFR 1910.93c, which states that "waste disposal methods and processes shall be established and implemented which do not permit carcinogens to be introduced into noncontrolled areas."

* 63-130(2): Could depositing of a bag of garbage in a hazardous waste container denote domestic usage and allow depositing with household refuse?

  Department Response: The rule refers to the origin of the container, not its subsequent use.

* 63-130: [The procedures for decontamination can be simplified by adding aeration to Section 63-011 defined as:] "Aeration" means arranging for complete escape of volatile substances from their containers in an inverted position for an adequate time period (usually not less than five days).

  [Certifying can be similarly simplified]

  Department Response: Partially agreed. "Aeration" will be added to the definitions. "Certifying" will be retained as one of the three procedures necessary for proper container management.

* 63-130: WARNING and CAUTION label containers may be recycled. Does this include refilling with other items?

  Department Response: Yes. Food or fiber exclusion added.

* 63-130(3)(b): [Combustible] containers may be burned . . . "in such a manner as to protect the public health and environment." This passage appears to be too vague.

  Department Response: It is felt that the air quality rule, OAR 340-23-040(7), prohibiting the open burning of any waste material which normally emits smoke, noxious odors, or which tends to create a public nuisance is sufficient guidance for a person to determine whether or not his manner of burning poses any threat to public health or the environment.

* 63-130: Since the number of plastic containers used in farming operations is small in number and size (usual maximum is 5 gallons), incineration is the most practical way of disposal. The amount of toxic substances liberated into the environment would be infinitesimal. Plastic containers should be included with paper for permissible burning under the rules for burning.

  Department Response: We are of the opinion that rigid plastic containers cannot be burned without violating OAR 340-23-040(7), which prohibits the open burning of materials which normally emit smoke, noxious odors, or which may tend to create a public nuisance. However, we will allow the burning of paper-based bags which may contain a small amount of plastic if it can be done in compliance with the aforementioned air quality rule.

* 63-130(3)(c): Persons engaged in agriculture should have to follow the same rules that apply to other hazardous waste. Agriculture persons should not be relied on to adequately bury this waste on their land. They have a long history of contaminating the land and water with little regard to the effects it may have. ("If it doesn't kill me when I touch it, it has to be O.K.")

  Department Response: Agree to a certain extent. However, many rural areas are so far from a permitted solid waste landfill, that on-site burial is the only reasonable alternative for disposing of pesticide containers. Should a farmer wish to dispose of pesticide, he will, of course, have to abide by the same rules as does everybody else.

PART C

* 63-205. Applicability. (1)(a). Exempts generators of 2000 pounds or less. Unless classes of waste that threaten public health and the environment in smaller quantities are excluded from this exemption, this passage would not appear consistent with the current understanding of hazards.

Department Response: Persons who annually generate less than 2000 pounds of hazardous waste are not exempt from properly disposing of that waste but only from the paperwork burden of registering with and periodically reporting to the Department. It is felt that this will provide reasonable coverage to introduce the program and does not preclude the future extension of registering and reporting to small generators.

* 63-205(1)(a & b): There should be no acceptable limit on generating or transporting hazardous waste. If it is only one pound, the waste should be pooled with other small generators for later adequate disposal.

Department Response: We have selected 2,000 pounds as the cutoff point for defining who is a generator and what size load will need to be accompanied by a manifest. It is felt that this provides reasonable coverage for an introductory program and does not preclude a future lowering of the cutoff limit. With regard to pooling small quantities of hazardous waste, we are making every effort to open hazardous waste collection sites in other areas of the State. At the present time, we have collection sites in Portland and in Springfield.

* The language of 63-205-1-c is unclear. Is this an "exception"?

Department Response: Agreed. The rule has been moved to a more appropriate location.

* I strongly support the use of "shall" in 63-215-2 regarding reuse and recycling of wastes.

* 63-215(2): A generator should be required to register itself with the Oregon Industrial Waste Information Exchange--a group run by the Portland Recycling Team with a grant from the Department of Energy. This program has saved generators money in transportation costs, even generated income from other firms to whom the waste is a resource. This should be mandatory.

Department Response: We agree that a generator should recycle waste whenever possible. It is our policy to advise those that call for disposal information of the Waste Exchange, however, we cannot codify this since the Portland Recycle Team is a private firm and there are other firms which may wish to compete for waste in general or for specific wastes.

* 63-215(3) What are the penalties for not reporting an accident involving hazardous waste?

Department Response: It is believed that an unreported accident would be a violation of ORS 459.510, punishable under ORS 459.995 by a $500 civil penalty.

* Under Part C, "Waste Management," 63-215, paragraph 6, mention is made of small quantities of hazardous waste. This was slightly confusing to me. Do small quantities refer to shipments of less than 2,000 pounds or to the amount given as acceptable for each sanitary landfill according to the type of waste? (See 63-110 through 63-125) This is kind of a nit-picking exercise, but nevertheless a source of misunderstanding on my part.

  Department Response: Referred to amount permitted to be disposed at other than a hazardous waste disposal site. New Section 63-135 added for clarity.

* 63-215(6): References to "shared responsibilities" appear vague. A method of allocating responsibilities in cases involving more than one party should be clearly outlined in a broader treatment of "liability."

  Department Response: Agreed. However, the allocation of responsibility is a legal question which we are not able to determine fully at the present time.

* My reading of 63-215-8 suggests that a generator holding 1200 pounds of corrosive waste could parcel the material out to a local fill over a six month period to avoid regulation. Is this the intent of the regulations? I believe you mean by 63-115-2 that an organization generating less than 200 pounds per month of corrosive material is not regulated; the present reading seems to allow parcelling.

  Department Response: It does. The rate of waste acceptance by a solid waste landfill was based on a Department assessment of what is both practical and environmentally sound. We intend to review this policy when we have a more adequate network of hazardous waste collection sites.

* Under 63-230, "Compliance with Manifest," information criteria does not include the time the transporter is expecting to arrive at the point of storage, treatment or disposal site. This might be helpful information to be included in the manifest.

  Department Response: This is felt to be adequately covered by Department of Transportation regulations. Specifically, 49CFR 177.853 states that all shipments of hazardous materials shall be transported without unnecessary delay, including the loading and unloading of the cargo.

* Section 63-230 should prohibit the reuse of a manifest proper. Reuse of a hazardous waste description, etc. may be acceptable but individual shipments should each have a separate manifest to ensure cumulative data collection, to facilitate tracking of an improper shipment and to avoid mischaracterization of proper shipments.

  Department Response: Agreed. Deleted provision for manifest reuse.

* Only with a tracking system can the DEQ ensure that proper procedures are being followed. An accident, whether at the manufacturer's premises, a distributor's, user's, or at a disposal site, has the same potential for danger. Registration is necessary so that some shipments will not become "lost" or others turn up for which no one has responsibility.

* Section 63-230 should require the manifest to specify the location of hazardous waste generation in addition to the address (office) of the hazardous waste generator.

  Department Response: Agreed and changed.

PART D

The following comments will be forwarded to the Public Utility Commissioner and are included herein for completeness only.

* In Part D: Transportation under "Waste Management", statement five (beginning on page 17, near the bottom in the draft), I feel light treatment has been given the idea of separating incompatible wastes. More detail is needed. Does separation mean a slat of cardboard between containers? Or on opposite ends of the truck's trailer? If two or more wastes are extremely incompatible, shouldn't more detailed regulations be set forth separating them into different vehicles entirely? These are just a few of the questions that popped into my mind while reading. It seems to be unnecessarily vague.

* In terms of the definition of "transporter", are firms hauling their own wastes legally defined as "motor carriers"?

PART E

* 63-405. Applicability. (1)(c): "persons disposing of their own domestic waste" are exempted. This is vague, and looks like a potential loophole.

  Department Response: Perhaps. Have spelled out small quantity disposal procedure in new Section 63-135.

* 63-420(4): Is six months a justified time? Conditions may change, allowing reuse of the material at a later date.

  Department Response: Agreed. Both 63-420(4) and 63-215(8) have been modified to encourage reuse or recycle.

* 63-425(4) Accepting quantities less than 2000 pounds. Again, a blanket exemption on the basis of weight does not address the variety of hazard levels per unit of weight.

Department Response: The conditions under which a hazardous waste management facility may accept these smaller quantities of waste is spelled out in the individual facility's license.

The aim is to facilitate proper disposal by minimizing the paperwork burden and does not preclude a future lowering of the cutoff point.

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Environmental Quality Commission

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MEMORANDUM

To: Environmental Quality Commission

From: Director

Agenda Item L, May 25, 1979, EQC Meeting

Subject: Proposed Adoption of Amendments to particulate emission limitation rules to allow boilers utilizing salt laden fuels to meet new grain loading limits, exempting salt emissions and requiring specific monitoring of emissions. OAR 340-21-020

Background

Boilers burning salt laden fuel are usually in violation of the Department of Environmental Quality's opacity and grain loading limits because the salt is largely carried through the combustion process and is emitted with other emissions. The bark used for fuel in these boilers contains salt if the logs are stored or transported in salt water. Therefore, there are only two plants currently in operation in Oregon with a potential salt emission problem. The proposed rule would provide a five year exemption from the opacity and grain loading limits for the salt portion of the emissions. Non-salt emissions would be required to meet the same limits as all other boilers.

ORS 468.295 authorizes the commission to adopt rules limiting air contaminant emissions. The "Statement of Need for Rulemaking" is attached. (Attachment 2).

Alternatives and Evaluation

The basis for the request, by industry, for an exemption for the salt emissions is the lack of known environmental damage due to the salt emissions. The salt emitted by the boilers is claimed to be similar to and in much smaller quantities than the airborne salt from the ocean. The plume from a boiler using salt laden fuel is highly visible and usually violates grain loading limits.

The salt emissions could be controlled. At least two installations in Washington have installed control equipment and met standards similar to Oregon's. However, the equipment necessary to control the fine salt particulate will cost approximately $2 million compared to the approximately $500,000 to control similar boilers without salt emissions. Operational and maintenance costs are also higher. Control equipment for

these types of installations may take two years for design and installation.

Weyerhaeuser Co. made the initial request for the Department to consider exempting salt from boiler emission limits. At the time of the request, approximately one year ago, Weyerhaeuser's boiler emissions did not comply with the existing limits even if salt were exempted. Since that time significant modifications to the boilers have been started. When these modifications are completed, in July, 1979, non-salt emissions will have been reduced to within the current 0.2 gr/scf limit for existing hogged fuel boilers. These modifications will result in a reduction in emissions of up to 300 tons per year at a cost of almost $1,100,000. This cost is in the same range as that incurred by other boiler operators in meeting the boiler emission limits. Some of these modifications would have been necessary even if salt were not exempted.

If the proposed rule is not adopted, the mills would be subject to current opacity and grainloading rule limits, and when applicable be required to submit new compliance schedules with increments of progress. Sources not in compliance by August 7, 1979, are subject to the non-compliance penalty section of the Clean Air Act (Section 120).

The proposed rule would provide an exemption of limited duration to allow development of data in the next three years. At that time the Department would reconsider the rule change and its environmental impact. If it is decided not to extend the rule change, there would be adequate time to design and install controls before the expiration of the exemption.

The Department held an informational hearing on November 20, 1978, and a public hearing on March 19, 1979, to consider the proposed rule change. Both hearings were held in Coos Bay, and were well attended. Oral and written testimony was received from more than thirty witnesses at the public hearing. The Department's responses to the major points are incoporated in this report as Attachment 1.

In considering Weyerhaeuser's request the Department evaluated the expected health, aesthetic, and economic impacts of that request. However, there is little available data specifically addressing these areas.

Testimony from several doctors was submitted at the hearing concerning the health impacts of the proposed rule change. The doctors were divided in their opinion of the health impact of the proposed rule. However, they did not submit any data and the Department has been unable to obtain any data on airborne salt and its effects on human health. This is one of the reasons the Department has proposed a temporary rule. One of the most significant facts is the lack of any limit on the amount of airborne salt in the worker environment. Neither the Occupational Safety and Health Administration nor the American Conference of Government Industrial Hygienists has advocated or set a limit on airborne salt.

In their proposal Weyerhaeuser has claimed that there was little concern for the aesthetic impact of the boiler plume as evidenced by the lack of complaints registered with them or the Department. The Department has no record of any complaints about the highly visible plume. At the hearings, seven witnesses commented on the aesthetic impact. Of these, four felt the plume was objectionable while the other three did not feel it was a significant problem. At the hearings there were complaints of fallout from some residents in Coos Bay, but the fallout was not a result of the salt emissions. The staff proceeded with the proposed rule change because there was little concern by the residents of the Coos Bay area with the high opacity resulting from these boilers.

Although economic hardship was not the stated motivation behind Weyerhaeuser's request, the economics of the problem are significant. The capital costs and operating costs are high to control an emission which is not known to have health impacts and has minimal aesthetic impacts.

EPA testified that a rule change that interferred with attainment or maintenance of air quality standards may not be approvable as an amendment to the State Implementation Plan. EPA has also testified that they do not support the proposed rule change because it is a relaxation of standards. If EPA does not approve this rule or a similar rule as an amendment to Oregon's SIP, then the companies affected by this rule would be subject to EPA enforcement of Oregon's existing boiler limits which are in the federally approved SIP.

Under current operating conditions, (neither salt nor non-salt emissions from Weyerhaeuser's boilers comply with current emission limits) there have been no measured ambient air violations in Coos Bay in the last 10 years. Since emission reductions are expected in the near future, the proposed rule change would not be expected to result in violations of state or federal ambient air standards at this site. The staff concludes that the proposed rule will not interfere with the attainment or maintenance of air quality standards.

The proposed rule would not change the limits for boilers without salt emissions, nor the limits on the non-salt emissions from boilers using salt laden fuel. The proposed rule would require affected boiler operators to continue to study the impacts of their salt emissions and control feasibility. These reports would be used by the Department in its reevaluation of the rule in 1982.

Summation

1) Weyerhaeuser Co. has requested a rule change to exempt salt from boiler emission limits. The request was based on the lack of a need to control emissions which occur naturally in much greater quantities.

2) The Department has held two hearings to consider the impacts of the proposed rule change. The Department has not found any data which indicates that the proposed rule would result in a health impact.

3) The Department has concluded that opacity of the plume from boilers with salt emissions does not negatively impact the Coos Bay area.

4) The Department has concluded that the economic costs of controlling salt emissions currently outweigh the possible health or aesthetic impacts of not controlling salt in the Coos Bay area.

5) The Department proposes a rule which provides for exemption of salt from emission limits for five years and for reassessment prior to the expiration of the rule. The adopted rule would be submitted to EPA as an amendment to the State Implementation Plan.

Directors Recommendation

Based upon the summation, it is recommended that the Commission adopt the proposed changes to OAR 340-21-020 (1) and (2) as attached.

Bill

William H. Young

F. A. Skirvin:jl
229-6414
May 15, 1979

Attachments
1) Department's Response to Public Comment
2) Statement of Need for Rulemaking
3) Hearings Officer's Report
4) Proposed Rule OAR 340-21-020 (1) and (2)

Attachment 1

DISCUSSION OF SIGNIFICANT ASPECTS OF THE PROPOSED RULE

The testimony from the two public hearings on the proposed rule change brought up several points which the Department considered in making its recommendation. The issue is not a simple right or wrong. The recommendation is based upon a subjective evaluation of the data and testimony of those living in the Coos Bay area.

This proposed rule, as discussed in previous staff reports, will be applicable to any boiler which burns salt laden fuel. At this time the Department is aware of only two plants utilizing salt laden fuel. Both of these plants, Georgia-Pacific Corp. and Weyerhaeuser Co., are located in the Coos Bay area. Any environmental impact of this proposed rule change would be felt most strongly by those living in that area and therefore their comments and questions were carefully considered.

In support of their request, Weyerhaeuser Co. submitted a study by Junge and Boubel entitled The Impact of Salt Emissions from Weyerhaeuser Co. Wood Fired Boilers, North Bend, Oregon. This study outlined the operation of the boilers, gathered the available ambient and source test data and analyzed the impact of the boiler emissions on the Coos Bay area. Drs. Junge and Boubel concluded that Weyerhaeuser's salt emissions were insignificant compared to the naturally occurring airborne salt.

Weyerhaeuser also submitted boiler emission data and opacity studies which evaluated the impact of the salt emissions on boiler opacity. Modeling studies were made to estimate the ambient air impact of Weyerhaeuser's boiler emissions.

The data and reports submitted by Weyerhaeuser were reviewed by the Department and no significant errors were found.

In addition to testimony from the hearings, the Department received several studies on the impacts of salt emissions. These studies were made for other reasons or with different emphasis but some of the results are discussed as they relate to the proposed regulation.

The following sections discuss the questions, some of which are interrelated, which were brought out at the hearings. In some cases definitive test results are unavailable and judgements were made based on more subjective criteria.

Health Effects

The potential health effects of the proposed rule change aroused the most controversy at the hearings. Much of the testimony concerned the difference between the salt emitted by boilers and the naturally occuring sea salt particles. Significant differences in chemical composition or physical structure could result in adverse health impacts not normally associated with naturally occuring sea salt.

Naturally occuring sea salt consists of approximately 68% sodium chloride ($NaCl$), 14.5% magnesium chloride ($MgCl_2$), 11.5% sodium sulfate ($NaSO_4$), 3% calcium chloride ($CaCl_2$) and 3% miscellaneous compounds. When analyzing chemical compounds, such as sea salt, the compounds are dissociated into the ions and evaluated. The result is a ratio of different types of ions compared to the whole or to the amounts of other ions. On this basis the chemical composition of the boiler salt is essentially the same as the naturally occuring sea salt. Source test data submitted by Weyerhaeuser verifies the sodium to chloride ion ratio is similar to that of sea salts.

As indicated in the PEDCo report, the Victoria, BC report and test results from Weyerhaeuser, salt from boilers is generally smaller in size than naturally occuring salt.

Of the salt emissions from the BCFP boilers, in Victoria, BC, about 80% by weight were less than 1 micron.

Of the measured ambient salt samples approximately 10% by weight were less than 1 micron. The range of sizes is approximately the same but there are significantly more small particles from the boilers.

Because of the small particle size nearly all of the salt entering the boiler leaves via the stack. Particles in that size range are highly visible as evidenced by the plume from Weyerhaeuser's stack.

The Department, as well as EPA, the British Columbia Pollution Control Branch, PEDCo, Weyerhaeuser and those testifying at the hearings, have been unable to locate any studies on the health impacts of airborne salt Whether it is naturally occuring or from boilers. Witnesses at the hearings interpreted this in two ways: a) since there is no data to prove salt is not harmful, salt emissions should be controlled, or b) since there is no data to prove salt is harmful, salt does not need to be controlled to protect human health.

One study was mentioned at the hearing that involved salt as a carrier of SO_2 into the lungs. In the presence of airborne salt the SO_2 had a greater impact on the breathing of laboratory animals. Although a copy of the study was not presented, the Department concludes that the small percentage increase in ambient salt levels resulting from boiler operation and the minimal amount of SO_2 in the Coos Bay airshed would minimize any similar impacts on human health if this rule were implemented.

Although no applicable studies were found, it is significant that the Occupational Health and Safety Administration and the American Conference of Government Industrial Hygienists do not limit the amount or particle size of airborne salt in worker environments.

There was testimony at the hearing of adverse health impacts due to the general air pollution in Coos Bay, however no one specifically mentioned salt as the reason for health problems.

Enforcement of Visible Limits

It was brought out at the hearings and in discussions with Department field staff that the dense plume resulting from the salt emissions would reduce the Department's ability to monitor operations of a boiler.

There is no doubt that the highly visible plume from a boiler burning salt laden fuel masks the normal boiler emissions. The size and quantity of salt particles makes them highly visible. Even the reduction (up to 300 TPY) in non-salt particulate to be implemented by Weyerhaeuser will result in a minimal reduction in opacity.

Opacity limits are used by the Department as a day to day means of monitoring boiler emissions and to some degree operation. In general, there is no direct empirical relationship between opacity and grain loading. Improper boiler operation generally results in a heavy dark plume which can be corrected in a short period of time. Mechanical breakdowns can require a longer period of time to reduce the opacity. Once a boiler has demonstrated compliance with grain loading limits, opacity is used to monitor continued compliance.

In the case where salt emissions mask other emissions, the plume can still be monitored to detect improper boiler operation or mechanical breakdown. First, the color of the plume will be much darker due to the unburned carbon resulting from poor combustion. Second, the proposed regulation would require installation of an in-stack opacity monitor and recorder and a study to develop the correlation between the opacity of that specific emission source and the grain loading. After the correlation has been established, limits could be added to the permit and a review of the recorder charts will reveal any violations of such permit limits. This would require an on site visit instead of the normal off site opacity readings.

The development of the correlation between opacity and grain loading will generate more emission data on that source than is available for any other hog fuel boiler in the state. The opacity recorder would then provide an accurate record of violations.

Comprehensive Monitoring Program

Several witnesses advocated a comprehensive sampling program to identify the quantity and types of air contaminants because a comprehensive monitoring program has not been undertaken in Coos Bay for 10 years.

For over 10 years the Department has maintained an emission inventory of the pollutant sources in Coos County as well as a monitor for ambient particulates (Hi Vol).

The emission inventory indicates that there has been a decrease in the particulate emissions from 5472 TPY in 1970 to 4234 TPY in 1978. This

decrease is due to a reduction in emissions from point sources from 4584 TPY to 2908 TPY. This does not include the additional reductions resulting from modifications to Weyco's boilers.

The ambient particulate monitor has not recorded a violation of the State's Ambient Air Quality Standards (equivalent to Federal Secondary Standards). However, the monitor is positioned so as to record ambient air quality. The site was selected in accordance with EPA criteria so that specific sources would not directly impact the monitor.

The emission inventory data and ambient monitoring data indicate that particulate emissions in Coos Bay have decreased and are within state and federal standards for protection of health and welfare. This data does not seem to warrant an ambient sampling program in addition to the existing monitor.

Impact of Rule Change on Other Regulatory Agencies

Testimony presented at the hearing indicated that the adoption of the proposed rule change would affect the decisions of other states and might have national significance. Exemption of salt emissions by Oregon might pressure Washington to adopt similar exemptions.

As recommended by the PEDCo report, the Department agrees that each case should be considered separately. In proposing the rule change, the Department did not intend to make a general statement about salt emissions from any boilers other than those already in existence in Oregon. In this case all of the sources which might be affected by this rule are located in Coos Bay.

Since there are many factors affecting decisions such as these, the Department would not presume to imply that other states blindly adopt similar rules.

The regulation proposed to the Commission at this time has been changed from that presented at the hearing to reflect the intent that the regulation affect only existing sources. New sources using salt laden fuel would be evaluated as they are proposed.

Victoria, British Columbia Salt Impact Study

In addition to data submitted at the public hearings, the Department has received a copy of a report entitled "Field Study of the Fate and Effects of Salt Emissions in the Victoria Area, British Columbia." The report was prepared in July, 1977 by the British Columbia Pollution Control Branch and the Council of Forest Industries. It is the first part of a before and after control installation study. The controls on the boilers being studied have been installed, however, the controls do not yet operate consistently enough to begin the second part of the study.

The results of the study are not directly applicable to Coos Bay, however the results do give an indication of the relative impact of the salt emissions on the ambient air quality.

The salt emissions from the boiler increased the salt concentrations in the area of the boiler by 2.8 ug/m^3. However, the salt concentrations in Victoria, when the boiler was shut down were less than the background levels measured near the ocean (about 50 miles from Victoria).

The sulfation rate (concentration of oxides of sulfur) in Victoria did not vary significantly whether the mill was operating or not. However, the sulfation rate in Victoria was higher than that of the background station because of the fuel oil combustion in residential and commercial buildings. The higher sulfation rate undoubtedly contributed to the higher corrosion rates experienced in Victoria compared to the background stations.

Almost 85% of the sodium chloride emitted by the boilers was submicron in size. The ambient sodium chloride in Victoria ranged from 33 to 60% less than 1 micron compared to the 6 to 12% less than 1 micron at the background stations. The total suspended particulate in Victoria ranged from 25-29% less than 1 micron compared to the 16-21% less than 1 micron at the background stations. This data would indicate that the boiler emissions affect the size range of the ambient salt particles in Victoria but the impact on the total particulate size range is not nearly as great. This data would also indicate that salt particles from boilers are generally smaller than the naturally occuring salt particles.

Of the 5 ambient air monitoring stations located in the Victoria area, only the one station ((65.4) mg/m^3 located in the direct path of the plume exceeded Oregon's standard of 60 mg/m^3as annual geometric mean. None of the stations violated the dustfall limits. There was insufficient data to determine compliance with the 24 hour standards.

Data from random tests of hydrogen chloride concentrations ranged from 1 to 7 ppm at the stack outlet. These concentrations at the stack outlet would be reduced by 100 to 1000 times by dispersion before the plume could reach a receptor at ground level. The OSHA limit for 8 hour average exposure to HCl is 5 ppm. Ground level concentrations would not be expected to result in any adverse health effects.

Effects of the Rule Change on Other DEQ Programs

In several instances, the high opacity salt laden plumes from boilers have been used as an excuse by individuals for their violations of open burning rules. It was pointed out at the hearing that legalizing the high opacity plumes could jeopardize the open burning program in Coos Bay.

Emissions from the boilers and open fires are not equivlent in their composition or impact, however, individuals are not always aware of that.

To date there have been no reports of widespread open burning violations in Coos Bay but it is a potential problem.

Permanent Rule Change

Several witnesses, as well as Weyerhaeuser Co., advocated a permanent rule change instead of the 5 year exemption proposed by the Department. There are several reasons the Department does not support a permanent rule change.

As evidenced by the testimony, some witnesses were opposed to any rule change. Their comments concerning the localized impact of the plume may be valid but it will take time to gather additional data.

EPA is considering additional standards for fine particulate at this time. Regulatory developments may affect the situation in Coos Bay. In developing the fine particulate standards, EPA may gather additional data on the health effects of salt emissions.

Control equipment for boilers with salt emissions is still developing. Installations have been made at high costs but operational and maintenance problems are still being encountered. These controls for the fine salt particulate use a lot of energy. Energy consumption may be a more significant consideration in the next few years.

For these reasons the Department has proposed a 5 year exemption and a manditory review of the rule in 3 years. If the rule is not to be extended, the additional 2 years will enable the companies to install controls which will comply with limits based on a more complete environmental and energy data base before the 5 year exemption expires.

Within six months of the rule change the Department expects that any company which utilizes this exemption shall have completed the opacity-grain loading correlation studies, and installed the recording opacity meters. After the correlation studies, the Department will evaluate the effectiveness adding interim opacity limits to their permits.

As part of the report required on January 1, 1982, the companies are required to address the current state of control equipment, economics, energy consumption, localized plume impacts and possible operation/process modifications for reducing salt emissions. Testing programs will be approved by the Department in advance of testing.

These reports and any additional data submitted will be used to determine whether the salt exemption should be extended, made permanent, or allowed to expire.

Alternatives to Salt Water Storage

Since handling and storage of the logs in salt water is the reason for the salt emission problem, one way to solve the problem is to store the logs on land or in fresh water.

The mill sites which might be affected by this rule have very limited land areas because of their location in or near Coos Bay. At this time, there are no obvious areas available which could be converted to log storage. In addition, log transportation to the mill by truck would create traffic problems for Coos Bay and North Bend.

EGW:jl

STATEMENT OF NEED FOR RULEMAKING

The Environmental Quality Commission is authorized to adopt rules limiting air contaminant emissions by ORS 468.295 Air Purity Standards; Air Quality Standards.

The proposed rule would relieve boiler operators from immediately complying with existing emission limits when salt is the only reason for noncompliance. The Department is unable to determine, at this time, any significant environmental or health impacts due to the salt emissions. Since the Clean Air Act Amendments of 1977 may result in assessment of substantial penalties for non-compliance with Department regulations, the proposed rule provides for a temporary exemption from existing limits and a review of the exemption prior to its expiration.

The Department has reviewed the following documents in considering the need for and in preparing the proposed rule.

a) Control of Salt-Laden Particulate Emissions from Hogged Fuel Boilers, a draft report prepared by PEDCo Environmental, Inc. for EPA.

b) Control of Particulate Emissions from Wood-Fired Boilers, report prepared by PEDCo Environmental, Inc. for EPA.

c) Letter from Weyerhaeuser Co. to the Department dated 9/19/78.

d) Information submitted by Weyerhaeuser including:
   1) Coos Bay Hogged Fuel Boiler Opacity Study
   2) Statistical Analysis of North Bend Emission Data
   3) The Impact of Salt Emissions from Weyerhaeuser Co. Wood Fired Boilers North Bend, Oregon
   4) Modeling study of boiler emission impacts

e) Testimony presented at the informational hearing held in Coos Bay on November 20, 1978.

f) Results of emission tests by the Washington Department of Ecology on the boiler at the Crown Zellerbach plant in Port Townsend, Washington.

g) EPA's Library Services could not provide any information on health impacts or the lack of impacts from sea salt or salt from boiler.

h) Testimony presented at the public hearing held in Coos Bay on March 19, 1979.

i) Field Study of the Fate and Effects of Salt Emission in the Victoria Area, British Columbia, Progress Report II, July 1977, prepared by the Joint Pollution Control Branch-Council of Forest Industries Committee on Salt Emissions.

j) Letter from Weyerhaeuser to the Department dated 3/27/79.

Attachment 3

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: Hearing Report on the March 19, 1979 hearing - Consideration of the Modification of Emission Limits for Hogged Fuel Boilers and Modification of the State Implementation Plan.

Summary of Procedure

Pursuant to public notice a public hearing was convened at the Pony Village Lodge, Coos Bay, Oregon at 7:00 pm on March 19, 1979. The purpose was to receive testimony regarding proposed changes to the emission limits for hogged fuel boilers which use fuel stored in salt water. The proposed changes would exempt salt emissions from current rules for five years.

Summary of Testimony

The following is a summary of each witness'es testimony which includes the main points of that testimony. The complete written and recorded statements are included as part of the record.

R. Jerry Bollen, Environmental Affairs Manager. Weyerhaeuser Company summarized the studies that Weyerhaeuser had made and generally supported the Department's proposed regulation as proposed.

Weyerhaeuser is about to complete a $1 million project to reduce the non-salt particulate emissions to meet the existing 0.2 gr/SCF limit.

Weyerhaeuser contracted with Dr. Junge & Dr. Boubel to study the salt emissions from the boiler stack. This study concluded that the salt emissions from the stack were essentially in the same size range and had the same composition as naturally occuring sea salt. In addition, the study indicated no visibility problems, no vegetation damage and no additional corrosion problems.

Weyerhaeuser submitted the results of a modeling study which indicated that boiler emissions have little impact on ambient air quality and do not cause the ambient air standards to be exceeded.

Weyerhaeuser has examined alternative operating procedures to reduce the salt content in the fuel but none were considered cost effective.

Control systems which could reduce salt emissions could cost as much as $2.1 million in capital costs and from $158,000 to $228,000 per year in operating costs were reported. Costs for disposal of collected material are not included in these estimates. Both of the possible control systems, baghouse or venturi scrubber, use significant amounts of eletrical energy.

Weyerhaeuser has discussed a similiar situation at their plant in Raymond, Washington with the Washington DOE and the local air pollution authority. A similiar regulation change may be considered by the DOE and the local air pollution control agency.

A written statement, copies the Junge and Boubel study and the modeling study were submitted into the record.

Dr. Joseph Morgan; allergist, Coos Bay indicated that he knew of no definitive studies which indicate that airborne salt does not adversely affect human health. The mixing of pollutants from Weyerhaeuser and other plants may result in other compounds which impact health. More studies should be made to determine what is reaching the human lungs. Since Weyerhaeuser has not threatened to close the plant if required to comply with existing limits, the company should prove that the proposed regulation would not be harmful.

There is a study which showed greater airway resistance from SO_2 when salt particulates are present. In addition SO_2 droplets coalesce with salt particles to form hydrochloric acid, an irritant.

Since there is a health problem in Coos Bay, the standards should not be relaxed, but tightened. In addition comprehensive monitoring should be undertaken to determine levels of particulate and gaseous pollutants.

A written copy of Dr. Morgan's testimony was submitted for the record.

Tom R. Graham, City Council of North Bend, submitted and summarized a resolution by the City Council which supported the proposed regulation.

Virginia Prentice submitted a letter from the Board of Directors of North Bend Chamber of Commerce which supported the proposed regulation.

Robert Mattecheck, North Bend, supported the proposed regulation and submitted a written statement into the record.

Wendell Wilson submitted a resolution by the Eastside City Council supporting the proposed regulation.

Melinda Renstrom, Oregon Environmental Council, opposed the proposed rule change. Weyerhaeuser has previously agreed to a compliance schedule but will not meet the final compliance date. If salt is exempted from boiler emission limits in Oregon other states may follow, therefore, this proposed rule change has national significance. Weyerhaeuser has dragged its heels for the two years of its compliance schedule depending upon a change in the regulation to attain compliance.

Since salt emissions are highly visible, they mask the other emissions. If the salt is not controlled, the Department will be unable to check the levels of non-salt pollutants using opacity observations.

The salt emissions from the stack are not the same as naturally occuring salt and occur in much greater concentrations. Health effects from the boiler salt are unknown. In addition the salt emissions are an "aesthetic blight on the community".

The cost of control technology is not prohibitively expensive. Therefore equipment equivalent to that required in Portland, Eugene and Medford should be required in Coos Bay. The company enjoys the economic advantage of using the bay for log storage but should not have the advantage of not using equivalent air pollution controls.

A written copy of the statement was submitted for the record.

James Opland, Coos Bay, submitted a petition signed by 65 citizens of the Bay Area, (Coos Bay, Lakeside, Eastside, North Bend, Charleston, Allegany) which supported the proposed regulation.

Honora A. Rigg, North Bend, stated that in the last few months she has observed plant damage at her home, her car has a pitted windshield, she has had headaches and breathing problems, there has been soot inside her house and her pets have breathing problems. She contacted Weyerhaeuser and they agreed that the soot problems may have been caused by their boiler stacks, however the pitted windshield was not a result of boiler emissions. Weyerhaeuser also indicated that the soot problems would be solved in the near future.

Chris Short, Vice President of the Central Labor Council IWA 3-361, supported the proposed rule. He submitted a written statement for the record.

Valerie Taylor, North Bend, opposed the proposed regulation because of concern over the health impacts of the boiler emissions.

Frank Kimbrel, Coos Bay, supported the proposed regulation because the amounts of salt emitted from the boilers was insignificant compared to that coming from the ocean.

Captain I. A. Hystad, North Bend, supported a permanent rule change because there is no evidence of adverse health effects. There are other sources of salt emissions such as fireplaces burning driftwood.

Lorie Evoniuk supported the proposed rule change and submitted a letter into the record.

Robert L. Moore, Coos Bay, supported the proposed rule change.

L. M. Steffensen, Georgia Pacific, stated that the GP mill in Coos Bay operated two hogged fuel boilers with some salt in the fuel. In 1977 a new high efficiency multiclone has been installed on one boiler. Although the boilers have demonstrated the capability to comply with existing emission limits, the salt in the fuel was not captured by the conventional control equipment. GP supported the proposed rule change.

Ren Cutlip, North Bend, supported a permanent rule change. A letter from Dr. R. M. Flanagan was submitted into the record. An article from the Oregonian in which the Joint Economic Committee of Congress recommended the federal goverment take steps to reduce the cost to industry of government regulations. Articles were also submitted from the Kiplinger Washington Editors and Research Publications both of which commented on goverment over-regulation.

Dr. R. M. Flanagan, Coos Bay, submitted a statement into the record in which he indicated that his records showed no increase in eye irritation in those patients living near Weyerhaeuser. Salt is used to irrigate the eyes and nose and is an essential chemical in the body. The level of salt emitted from the stack could not be toxic.

Ennis Kaiser M. D., North Bend, supported the proposed regulation and used a hypothetical situation to dramatize the very low levels of salt emissions from the Weyerhaeuser stack.

Wayne Meek, Simpson Timber Company, Seattle, supported the proposed regulation. Simpson Timber operates a plant in Shelton, Washington which utilize hogged fuel which contains salt. This is the only plant which has installed a baghouse to control salt emissions. While the baghouse has enabled the boilers to comply with the emission limits, there are no real benefits. In addition operation of the baghouse consumes 8×10^6 KWH per year. A written copy of his statement was submitted into the record.

Robert Hoit, Simpson Timber, Shelton, Washington,supported the proposed rule change. Because of the high maintenance and energy costs of operating control equipment which will capture salt emissions, there is doubt about the overall benefits of these controls.

Orvis Harrelson M. D., Medical Director Weyerhaeuser, stated that he had researched this health impacts of airborne salt and had reached the following conclusions:

a) Salt does not cause cancer. National Cancer Institute knew of no studies linking salt and cancer. Automated listings of research articles found no references linking salt to cancer.
b) Breathing salt aerosol does not cause lung problems. Lab experiments with animals showed no difference between animals breathing salt and those breathing air without salt. Salt aerosol when combined with SO_2 and NO_2 caused increased breathing difficulty in lab animals. However there is no SO_2 or NO_2 in the stack or atmosphere of Coos Bay.
c) Breathing salt aerosol does not cause diseases or aggravate other diseases. High blood pressure and kidney problems are affected by salt intake but more than 10 million times the amount of salt which might be inhaled is necessary to aggravate high blood pressure or kidney disease.
d) Medical experts at Hooker Chemical, the Salt Institute and the Director of Environmental Health for the State of Utah stated that salt had no effect on health.
e) The Occupational Safety and Health Administration does not consider salt to be dangerous to health. The American Conference of Government Industrial Hygienists does not limit the amount of salt in the work environment.

A copy of his statement was submitted for the record.

William L. Huggins, Coos Bay, supported this proposed rule change.

Kent Mulkins, Coos County Board of Realtors, supported a permanent rule change, similiar to the proposed rule change.

Burt Long, President Local 3261 IWA, supported the proposed rule change.

John Rosene, Olympia Air Pollution Control Authority submitted a statement into the record. He opposes the proposed rule change because there is control equipment available which will meet existing emission limits. In addition if the rule is relaxed, a source will enjoy an economic advantage over other sources which must comply. The Clean Air Act provides for Delayed Compliance Orders if the source is using innovative technology. The DCO would exempt the source from non compliance penalities for the length of the order. The Washington Department of Ecology limits boiler particulate emissions to 0.2 gr/SCF and 20% opacity. No distinction is made of different types of particulates.

J. Stewart Lyons, President, Ocean Terminals Company, North Bend, submitted a statement in support of the proposed rule change.

Mr. & Mrs. E. O. Berg, North Bend, submitted a statement in support of the proposed rule change.

Thomas Donaca, General Counsel, Associated Oregon Industries submitted a statement supporting a permanent rule change. A special Hogged Fuel Boiler committee was formed by AOI several years ago. After a detailed analysis of the data, the committee agreed that salt emissions from boilers did not adversely impact air quality or cause other environmental problems.

Ken Schifftner, Peabody Process Systems, Stamford, Connecticut submitted a statement which supported the proposed rule change. He formerly worked for a company which supplies control equipment for hogged fuel boilers. Source test results indicate that the control equipment necessary to control salt uses three times the horsepower of controls which do not capture salt. In addition controls must be designed to comply with emission limits during the highest salt emission periods. During the low periods as much as 2/3 of the horsepower necessary to operate the controls is wasted. Data to support these conclusions was included in the statement.

Douglas C. Hansen, Director Air and Hazardous Materials Division, Environmental Protection Agency, submitted a statement and attachments. EPA does not support the proposed rule change because the need for relaxation has not been justified. The attachments included the statement of Norman Edmisten at the November 20, 1978 informational hearing and the draft PEDCo report entitled Control of Salt-Laden Particulate Emissions from Hogged Fuel Boilers.

Mr. Hansen indicated that it was up to the State to determine how the National Ambient Air Quality Standards were achieved. In addition PSD and visibility protection should be considered in developing emission limits. EPA could support a relaxation if it were shown not to adversly affect maintenance of NAAQS.

EPA has no data to indicate that salt from hogged fuel boilers is not harmful to human health.

The testimony of Norman Edmisten, submitted at the November 20, 1978 informational hearing stated that control equipment is available to meet emission limits. The cost is higher than conventional control for boilers with no salt emission. In addition, the plume from Weyerhaeuser does substantially increase short term impacts in areas surrounding the plant.

Before EPA could agree to relaxation of the standard, there must be sound evidence that it is not made at the sacrifice or detriment of the health and welfare of those invovled.

The draft report from PEDCo Environmental funded by EPA studied three powerplants located in Oregon and Washington which utilize salt laden hogged fuel. One of the plants studied was Weyerhaeuser in North Bend.

The report indicated the salt content of fuels and boilers emissions varies widely. However the opacity of the salt plume is usually high and asthetically objectionable.

There are controls available to capture the salt and allow compliance with emissions limits. The costs of controls was discussed but were not compared to controls for boilers without salt laden fuel. In addition, the disposal of collected material can present additional problems.

In the recommendations for evaluation of boilers using salt laden fuel the report suggests the investigation of a variance from emission limits or other compromise if the ambient air standards are not violated and citizen complaints are not numerous.

The report also provided data on the three installations such as salt content of fuel and emissions, control costs and methods, types of boilers and ambient air monitoring data.

The summary of the ambient air data for Coos Bay indicated that violations of the 24 hour standard had occurred, however the data presented indicated that there have been no violations of the annual, monthly or 24 hour standards for particulate matter . High concentrations of salt and other pollutants could occur on a short term basis during low winds or inversion conditions.

Another study by Tsang and Stubbs was summarized in PEDCo's report. It indicated that there was no deleterious corrosive effects downwind of a boiler utilizing salt laden hogged fuel in a coastal environment.

Jeff F. Kaspar; Port of Coos Bay, submitted a statement in support of the proposed rule change. He cited the lack of complaints and lack of evidence of health hazards in addition to others items as reasons for supporting the rule change.

David G. Snyder, Gold Beach, a former DEQ employee submitted a copy of a letter he submitted at the informational hearing on November 20, 1978. He opposes the proposed rule change. The reasons include the following:

a) The technology is available to solve the salt-mixture plume problem.
b) Tax credits are available.
c) With the equipment already ordered by Weyerhaeuser, only a proportionally smaller investment needs to be added to achieve compliance with current standards.
d) This variance circumvents the Clean Air Act of 1977.
e) 2/3 of all people burning illegally refer to Weyerhaeuser or Georgia Pacific as an example of other non-complying sources.
f) This proposed rule change will jeopordize the open burning program in Coos Bay.

Lorance W. Eickworth, Bay Area Environmental Committee, opposed the proposed rule change in a written statement. The reasons include:

a) Weyerhaeuser has had 2 years to do something but nothing has been done.
b) 300 tons of salt emitted into the atmosphere is too much.
c) Large companies should lead the way in cleaning up the environment.
d) Dry storage of logs is an answer to the problem.

Edgar Maeyens M. D., Coos Bay opposed the proposed rule change in a written statement. Weyerhaeuser definitely creates air pollution and any relaxation of the rules will aggravate the current condition. The DEQ should undertake an extensive monitoring program in Coos Bay.

Donald E. Poage MD, City of Coos Bay, supported the proposed regulation change in a written statement. The particulates from forest product manufacturing do not affect resident's health. A five year exemption is appropriate to allow additional time for review.

Mary Sherriffs and Marguerite Watkins, League of Women Voters of Coos County, opposed the regulation change in a written statement. There is concern that this regulation change will encourage other industries to request relaxation of other standards. The staff report did not present evidence which forcefully indicates that the original regulation is in error. They concurred with the testimony of Norm Edmisten, EPA, and Dr. Joseph Morgan as to the need for additional data or evidence to support the contention that there are no health impacts from the proposed rule change. They also suggested that a comprehensive testing program be established in Coos Bay.

Respectfully Submitted,

Wayne E. Cordes
Hearing Officer

EGW:tf
229-6480
April 5, 1979

Fuel Burning Equipment Limitations

340-21-020 (1) No person shall cause, suffer, allow, or permit the emission of particulate matter, from any fuel burning equipment in excess of:

(a) 0.2 grain per standard cubic foot for existing sources.

(b) 0.1 grain per standard cubic foot for new sources.

(2) Where salt in the fuel is the only reason for failure to comply with the above limits and when the salt in the fuel results from storage or transportation of logs in salt water, the resulting salt portion of the emissions shall be exempted from (1)(a) above and 340-21-015 until January 1, 1984. Sources which utilize this exemption, to demonstrate compliance otherwise with (1)(a) above, shall:

(a) Install a continuous opacity monitor with recorder on each boiler exhaust stack.

(b) Submit the results of a study to correlate opacity and grain loading. These results will be used to set interim opacity limits.

(c) By no later than January 1, 1982 submit a report on the cost and feasibility of possible control strategies to meet (1)(a) above and the environmental impact of the salt emissions on the airshed.

If this exemption is utilized by any boiler operator, by no later than July 1, 1982 the Department shall hold a public hearing to evaluate the impact of the expiration of this exemption.

AQD Files

OBERT 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. ___ . October 27, 1978, EQC Meeting

Request for Authorization to hold a Public Hearing Regarding a Request for an Emission Regulation Change by Weyerhaeuser Co.

Background

Weyerhaeuser Co. operates a sawmill and plywood plant in Coos Bay. The steam necessary to operate these facilities is generated by three hogged fuel boilers. The emissions from these boilers do not comply with either the 40% opacity limit or the 0.2 grains per standard cubic foot limit. The Department and Weyerhaeuser have agreed to a compliance schedule for the boilers which requires compliance by June 30, 1979.

Source tests have shown that the major reason that the boilers do not comply with Department limits is the salt in the boiler fuel. Currently, excluding the salt, the boilers do not comply with the 0.2 gr/SCF limit. However, they are close to compliance and attaining compliance, excluding the salt, is not a difficult problem technologically.

The fuel has a high salt content because the bay is used for log transport and storage. The salt in the water is absorbed in the bark. The amount of salt absorbed is dependent upon the salinity of the bay and the length of time the logs are stored in the bay.

In addition to proceeding with their control strategy, Weyerhaeuser Co. has requested that the Department change the grain loading standard from 0.2 gr/SCF for all emissions to 0.2 gr/SCF for the non-salt emissions plus 0.4 gr/SCF for the salt emissions and exempt the boilers from the opacity limit for one year to gather data on the opacity resulting from compliance with the proposed grain loading limit.

Evaluation

Weyerhaeuser Co. has provided the results of studies which indicate that the salt portion of the emissions does not create a health hazard, has little impact on ambient air quality and does not cause visibility problems. These studies consist of a report on the environmental impact of the salt

emissions by Drs. Junge and Boubel of Oregon State University and a modeling study of the emissions by Weyerhaeuser Co. staff. In addition Weyerhaeuser has done extensive testing and study in an attempt to correlate the grain loading and opacity.

The Department concurs that the salt portion of the boiler emissions is responsible for the gross opacity violations. The particle size of the salt is less than 1 micron. The existing multiclone control equipment has a low collection efficiency for sub-micron particles. That is coupled with the fact that particles in that size range are more visible.

The Department has reviewed the studies submitted by Weyerhaeuser and has not found any significant discrepancies in their methods or conclusions. In addition, Weyerhaeuser has contended that the high opacity from the boiler stack is not a concern of the populace of Coos Bay and North Bend. Weyerhaeuser has based their contention on the lack of formal complaints recorded by the Department or Weyerhaeuser.

The Department has not received formal complaints, but during inspections and enforcement activities with other sources and individuals, the plume from Weyerhaeuser's stack has been cited as an example of compliance inequity. The Southwest Regional Office staff feels that the obvious lack of compliance by Weyerhaeuser hinders enforcement activities with other sources.

Therefore, the Department is requesting authorization to hold a public hearing in Coos Bay to gather additional input about Weyerhaeuser's requests for a rule change to allow higher opacity and grain loading for their boilers.

In addition to studies on environmental impacts, Weyerhaeuser has submitted their estimates of the costs of controls to meet current regulations and the proposed regulations. See Attachment "Control Alternatives--Annual Cost Basis".

Weyerhaeuser is proceeding with a control program to reduce the non-salt emissions to meet a limit of 0.2 gr/SCF. This control effort is expected to cost approximately $750,000 and will be completed by 7/1/79. To reduce all emissions, salt and non-salt, to meet the 0.2 gr/SCF limit could cost over $2,000,000.

The current program to reduce non-salt emissions will not result in an observable decrease in opacity. However, non-salt emissions would be reduced by approximately 40% and total emissions by 20%.

There are some other aspects of this situation which the Environmental Quality Commission should be aware of before a final decision is made. The recent Clean Air Act Amendments have essentially eliminated the option of granting a variance from a regulation as a means of avoiding the mandatory non-compliance penalties, and therefore a rule change would be necessary to relieve the source from being subject to mandatory penalties

by EPA.

Should a regulation which exempts all or a portion of the salt emissions from grain loading limits be adopted, these limits may be applicable to three or four other facilities with salt bearing emissions. These other sources generally operate in compliance and the new regulation could allow an increase in current emissions. Due to time constraints, the Department has not yet determined the impact of Weyerhaeuser's proposed regulation on these other sources. This will be done before the Department recommends final action on Weyerhaeuser's proposal.

Time is a factor in reviewing Weyerhaeuser's proposal. The Clean Air Act requires compliance with the existing regulation on or before July 1, 1979 in order to avoid non-compliance penalties. It is doubtful that Weyerhaeuser can attain compliance with the existing regulation by that date. The lead time for equipment delivery for a source this size is getting longer as more sources try to meet the July 1, 1979 deadline.

Because the non-compliance penalties are based on the cost of compliance, Weyerhaeuser faces significant penalties based upon the high cost of controlling their boilers to meet the existing regulation. Therefore, the Department should act as soon as possible so Weyerhaeuser can proceed with appropriate controls, or the Department can proceed with a rule change.

Summation

1. Weyerhaeuser conducted a study that concluded salt emissions are insignificantly influencing ambient air quality, are not causing visibility problems, or damage to vegetation, and are not adding to corrosion problems in the area. Therefore, the company requested that salt be exempted from hog fuel boilers emission regulations in coastal areas.

2. The Department reviewed the Weyerhaeuser consultant's report and agreed with the findings. In addition, The Department requested Weyerhaeuser to conduct a study on correlation of opacity with salt in fuel, grain loading,, and salinity in the bay and 2) to determine if process or operating mode changes could reduce salt emissions.

3. Weyerhaeuser conducted the requested study and concluded there was no feasible way to reduce salt emission levels to meet current regulatory limits by changes in operating mode.

4. Weyerhaeuser is proceeding on a compliance schedule to meet a non-salt 0.2 grains per standard cubic foot limit.

5. Weyerhaeuser proposed a regulatory limit of 0.2 grains non-salt, 0.4 grains salt and a total grain loading of 0.6 grains.

6. Weyerhaeuser has found based upon current data that within a 95% confidence level the opacity will periodically read 95% on an hourly average.

7. The staff concludes, based upon current information, an interim rule change would essentially require exempting the source from visible emission limits.

8. Any proposed regulatory change would require sources subject to the rule to install an opacity monitor and recorder and require periodic reporting to the Department. The purpose of this requirement is to gather enough data to determine if a practicable opacity limit can be established.

9. In order to ascertain the aesthetic impact and public testimony of Weyerhaeuser's boiler emissions and the impact of the proposed regulation change on the residents of Coos Bay and North Bend, the Department proposed to hold a public hearing in that area.

10. A draft of the proposed action is Attachment 1.

Director's Recommendation

Based upon the Summation, it is recommended that the Environmental Quality Commission authorize the Department to hold a public hearing in Coos Bay to obtain public input concerning Weyerhaeuser Co.'s proposed regulation change.

WILLIAM H. YOUNG

FASkirvin:as
(503)229-6414
10/9/78

Attachments
1) Proposed Action Summary
2) Weyerhaeuser's 9/19/78 letter to DEQ
3) Summary of the costs of various control strategies

PROPOSED ACTION

The Department is considering a rule change to essentially exempt the salt portion of particulate emissions and seeks public input, especially from residents of the North Bend / Coos Bay area concerning the proposed action. The proposed rule changes are generalized as follows:

1. The Rule would be applicable in Coastal areas only.

2. The particulate emission limit of 0.2 grains per standard cubic foot for boilers would be changed to 0.2 grains per standard cubic foot for non-salt emissions and 0.6 grains per standard cubic foot for total particulate emissions.

3. Boiler facilities subject to the proposed rule would, at least for the interim, be essentially exempt from opacity (white emissions) limits. (The objective of the Department is to evaluate if an applicable opacity limit or an instack limit can be established and to establish such limits when additional information is gathered.)

4. Facilities to be subject to these emission limits would be required to install an instack opacity measuring device to continuously monitor emissions and periodically report such instack opacity data and grain loading data to the Department.

5. Black Smoke, as dark or darker in shade as that designated as No. 2 on the Ringlemann Chart would be prohibited except for a period or periods not aggregating more than 3 minutes in any one hour.

10/78

Weyerhaeuser Company

270 Cottage Street, N.E.
Salem, Oregon 97301
(503) 588-0311

September 19, 1978

Harold M. Patterson, Manager
Air Pollution Control
Department of Environmental Quality
522 S.W. 5th Avenue
Portland, Oregon 97201

Dear Mr. Patterson:

On Thursday, September 7, Messrs. Halvor, Sjolseth, Nelson and I met with you and members of your staff to present the results of Weyerhaeuser Company's North Bend Hog Fuel Boiler Opacity Study. This study was conducted during July and August of 1978 at your agency's request to determine the influence of fuel salt content on stack opacity.

The purpose of this letter is to confirm the results of that study. First, however, in way of a brief historical review, Weyerhaeuser Company in early 1978 retained Richard Boubel and David Junge of Oregon State University to determine the impact that salt emissions from our North Bend facility have on ambient air quality and on other environmental concerns. The results of this study, which was completed in March, 1978, conclusively demonstrated that the salt emissions from this facility are insignificantly influencing ambient air quality, are not causing visibility problems, are not creating a health hazard, do not damage vegetation and do not add to corrosion problems in the area. As a result of this study, we, by letter dated April 5, 1978, requested that salt be exempted from the hog fuel boiler regulations.

Subsequently, on May 8, Chuck Ward and I met with agency representatives to present the results of Mr. Ward's particulate modeling study for the North Bend-Coos Bay area. This study confirmed Boubel and Junge's findings and showed only minor impact on ambient air quality in the most highly affected locations. This study also confirmed that total emissions, including salt, did not cause violations of either the 24 hour or annual air quality standards.

On May 1, 1978, several representatives of Weyerhaeuser Company met with you and members of your staff to present the results of extensive investigattions which had been undertaken both to evaluate potential actions that could be taken to reduce salt emission levels and to determine control alternatives to achieve emission compliance under both the existing regulations and if the regulations were amended to exclude salt. As you remember, our investigation

concluded that there was no feasible way to reduce the emission salt level by modifying our current operating mode. With respect to control alternatives, the attached document, which was previously submitted to your agency, shows the cost comparison between salt and non-salt compliance. As you know, we have proceeded with the boiler modification project at a capital cost of $750,000 to accomplish compliance with a non-salt 0.2 grain loading and 40% opacity. The required equipment has been ordered for this project, and we are on schedule with your agency's required compliance schedule.

Finally, we have previously indicated that should the regulations be revised, we could commit ourselves to meet a particulate requirement of 0.2 grains non-salt, 0.4 grains salt and a total grain loading of 0.6.

The purpose of the recent opacity study, therefore, was to evaluate the impact of salt on opacity and to determine anticipated maximum opacity levels when the current project has been completed. In this regard, the information we presented on September 7 showed that within a 95% confidence level, in-stack opacity will periodically reach 95% on an hourly average. This is based on a 0.4 salt grain loading and a 40% non-salt opacity. As we indicated, a non-salt opacity of 40% adds only 4 to 5 percentage points to the total opacity level since it is a log function.

Although the following are only estimated values which we simply could not commit to in a regulation, the data obtained during this study, as well as other previous source test data, would also indicate that:

1. 100% of the time, in-stack opacity would be less than 95%.

2. 83% of the time, in-stack opacity would be less than 86%.

3. 67% of the time, in-stack opacity would be less than 80%.

4. 25% of the time, in-stack opacity would be less than 74%.

With respect to the opacity issue and based on the results of this recent study, we would respectfully request your consideration of the following approach:

1. By regulation, specify black color except for period of grate cleaning as non-compliance.

2. Require installation of an in-stack opacity meter.

3. Following completion of the current boiler project and demonstration of compliance with particulate limits, require that we continuously monitor opacity for a years period to accurately determine opacity variations.

4. Based on the results of this monitoring program, amend the air discharge permit as appropriate to define allowed opacity level variations as a permit provision.

We have sincerely appreciated your cooperation and consideration in this matter. Please call us should you have any questions.

Yours very truly,

R. Jerry Bollen

R. Jerry Bollen
Oregon Public Affairs Manager

Enclosure

cc: Bob Abel

WEYERHAEUSER COMPANY
NORTH BEND POWERHOUSE
CONTROL ALTERNATIVES - ANNUAL COST BASIS

	Boiler Modifications	Boiler Modifications Plus Baghouse	Boiler Mods Plus High Energy Wet Scrubber	High Energy Wet Scrubber (Alone)
Capital Cost	$750,000	$2,063,000	$1,820,000	$1,214,000
Annual Costs/(Credit)				
Depreciation (15 Yr. Life)	$ 50,000	$ 137,533	$ 121,333	$ 80,933
Tax Credit (5%)	(37,500)	(103,150)	(91,000)	(60,700)
Operating & Maintenance	-	116,400	207,600	279,000
Solid Waste Disposal (1)	-	27,000	-	-
Total Annual Costs	$ 12,500	$ 177,783	$ 237,933	$ 299,233

(1)Assumes we do not have to open a new site.

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. M, - May 25, 1979, EQC Meeting

Kenneth D. Hyde - Appeal of Subsurface Variance Denial

Background

The pertinent legal authorities are summarized in Attachment "A".

Mr. Hyde applied to Josephine County for a site evaluation for subsurface sewage disposal for property he owns, identified as Tax Lot 100; Sec. 23; T. 37 S.; R. 5 W., W.M.; Josephine County. Mr. Bruce Cunningham, Josephine County Environmental Health Services, examined eight (8) test pits and determined that the site was not approvable for installation of a standard subsurface sewage disposal system. On the leveiest area of the property (natural ground slopes varying from fifteen (15) to twenty-four (24) percent) he found a restrictive soil horizon beginning at depths ranging from twenty-five (25) to thirty-nine (39) inches from the ground surface. Slopes greater than thirty-five (35) percent were found on the remainder of the property. A road cut requiring a fifty (50) foot setback was located along the western side of the property adjacent to Hyde Park Road.

An incomplete application for a variance from the subsurface rules [OAR 340-71-020(2)(e), 020(3)(a), 030(1)(b), and 030(1)(e)] was received by Water Quality Division on October 30, 1978. The application was completed on December 28, 1978 and assigned to Mr. Steven D. Scheer, R.S., Variance Officer, on the following day. Mr. Scheer scheduled a visit to the proposed site and the variance hearing on January 29, 1979. After closing the hearing, Mr. Scheer evaluated the information provided by Mr. Hyde and others. Mr. Scheer found that the proposed drainfield was limited in area due to location of a large pit (approximately 8' x 20' x 5' deep) in the designated repair area, the location of road cut immediately downslope and the steep hill (slopes greater than 35 percent) immediately upslope. A shallow seasonally perched water table (as evidenced by mottling) was also found to be a factor at the site. Mr. Scheer concluded that a curtain drain would be necessary if the drainfield were to function properly, assuming sufficient area could be located on the site. The soil texture and depth would require the drainfield be sized at 330 square feet of effective sidewall per 150 gallons of sewage flow.

Mr. Scheer felt that the facts did not support a setback of less than fifty (50) feet from the road cut or the large pit, or a separation distance between the drainfield and the curtain drain of less than twenty (20) feet. Mr. Scheer was not convinced that a drainfield could be installed in the remaining area between the setback limits and also maintain a reasonable area for future replacement of the system. Mr. Scheer denied the variance request on March 13, 1979. (Attachment "B")

Mr. Hyde's letter (Attachment "C") appealing the variance officer's decision was received on April 6, 1979. Mr. Hyde listed three (3) items as grounds for appeal:

1. "No. 1 reason for denial was one of the test pits was 45 feet from the road, but we had several pits there."

2. "It had rained, and water had saturated the pits, and Mr. Cunningham did not show a curtain drain on the drawing of the system."

3. "A two bedroom home will be good enough."

Evaluation

Pursuant to ORS 454.660, decisions of the variance officer to grant variances may be appealed to the Environmental Quality Commission. Mr. Hyde has made such an appeal. The Commission must determine if a subsurface sewage disposal system of either standard or modified construction can reasonably be expected to function in a satisfactory manner at Mr. Hyde's proposed site.

After evaluating the site and after holding a public information type hearing to gather testimony relevant to the requested variance, Mr. Scheer was not able to find that a subsurface sewage disposal system, of either standard or modified construction, would function in a satisfactory manner so as not to create a public health hazard. He was also unable to find that special physical conditions exist which render strict compliance with the rules unreasonable, burdensome, or impractical. Mr. Scheer considered modifications that would overcome some of the deficiencies in Mr. Hyde's proposal, such as the use of a curtain drain to redirect the seasonally perched groundwater away from the system, thereby reducing the possibility of groundwater flooding the system. The effective sidewall of the system was increased to more accurately address the soil texture and depth requirements. To establish the total size of the drainfield, Mr. Scheer asked Mr. Hyde how many bedrooms the home would have. Mr. Hyde replied that he was not sure, probably two (2) or three (3). In assembling the components of the system, and keeping in mind the necessary separation distances, Mr. Scheer found that it was not physically possible to place the system and future replacement area at the proposed site.

Summation

1. The pertinent legal authorities are summarized in Attachment "A".

2. Mr. Hyde submitted an application for site evaluation to Josephine County.

3. Mr. Bruce Cunningham visited the property and evaluated the soils to determine if a standard subsurface sewage disposal system could be installed. He observed that the proposed site had soils that were too shallow to restrictive soil horizons given the natural ground slope, and an escarpment was located downslope. He therefore found that the site was not approvable for installation of a standard subsurface sewage disposal system.

4. Mr. Hyde submitted an incomplete variance application to the Department on October 30, 1978.

5. Mr. Hyde's variance application was found to be complete on December 28, 1978, and was assigned to Mr. Scheer on December 29, 1978.

6. On the morning of January 29, 1979, Mr. Scheer examined Mr. Hyde's proposed drainfield site and found that it was located immediately upslope from a road cutbank, immediately downslope from a steep hill (slope in excess of 35 percent), had indications of a seasonally perched water table present in the soil profiles, observed a large excavated pit within the designated area, and found the site to be limited in area to install an adequate subsurface sewage disposal system.

7. On the afternoon of January 29, 1979, Mr. Scheer conducted a public information type hearing so as to allow Mr. Hyde and others the opportunity to supply the facts and reasons to support the variance request.

8. Mr. Scheer reviewed the variance record and found that the testimony provided did not support a favorable decision. He further determined that he was not able to modify the variance proposal to overcome the site limitations.

9. Mr. Scheer notified Mr. Hyde by letter dated March 13, 1979 that his variance request was denied.

10. Mr. Hyde filed for appeal of the decision by letter dated April 2, 1979.

Director's Recommendation

Based upon the findings in the summation, it is recommended that the Commission adopt the findings of the variance officer as the Commission's finding and uphold the decision to deny the variance.

Sherman O. Olson/T. Jack Osborne:em
229-6443
May 9, 1979

Bill

WILLIAM H. YOUNG
Director

ATTACHMENT "A"

1. Administrative rules governing subsurface sewage disposal are provided for by Statute: ORS 454.625.

2. The Environmental Quality Commission has been given statutory authority to grant variances from the particular requirements of any rule or standard pertaining to subsurface sewage disposal systems if after hearing, it finds that strict compliance with the rule or standard is inappropriate for cause or because special physical conditions render strict compliance unreasonable, burdensome or impractical: ORS 454.657.

3. The Commission has been given statutory authority to delegate the power to grant variances to special variance officers appointed by the Director of the Department of Environmental Quality: ORS 454.660.

4. Decisions of the variance officers to grant variances may be appealed to the Commission: ORS 454.660.

5. Mr. Scheer was appointed as a variance officer pursuant to the Oregon Administrative Rules: OAR 340-75-030.

ATTACHMENT "B"

Department of Environmental Quality
SOUTHWEST REGION
1937 W. HARVARD BLVD., ROSEBURG, OREGON 97470 PHONE (503) 672-8204
Coos Bay Branch Office - 490 North Second, Coos Bay, OR 97420 - 269-2721

[illegible] P. Reiter
[illegible] Manager

CERTIFIED MAIL

March 13, 1979

Kenneth Hyde
11115 Williams Highway
Grants Pass, OR 97526

RE: WQ-SS-Josephine County
Variance Hearing
T. 37, R. 5W, S. 34, Lot 102

Dear Mr. Hyde:

This correspondence will serve to verify that your requested Variance Hearing, provided for in Oregon Administrative Rules, Chapter 340, Section 75-045 was held at City Hall Conference Room, in Grants Pass, Oregon, at 1:00 p.m., January 29, 1979. Persons present at the hearing were: Bruce Cunningham, R.S. (Josephine County Sanitarian), Kenneth Hyde (property owner), Bill Gilmore (interested party), and Steven Scheer (EQC Variance Officer). Prior to the hearing at 11:30 a.m. on January 29, 1979, an on-site inspection of the property in question was conducted, in your presence, by the Variance Officer for the purpose of gathering soils and topographic information with regard to your request. Persons present during the inspection were: Bruce Cunningham, R.S., Kenneth Hyde, Bill Gilmore and Steven Scheer, R.S.

Your request was for a variance to the following rules:

OREGON ADMINISTRATIVE RULES, CHAPTER 340.

71-020 (2)(e)(A)	Requires a 50 foot setback from a manmade cut bank which intersects a restrictive or impervious layer.
71-020 (3)(a)	Requires enough usable area meeting code for installation of a initial system plus equal future repair.
71-030 (1)(b)	Requires a depth of thirty (30) inches to a restrictive layer on less than 12% slope.
71-030 (1)(e)	Requires slope not to exceed 25% or a restrictive and/or impervious layer to be less than shown in OAR 340 Table 4A for a specific slope.

The property in question is described as Township 37 South, Range 5 West, Section 34, Tax Lot 102 of Josephine County, Oregon. Said property is approximately 5.57 (5) acres in size.

All exhibits entered into the record were provided to the Variance Officer prior to the hearing and are referred to by Roman Numerals. The exhibits are as follows:

EXHIBIT

I Variance application in the name of Kenneth Hyde, dated October 2, 1978.

II December 29, 1978, letter from Sherman D. Olson, Jr. to Kenneth Hyde assigning Steven Scheer as Variance Officer.

III Metes and bounds description of property and minor partition map.

IV Josephine County assessor's map showing location of Tax Lot 102.

V October 24, 1978, narrative description proposal signed by A. Bruce Cunningham, R.S.

VI Copy of OAR Chapter 340 Diagram IIB showing plan view of serial distribution system.

VII Applicant's plot plan of property (scale 1" = 30') showing drainfield location and layout, road locations, cutbank, slopes, property lines, and four (4) test pits.

VIII Applicant's plot plan of property (scale 1" = 30') showing location of four (4) test pits, roads and property lines.

IX Josephine County subsurface sewage application for site evaluation dated August 23, 1978, by Kenneth Hyde and subsequent denial on September 4, 1978, by A. B. Cunningham.

X Josephine County plot plan dated September 20, 1978, showing test pit location and soils information.

XI Josephine County plot plan dated September 8, 1978, showing test pit locations and soils information.

XII Josephine County plot plan dated August 22, 1978, showing test pit locations.

XIII Josephine County verification of zoning provisions letter dated August 16, 1978.

XIV Minor land partition map showing Tax Lot 102 outlined in heavy color.

XV Josephine County Health Department letter of denial dated September 13, 1978, and signed by A. Bruce Cunningham, R.S.

XVI September 7, 1978, two page Josephine County Health Dept. letter of denial signed by A. Bruce Cunningham.

XVII September 21, 1978, two page Josephine County Health Dept. letter of denial signed by A. Bruce Cunningham.

XVIII Hyde variance proposed plot plan signed by A. B. Cunningham and dated October 20, 1978, showing location of seven (7) test pits, drainfield, repair and escarpment.

XIX A plot plan signed by Kenneth Hyde showing property configuration, existing roads, test pit locations and separation distances.

XX Josephine County plot plan dated September 20, 1978, showing test pit locations.

XXI Letter dated January 18, 1979, from Steven Scheer to Mr. Kenneth Hyde setting time, date and location of Hyde variance hearing and on-site visit.

XXII Letter dated January 18, 1979, from Steven Scheer to Charles D. Costanzo, R.S. setting time, date and location of Hyde variance hearing and on-site visit.

XXIII Kenneth Hyde variance hearing attendance list.

Verbal testimony was given by Bruce Cunningham, R.S. (Sanitarian with Josephine County Health Department) who testified that he believes personally that the system will work under the restrictions placed upon it as described on the plot plan (standard system at 30 inch maximum trench depth).

Mr. Cunningham then went on to say that the plot plan originally submitted does not correctly show the true placement of the disposal trenches. Instead the lines are to be installed to follow the contours of the site.

Mr. Cunningham then stated that he felt that the system, if approved, would function properly and not pollute the waters of the state or come to the surface of the ground under normal conditions.

The Variance Officer then asked clarification of Mr. Cunningham as to the wording concerning mottling on Exhibit Number 9.

Mr. Cunningham replied, "Yes, the word was mottling and yes, he did find mottling at 24 inches on the site".

The Variance Officer then stated that he had noticed that the variance proposal contains no provisions for a curtain drain.

Mr. Cunningham went on to state that the curtain drain would not only cut off any water coming toward the system, but also with the man made cut below the drainfield it should be a requirement.

Mr. Cunningham then concluded by saying with the limited depth of soil and the cutting off of any subsurface water with a curtain drain, he thinks the soils there will handle the effluent.

Concerning the design of the system, Mr. Cunningham felt that depending on the setback from the drainfield to the cut bank it appears possible to install approximately seventy-five (75) foot lines on the site.

The Variance Officer then inquired of Mr. Cunningham as to the square footage per bedroom he was basing the design on.

Mr. Cunningham replied, "One Hundred and twenty-five (125) lineal ft. or two hundred and fifty (250) square feet per bedroom.

The Variance Officer inquired of Mr. Cunningham how many bedrooms the proposal was based on.

Mr. Cunningham replied that he had not placed a maximum on the number of bedrooms.

The Variance Officer then asked Mr. Cunningham if he had any recommendations on the depth of the curtain drain.

Mr. Cunningham replied that the further you go up the side of the hill, the shallower the soil apparently is. So actually at the uppermost part of the drainfield with a maximum depth of soil of thirty (30) inches, you could run your curtain drain at minimum depth of thirty-six (36) inches. That would put the drain six (6) inches into the restrictive layers.

Mr. Kenneth Hyde (property owner and applicant) then testified that what Mr. Cunningham testified to sounded good to him.

Mr. Hyde then stated he felt the system would work and that he had seen a lot of systems go in the way Mr. Cunningham had described and he had not seen any trouble.

Mr. Hyde then went on to say that Dave Moran, a neighbor up the road who owned ten (10) acres of land, has been on his property for two (2) years and has never had a problem with his system.

The Variance Officer then asked Mr. Hyde how many bedrooms he was applying for.

Mr. Hyde replied that he was not sure. Probably two (2) or three (3).

Mr. Gilmore (a interested party) then stated three (3) bedrooms, if possible.

MR. Hyde then restated, "Three (3) bedrooms, if we can get them.

Mr. Hyde then asked the Variance Officer if that wasn't about the average now.

The Variance Officer replied, "yes,normally three (3) bedrooms".

Mr. Hyde then stated he'd rather put in too big of a system rather than too small of one and have any problems later.

Mr. Gilmore then testified that across from Mr. Hyde's lot there used to be located a Oregon Christian Center which consisted of living quarters for retired missionaries and Christian people. There used to be a lot of these people at one time and they never had any problem with their system that he knows. There used to be eight (8) or nine (9) adults there at one time plus a few children.

The Variance Officer then inquired of Mr. Cunningham and Mr. Hyde if they had any objections to any modification or changes to the proposal if the Variance Officer felt they were necessary in order to approve the variance request.

Neither Mr. Hyde nor Mr. Cunningham had any objections. Both were only concerned that the system work.

After closing remarks, there being no further questions the hearing was closed.

OAR 340.75-015 states, "Pursuant to authority granted by the commission under the provisions of ORS 454.660, a special Variance Officer may grant specific variances from the particular requirements of the rules or standards pertaining to subsurface sewage disposal systems if he finds that:

1. The subsurface sewage disposal system will function in a satisfactory manner so as not to create a public health hazard, or to cause pollution of public waters; and

2. Special physical conditions exist which render strict compliance unreasonable, burdensome, or impractical.

Based on a review of the verbal and written testimony, it is the opinion of the Variance Officer that the proposed sewage disposal system could not be expected to satisfy the requirements of OAR 340, Division 7, Section 75-015 (1) and (2) above, and therefore, your request for a variance must regretfully be denied.

Some of the reasons the denial is based upon are as follows:

1. Strict compliance with the fifty (50) foot setback from the cutbank manmade (OAR 340, 71-020 (2)(e)(A) must be maintained to adequately protect seepage of sewage out this bank.

2. Josephine County Health Department field notes show a temporary perched water table at twenty-four (24) inches and the Variance Officer also found evidence of saturated soil at twenty (20) inches and faint mottling to sixteen (16) inches. Therefore, a curtain drain would be needed to divert subsurface water from entering the drainfield.

3. After maintaining the fifty (50) foot setback from the manmade cutbank, twenty (20) feet from the curtain drain, and fifty (50) feet from the old excavated pit located in the proposed drainfield area, I feel there would not be enough area for a initial system and repair based upon a sizing of three hundred and thirty (330) square feet per bedroom.

Pursuant to OAR 340-75-050, my decision to deny your variance request may be appealed to the Environmental Quality Commission. Requests for appeal must be made by letter stating the grounds for appeal, and addressed to the Environmental Quality Commission, in care of Mr. William H. Young, Director, Department of Environmental Quality, P. O. Box 1760, Portland, Oregon, 97207, within twenty (20) days of the date of the certified mailing of this letter.

By copy of this correspondence, I am directing the Josephine County Health Department Environmental Health Services Section tc not issue to you a permit to install a subsurface sewage disposal system on the property in question.

If you have any questions with regard to this action, please feel free to contact the undersigned at any time.

Sincerely,

Steven D. Scheer, R.S.
Variance Officer

SDS:dp
cc: T. Jack Osborne, SS-DEQ-Portland
Josephine County Health Department, Att: C. Costanzo & B. Cunningham
Medford Branch Office - DEQ
Ron Baker

ATTACHMENT "C"

Kenneth D Hyde
11115 Williams Hy
Grants Pass, Oregon
97526

Mr William H Young
Director D.E.Q.
P.O. Box 1760
Portland, Oregon 97207

Dear Mr Young

I was turned down for a subsurface sewage disposal system in march-79. the property in question is described as township 37 south, Range 5 west Section 34 tax lot 102 of Josephine County, Oregon. Said property is 5.57 acres in size.

Steven D Scheer, R.S. was the Variance officer, out of Coos Bay branch Office

I would like to put in a Request for a appeal.

Bruce Cunningham R.S. Josephine County Sanitarian said he saw no reason why it would'nt work.

No. 1 reason for denial was one of the test pits was 45 feet from the road, but we had several pits there.

No 2. It had rained, and water had saturated the pits, and Mr Cunningham did not show a curtain drain on the drawing of the system.

No 3. a two bedroom home will be good enough

I sent the papers for you to look at.

thanks you
Kenneth D Hyde
11115 Williams Hy
Grants Pass, Oregon 97526

(Bill Gilmore is my Cousin)

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. O, May 25, 1979, EQC Meeting

Request for Approval of Stipulated Consent Order for the City of Hood River

Background

The City of Hood River operates a wastewater treatment plant that treats both sewage from the city and fruit processing waste from Diamond Fruit Growers' Hood River plant. Although the Hood River plant was designed for the significant waste load from Diamond Fruit, it has rarely operated effectively and continuously through the fall and early winter when high waste loads are generated by pear processing and canning. As a result, since the existing plant started operation, the city's permit has been violated almost constantly during pear season.

Although the City of Hood River and Diamond Fruit have made many improvements and modifications to their respective facilities, the permit violations have continued. In the fall of 1978 Diamond Fruit retained a consultant to investigate the processing plant and the sewage treatment plant. The consultant's report was submitted to Hood River in February 1979. The city retained its own consultant to review the report and conclusions. The Department also reviewed the report and submitted comments to the city.

Although the Department assessed the City of Hood River $1550 civil penalty in October 1978 for previous violations, no penalties have been assessed for violations during the 1978 pear season, pending action by the city to improve and/or upgrade their facility.

Evaluation

The Diamond Fruit consultant recommended an additional aeration basin at the treatment plant, but the city's consultant disagreed, recommending that a thorough engineering evaluation be made of the operation and maintenance practices. This evaluation would recommend changes in plant operation that should allow it to operate as designed. The City of Hood River has decided to take their consultant's recommendation.

The proposed Stipulated Consent Order (attached) requires the engineering evaluation report to be submitted to the Department by July 1, 1979 and requires the recommendations to be implemented by September 1, 1979. The Department's staff has evaluated both consultants' proposals and believes the engineering evaluation is the more practicable action for the city.

Implementation of the evaluation report's recommendation by September 1, 1979 should allow the city to meet permit limits when pear season starts. After September 1, 1979, the Order requires the city to meet permit limits at all times.

Pear processing will not begin again until September. Until then, the treatment plant is treating mostly sewage and can achieve permit limits with little trouble. Consequently, the Stipulated Consent Order does not provide for interim effluent limits for the period of the Order.

Summation

1. The City of Hood River sewage treatment plant cannot meet permit effluent limits because of industrial loads from a pear processing plant.

2. Several consultants have evaluated the problem and have recommended various alternatives. The City of Hood River has chosen the alternative that calls for a thorough engineering evaluation of the operation and maintenance of their treatment plant. The Department staff concurs with the city's choice.

3. The proposed Stipulated Consent Order requires the report to be submitted to the Department by July 1, 1979 and that the report's recommendations be implemented by September 1, 1979.

Director's Recommendation

Based upon the Summation, it is recommended that the Environmental Quality Commission approve the proposed Stipulated Consent Order for the City of Hood River.

Bill

WILLIAM H. YOUNG

Richard J. Nichols:dmc
382-6446
May 9, 1979
Attachments - (1) Stipulated Consent Order

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY OF THE STATE OF OREGON, Department, v. CITY OF HOOD RIVER, Respondent.	)	STIPULATION AND FINAL ORDER No. WQ-CR-79-38 Hood River County

WHEREAS:

1. On September 17, 1974, the Department of Environmental Quality ("Department") issued National Pollutant Discharge Elimination System ("NPDES") Waste Discharge Permit No. 1729-J to the City of Hood River ("Respondent"). The stated expiration date on that permit was July 31, 1978. On April 11, 1978, the Department received Respondent's permit renewal application. On April 16, 1979, the Department issued NPDES Waste Discharge Permit No. 2966-J to Respondent. That permit is now in effect and is scheduled to expire on June 30, 1983. Pursuant to ORS 183.430(1), NPDES Permit No. 1729-J was in effect until NPDES Permit No. 2966-J was issued. Hereinafter, "Permit" will refer to the above NPDES Permit in effect at the time of the events described below.

2. The municipal wastewater treatment plant ("plant") serving the City of Hood River was completed in mid-1975. The plant was designed to handle and treat all sewage from the City and wastewater from the Diamond Fruit Growers' ("DFG") Cannery. DFG processes and cans pears, apples and sweet cherries at various times of the year. Waste loadings from the cannery vary widely depending upon the time of year

and the type of fruit being processed.

3. Respondent has not been able to consistently handle the variable waste loads from DFG and treat all wastewaters received at its treatment plant to the level required by its Permit. Respondent has violated the effluent limitations of its Permit on many occasions in the past and, in particular, during pear processing seasons.

4. In response to Respondent's violations of its Permit, the Department filed the following enforcement actions with the Environmental Quality Commission ("Commission"):

   a. Notice of Violation and Intent to Assess Civil Penalty No. WQ-CR-77-310, dated December 1, 1977, cited a number of Permit violations that occurred between January 1 to November 2, 1977, including seventy (70) pH violations and several violations of Biochemical Oxygen Demand ("BOD") and Total Suspended Solids ("TSS") effluent limitations.

   b. Notice of Assessment of Civil Penalty No. WQ-CR-78-142, dated October 16, 1978, assessed a civil penalty of $1650.00 for a total of thirty-three (33) pH, BOD and TSS effluent limitation violations that occurred during the period from December 1, 1977 through July 31, 1978.

5. As part of a negotiated settlement between the Department and Respondent, Respondent admitted all of the violations alleged in the above Notices and withdrew its request for a contested case hearing. The Department recommended mitigation of the civil penalty to $200.00 which the Commission approved on March 29, 1979.

6. From on or about August 1, 1978 through March 31, 1979, Respondent

committed forty (40) pH, thirty-two (32) BOD, and twenty-three (23) TSS violations of the effluent limitations of its Permit.

7. The Department has not taken any enforcement action on the violations set forth in Paragraph 6 above, pending the outcome of Respondent's and DFG's consultants' respective evaluation of the treatment plant's problems and recommendations for corrective action.

8. By letter of March 15, 1979, to the Department, Respondent proposed to bring its plant into compliance with the effluent limitations of its Permit by developing and implementing a program to improve the quality of plant operation. That program was recommended to Respondent by letter of March 2, 1979, from Ralph R. Peterson of CH2M Hill, Respondent's consultant. The proposed program includes, but is not limited to the following:

a. Placing primary emphasis, supported by adequate budget, on effective treatment plant operation and maintenance.

b. Establishing a formal diagnostic monitoring program to properly operate the plant, including intensive monitoring of nutrient levels.

c. Improving centrifuge performance, and in particular, solids capture.

9. The Department and Respondent recognize that the Commission has the power to impose a civil penalty and issue an abatement order for violations of Respondent's Permit. Therefore, pursuant to ORS 183.415(4), the Department and Respondent wish to resolve the violations set forth in Paragraph 6 above by stipulated order requiring certain action, and waiving certain legal rights to notices,

answers, hearings and judicial review on these matters.

10. This stipulated 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:

I. The Commission issue a final order requiring Respondent:

A. By July 1, 1979, to submit an approvable detailed written plan for achieving full compliance with all the requirements of its Permit. Such plan shall include, at a minimum, the following items:

1. Operation:

a. Operational procedures, methods, techniques to be used.

b. Operating schedule.

c. Operating staff needs - (qualification, certification levels).

2. Inplant process monitoring:

a. Location of sampling points and parameters to be analyzed.

b. Reasons for individual sampling location.

c. Records to be kept.

d. Laboratory staff needs (qualifications, certification levels).

3. Maintenance:

a. Maintenance schedules.

b. Spare parts to have on hand.

c. Staff needs - (qualifications, certification levels).

4. A proposal to attract and keep the quantity and quality of plant personnel necessary to operate the plant in full compliance with all of the requirements of Respondent's Permit.

B. Upon approval of the plan by the Department, to meet all of the requirements and time schedules specified therein.

C. By September 1, 1979, to achieve full compliance with all of the requirements of Respondent's Permit.

D. For any effluent violation that occurs after September 1, 1979, to:

1. Take immediate action to determine and correct the cause of the violation.

2. Notify the Department immediately, but in no event later than 48 hours of first becoming aware of the effluent violation.

3. Submit a detailed written report to the Department along with Respondent's monthly discharge monitoring report submitted pursuant to Schedule B of the Permit. Said report shall describe the cause of the violation, action taken to correct the cause of the violation and measures taken or proposed to be taken to prevent a recurrence.

II. The Commission shall enter an order imposing civil penalties upon Respondent in the amount of $200.00 per day for each day during the period commencing July 1, 1979, and ending on the day that Respondent complies with the condition set forth in Paragraph I (A) above. The

penalties shall be due and payable monthly on the fifteenth day of each month, commencing August 15, 1979, for the preceding calendar month. Pursuant to OAR, Section 340-11-136(1) and (2), the Director of the Department, on behalf of the Commission, shall enter such additional or supplemental orders as are necessary to carry out this paragraph.

III. Regarding the violations set forth in Paragraph 6 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.

IV. 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 other than those requirements for which penalties are specified herein, would constitute a violation of this stipulated final order and could subject Respondent to liability for additional and independent penalties in amounts as great as the statutory maximum and would not be limited in amount by 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.

DEPARTMENT OF ENVIRONMENTAL QUALITY

_____ By _____
Date WILLIAM H. YOUNG
Director

RESPONDENT

_____ By _____
Date (Name _____)
(Title _____)

FINAL ORDER

IT IS SO ORDERED:

ENVIRONMENTAL QUALITY COMMISSION

_____ By _____
Date WILLIAM H. YOUNG, Director
Department of Environmental Quality
Pursuant to OAR 340-11-136(1)

ERL
HCJ

U.S. ENVIRONMENTAL PROTECTION AGENCY

REGION X

1200 SIXTH AVENUE

SEATTLE, WASHINGTON 98101

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
MAY 9 1979
WATER QUALITY CONTROL

REPLY TO ATTN OF: Mail Stop 521

MAY 3 1979

William H. Young, Director
Department of Environmental Quality
P.O. Box 1760
Portland, Oregon 97207

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
MAY 7 1979
OFFICE OF THE DIRECTOR

Re: City of Hood River, Oregon
Compliance Order X79-04-03-309

Dear Bill Young:

Pursuant to Section 309 of the Clean Water Act (CWA), the U. S. Environmental Protection Agency is issuing today a Compliance Order to the City of Hood River for failure to consistently achieve final effluent limits in NPDES Permit No. OR-002078-8.

We have noted that both DEQ and EPA have initiated enforcement actions aimed at resolving the City's long history of permit noncompliance. On August 24, 1978, EPA issued a Notice of Violation to the City, which was followed on October 16, 1978, by a DEQ Notice of Assessment of Civil Penalty. However, subsequent discharge monitoring reports submitted by the City for the period September 1978 through February 1979 indicate continuing violations of effluent limits for Biochemical Oxygen Demand (BOD), Total Suspended Solids (TSS) and pH.

EPA believes corrective actions must be immediately taken by the City to prevent recurrence of effluent violations during the next pear processing season starting in the fall of 1979. On March 19-21, 1979, EPA conducted an inspection of the Hood River treatment plant. Our evaluation identified several operational deficiencies which may be contributing to the plant's failure to meet effluent limits when treating industrial wastes. A copy of the EPA report has previously been provided to DEQ. Your staff has indicated they concur with the report's conclusions and recommendations.

We are aware of DEQ's recent mitigation of the previously assessed civil penalty from $1,650 to $200. In the absence of a firm and binding commitment from the City to resolve its noncompliance in a timely manner, this penalty mitigation does not appear appropriate at this time. In addition, past DEQ actions have not been successful in attaining compliance by the City or in obtaining a firm commitment to achieve compliance.

The Compliance Order issued today by EPA appropriately places responsibility for permit compliance solely with the City of Hood River. It is possible that past DEQ actions may not have effectively communicated this to the City. While EPA is willing to cooperatively work with the City to resolve the treatment problems, we believe the City must first be made aware of its responsibility for compliance.

Should you have any questions, I would be pleased to assist you, or should your staff have any questions, please have them contact Mr. Michael Garcia, Attorney, Legal Support Branch at (206) 442-1275.

Sincerely,

Donald P. Dubois
Regional Administrator

Enclosure

cc: Oregon Operations Office, EPA

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION X
1200 SIXTH AVENUE
SEATTLE, WASHINGTON 98101

MAY 3 1979

REPLY TO ATTN OF: Mail Stop 521

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Honorable Mayor and City Council
City of Hood River
P.O. Box 27
Hood River, Oregon 97031

Re: City of Hood River
NPDES Permit No. OR-002078-8

Dear Mayor and Councilmen:

Enclosed is a Compliance Order issued pursuant to Section 309 of the Clean Water Act (CWA). By this Order, EPA finds the City of Hood River's wastewater treatment plant to be in violation of the Clean Water Act.

On August 24, 1978, EPA issued to the City of Hood River a Notice of Violation for failure to comply with final effluent limits of its NPDES permit. Subsequently, we have noted continuing effluent violations during the period September 1978 through February 1979, as evidenced by the City's discharge monitoring reports.

An EPA evaluation of the Hood River treatment plant was conducted on March 19-21, 1979. This study (copy of report is enclosed) identified several operational deficiencies which are likely contributing to the plant's failure to meet effluent limits.

The enclosed Order requires submittal of a plan that ensures provision of adequate operation and maintenance of the Hood River treatment plant. In developing this plan, you are urged to consider the recommendations in the enclosed report.

Please note that the plan must be fully implemented prior to the start of the 1979 pear processing season (approximately September 1). Should effluent violations occur after that date, the City may be subject to further EPA enforcement action to eliminate the noncompliance condition.

If you have any questions concerning this matter, please contact Mr. Michael Garcia, Attorney, Legal Support Branch, at (206) 442-1275.

Sincerely,

Lloyd A. Reed, Director
Enforcement Division

Enclosures

cc: Oregon Operations Office, EPA
DEQ

O&M EVALUATION -- HOOD RIVER, OREGON

The Hood River wastewater treatment plant was visited on March 19, 20, 21, 1979, by EPA O&M personnel to determine the cause(s) of the facility's inability to reliably meet its effluent discharge limits. The treatment plant started operation in 1975. The plant was designed to treat the domestic waste from the City of Hood River and the industrial waste from Diamond Fruit Growers (DFG) Cannery. DFG discharges wastes from processing pears, apples, and cherries. The treatment plant is designed to treat a total flow of 3.5 MGD, 6,800 pounds of suspended solids (S.S.), and 18,800 pounds of biochemical oxygen demand (BOD_5). Except for the 1976 canning season, this plant has generally not met its designed treatment efficiency.

The highest 1978 monthly average BOD_5 applied to the plant during the peak canning season was 9,233 pounds per day. During 1976 the peak monthly average was 12,582 pounds per day. The corresponding effluent BOD_5 and S.S. was 36 mg/l and 92 mg/l (1978) and 14 mg/l and 13 mg/l (1976).

The plant evaluation included interviews with plant personnel, a review of plant records, a review of the design criteria, and visual observations of the process units.

The following items were noted during the evaluation:

1. During pear season, approximately one pound of solids is produced per pound of BOD_5 removed.

2. The mixed liquor suspended solids (MLSS) exhibits very poor settling characteristics during the pear season.

3. Sludge disposal has been an extreme problem in the past, especially during pear season. The centrifuges have only been capable of producing a 2-4% solids cake. Early in January 1979, the plant personnel moved the point of centrifuge polymer application from within the centrifuges to approximately six feet upstream in the centrifuge feed piping. This has resulted in the centrifuges producing a solids cake of 8-12 %.

4. Only one aeration basin was used during 1977 and 1978 canning season for waste flow treatment; the second basin was used for sludge storage.

5. The recently constructed, asphalt-lined, sludge holding basin was partially filled with about three feet of water. The basin then drained through leakage within 48 hours.

6. Nutrient feeding and monitoring (N-P) during canning season has been extremely sporadic even though the plant O&M manual explains the need for nutrient addition. It was reported during the evaluation that the nutrient feed pumps were inoperative.

7. The ABF tower has nine air vents which are 30 inches by 66 inches providing a total of 123.75 ft^2 of ventilation openings. The tower contains 76,265 ft^3 of media thus providing 616.28 ft^3 per ft^2 of ventilation opening. The tower media adjacent to the vents was approximately 90% clogged with slime growths. While the tower effluent contained a D.O. between 1-2 mg/l, it is quite possible that a portion of the tower is anaerobic. It has been a common practice not to use the tower recirculation pump.

8. The two aeration basins are square with four surface aerators each and approximately 13 feet of liquid depth. The basin influent enters below each of the four aerators. It has been common practice to control the MLSS D.O. by turning off up to three of the aerators in each basin. Records indicated that even during pear season, it was a rare occasion when more than two aerators were in use.

9. During the non-canning season, the ABF tower is used to treat the domestic waste without post aeration.

10. Discussions with plant personnel revealed that 15 plant personnel have quit in the past four years. This appears to be an exceptionally high turnover rate for a wastewater treatment plant. The problem is compounded in that when personnel leave after pear season, they are not replaced until the next pear season which provides very little time for training in the complex duties of plant operations.

11. While a multitude of laboratory data is generated on a day to day basis, there was little evidence that the data is used to control the waste treatment unit processes.

12. The relatively high solids production per pound of BOD_5 removed and and the poor MLSS settling characteristics could be attributed to nutrient deficiency, inadequate aeration detention time, D.O., mixing, or a combination of these items.

The following suggestions are offered to alleviate problems which could be either individually and/or collectively contributing to the failure of the plant to reliably meet its effluent discharge limits:

1. A D.O. profile should be conducted in the aeration basins to check for adequate mixing with varying numbers of aerators in service. If it is determined that inadequate mixing is a problem, draft tubes should be installed on the aerators.

2. Dye tests should be performed on the aeration basins to determine the actual detention time. Rhodamine WT dye should be used since it is resistant to absorption by the sludge and to bacterial decay. A fluorometer will be needed to determine the relative dye concentrations in the aeration basin effluent. If the actual detention time is limited, a non-load bearing baffle

wall could be constructed dividing each aeration basin into two sections. All of the basin influent should be directed into one section with the flow passing through the second section to the basin effluent. Consideration should also be given to modifying the plant piping to provide for series or parallel operation of the two aeration basins.

3. The percent of oxygen of the air mass within the ABF tower should be checked. Neptune-Microfloc should be contacted to obtain the proper procedure for measuring the percent of oxygen in the air mass. After checking the air mass, the ABF tower recirculating pump should be continously operated to provide the required wetting rate and flushing action for several weeks. The air mass should again be checked. If the percentage of oxygen in the air mass is less than 20%, additional ventilation area in the sides of the tower should be considered. The tower recirculation pump should be in operation whenever the hydraulic loading rate on the tower is less than 3.9 MGD to provide for proper solids flushing of the tower.

4. The nutrient feed pumps need to be repaired and a backup pump and controls installed. Flow rate indicators with totalizers should be installed on the N and P feed systems to accurately measure the volumes fed. When needed, nutrients should be fed on a continous basis rather than in slug doses as currently practiced. N and P should be monitored twice daily in the plant effluent and return activated sludge (RAS) during the fruit process season. There are several schools of thought on measuring the adequacy of nutrients in biological treatment systems. One is outlined in the O&M manual, maintaining a concentration of 1 mg/l of N and P in the effluent. Another is maintaining a concentration of 5 mg/l N and 2 mg/l P in the effluent. A third method which should be considered is maintaining a concentration of 7% N (TKN) and 1.2% P (PO_4-P) based on volatile matter in the RAS. Nutrient concentrations in the RAS would probably be the least likely to fluctuate and, therefore, should be the easiest to use for control purposes. Initially both the effluent and RAS should be monitored until sufficient data is available to determine which sample point and concentration is appropriate for the Hood River plant.

5. The DFG sampling and pH monitoring point should be moved upstream to preclude the possibility of the nutrient addition influencing the data obtained.

6. The sludge handling and disposal problems may have been alleviated by the change in centrifuge polymer feeding initiated by the plant personnel and through the use of the sludge holding pond although the sludge holding pond must be properly sealed prior to its use.

7. Plant management and staffing needs to be thoroughly examined. The seemingly high turnover rate, 15 personnel in four years, raises several questions which must be answered in order to resolve the situation: Are salaries comparable with other departments within the City of Hood River and with other municipalities in the region? Is the high turnover rate only at the treatment plant or are other departments, e.g., fire, police, water, streets, etc., within the City exhibiting similar problems? What

are the hiring practices; are only readily available personnel hired, or does the City advertise over a broad area for prospective personnel? What training and advancement opportunities are provided or do personnel have to look elsewhere for training and personal advancement? Are incentives offered for personal upgrading and certification? These are only some of the questions that need to be answered in order to detemine the cause(s) of the personnel turnover. Once answered, corrective actions should be taken.

The number and type of personnel needed to properly operate and maintain the treatment plant needs to be reviewed. Obviously the number of personnel needed changes seasonally with the plant loading. Unfortunately, due to the complexity of the plant and expertise and experience needed to provide adequate operation and maintenance, the number of personnel at the plant can not be bounced like a yo-yo. The following staffing pattern should be considered:

1	superintendent
1	chief operator/chemist
1	chemist
1	maintenance mechanic
5	operators
2	truck drivers
11	

During the off canning season, two of the operators should assist the maintenance mechanic in annual routine overhaul of equipment in preparation of the next canning season. Vacations and off site training should be restricted to the off season period. This is also the time when the grounds and landscaping needs the most attention. It is doubtful that that there would be a shortage of work during the off canning season.

8. The complexity of this treatment plant and the type of waste being treated dictates the need to maximize laboratory data interpretation and utilization for economic and efficient process control. Graphing is one of the easiest and effective methods of interpreting and utilizing laboratory data. Once initiated, very little time is needed for maintenance of graphs and a pictorial view of process control, subtle trends, and correlations between parameters is provided.

The graphs should, at least, include the following parameters:

1. Total plant flow.
2. ABF tower--influent and effluent BOD_5 or COD.
3. ABF effluent - D.O.
4. Aeration basin - D.O. and pH.
5. MCRT or SRT.
6. F/M ratio.
7. SVI.
8. Secondary clarifier - D.O.

9. Final effluent - BOD_5 and S.S.
10. Final effluent - N (TKN) and P (PO_4-P).
11. RAS - S.S., % N(TKN) and %P (PO_4-P).
12. Centrifuge influent - S.S., polymer dosage.
13. Centrifuge centrate - S.S.
14. Centrifuge cake - S.S.
15. Anaerobic digester - gallons of sludge fed, T.S.S., and V.S.S.
16. Anaerobic digester - Temp., pH, VA/Alk ratio, $\%CO_2$ in gas.
17. Digested sludge - T.S.S., % V.S.S. reduction, gallons of sludge removed.

A method of setting up the graphs and their interpretation was explained to Matt Sommerville during the site visit.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 10
1200 Sixth Avenue
Seattle, Washington

IN THE MATTER OF:	
City of Hood River, Oregon	NO. X79-04-03-309
PROCEEDINGS UNDER SECTION 309(a)(3), (a)(4) and (a)(5) CLEAN WATER ACT OF 1977 [33 USCA §1319(a)(3), (a)(4) and (a)(5)] in re NPDES PERMIT No. OR-002078-8.	FINDINGS OF FACT AND COMPLIANCE ORDER

The following FINDINGS are made and ORDER issued pursuant to the authority vested in the Administrator of the Environmental Protection Agency (hereinafter the EPA) by the above referenced statute (hereinafter the Act) and by him duly delegated to the Regional Administrator, which authority has been duly re-delegated to the undersigned Director, Enforcement Division, Region 10.

FINDINGS OF FACT

1. The City of Hood River, Oregon (hereinafter the Permittee) owns and operates a sewage treatment facility in Hood River County, Oregon which discharges pollutants into the Columbia River.

GPO-890-087

2. The Columbia River is a "navigable water" as defined in §502(7) of the Act, [33 USCA §1362(7)].

3. Pursuant to §402 of the Act, [33 USCA §1342], the Director, Oregon Department of Environmental Quality issued National Pollutant Discharge Elimination System Permit No. OR-002078-8 to the Permittee for the discharge of pollutants from its sewage treatment facility. The permit became effective September 17, 1974.

4. The applicable portion of permit special condition S4. specifies the following discharge effluent limitations effective December 31, 1975:

a. During the period between June 1 and October 31 when Diamond Fruit is processing fruit:

(1) The monthly average quantity of effluent discharged shall not exceed 3.72 million gallons per day (MGD).

(2) The monthly average 5-day 20° C. Biochemical Oxygen Demand (BOD) shall not exceed a concentration of 30 mg/l or 930 pounds per day with a weekly average not to exceed 45 mg/l or 1400 pounds per day and with a daily maximum of 1860 pounds.

(3) The monthly average Suspended Solids shall not exceed a concentration of 40 mg/l or 1240 pounds per day with a weekly average not to exceed 60 mg/l or 1860 pounds per day and with a daily maximum of 2480 pounds.

(4) The effluent shall receive disinfection sufficient 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. (Usually this can be obtained with a chlorine residual of 1.0 mg/l after 60 minutes of contact time.)

(5) The effluent pH shall not be outside the range 6.0 - 9.0.

b. During the period between November 1 and May 31:

(1) The monthly average quantity of effluent discharged shall not exceed 3.72 million gallons per day (MGD).

(2) The monthly average BOD shall not exceed a concentration of 40 mg/l or 1100 pounds per day with a weekly average not to exceed 60 mg/l or 1650 pounds per day and with a daily maximum of 2200 pounds.

(3) The monthly average Suspended Solids shall not exceed a concentration of 40 mg/l or 1240 pounds per day with a weekly average not to exceed 60 mg/l or 1860 pounds per day and with a daily maximum of 2480 pounds.

(4) The effluent shall receive disinfection sufficient 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. (Usually this can be obtained with a chlorine residual of 1.0 mg/l after 60 minutes of contact time.)

(5) The effluent pH shall not be outside the range 6.0 - 9.0.

NOTE: The monthly and weekly averages for BOD and Suspended Solids are based on the arithmetic mean of the samples taken. The averages for fecal coliform are based on the geometric mean of the samples taken.

5. A Notice of Violation No. X78-08-01-309 was issued by EPA to the State of Oregon and the Permittee on August 24, 1978 for violations of the Clean Water Act by the Permittee. This Notice stated that if the State did not commence appropriate enforcement action within thirty (30) days, EPA could then take enforcement action.

6. Discharge Monitoring Reports submitted by the City of Hood River for the months of September, October, November, December 1978, and January, February, and March 1979, show effluent concentrations and

GPO-890-087

effluent loadings in excess of permit limitations specified by special condition S4. of NPDES Permit No. OR-002078-8.

7. Actions taken by the Oregon Department of Environmental Quality did not result in attaining compliance or in a commitment by the City to meet final effluent limits.

8. The Permittee, therefore, has not complied with special condition S4. of its NPDES permit and is in violation of §301 of the Act [33 USCA §1311].

COMPLIANCE ORDER

Based upon the foregoing Findings of Fact and pursuant to Clean Water Act §309(a)(3), (a)(4) and (a)(5) [33 USCA §1319(a)(3), (a)(4) and (a)(5)], it is hereby ORDERED as follows:

1. No later than fifteen (15) days from the date of receipt of this Order, the Permittee shall submit a written statement, signed by a City official with authority to represent the City in this matter, acknowledging receipt of this Order.

2. No later than thirty (30) days from the receipt of this Order, the Permittee shall submit to EPA a plan for measures to be taken to ensure adequate and reliable operation and maintenance of the treatment facility. A plan consists of specific actions to be taken, plus a schedule or timetable for taking such actions. Such plan shall also include, the following:

a. An analysis of plant management and staffing needs, and proposed staffing task plan;

b. An analysis of staff training needs and a proposed training plan;

c. A plan for adequate and reliable operation and maintenance of the nutrient addition facilities and a plan for nutrient monitoring;

d. A plan to maximize laboratory data interpretation and utilization for efficient and effective process control;

GPO-890-087

e. Other applicable measures that the Permittee determines are appropriate.

3. Within sixty (60) days of receipt of this Order the City shall submit a plan to evaluate and analyze the process and/or design modifications and operation and maintenance improvements needed to meet final effluent limitations in condition S4. by September 1, 1979.

4. Within sixty (60) days of receipt of this Order the City shall provide:

a. A detailed budget listing the treatment plant's expenditures for calendar (or fiscal) year 1978. As a minimum this budget shall include amount spent for the treatment system for:

(1) Salaries
(2) Training
(3) New equipment
(4) Electricity
(5) Chemicals (treatment)
(6) Consumables
(7) Laboratory supplies
(8) Fuel
(9) Parts
(10) Construction
(11) Other
(12) The amount spent on the collection system

b. A proposed budget for the 1979 calendar or fiscal year listing the above categories separately.

c. The user charge fee system used in supporting the above expenditures.

d. The number of connections serviced by the City's collection and treatment system and the revenue generated by each for the following categories:

(1) Industrial
(2) Commercial
(3) Residential

5. Progress reports concerning implementation of the Permittee's plan for meeting final effluent limitations in accordance with paragraph 3 above shall be submitted July 1, 1979, and August 1, 1979.

6. Permittee shall complete all actions required in the plan in paragraph 3 above and attain compliance with all permit limitations in condition S4. no later than September 1, 1979.

Submittals required by this Order shall be addressed and forwarded to:

U. S. Environmental Protection Agency
Attention: Mr. Jamie Sikorski
1200 Sixth Avenue Mail Stop 521
Seattle, Washington 98101

Please be advised that under the Clean Water Act §309(d) [33 USCA §1319(d civil penalties of up to $10,000 per day can result from violations of this Order.

Compliance with the terms and conditions of this Order shall not in any way be construed to relieve Permittee, except as otherwise noted herein, of its obligation to comply with the terms and conditions of its National Pollutant Discharge Elimination System Permit, nor of any applicable Federal, State or local law.

On request, the Regional Enforcement Division will attempt to provide the Permittee (or its counsel) with both information and guidance aimed at an amicable, but effective, resolution of this matter. If there are any questions please contact Mr. Michael Garcia, the attorney assigned to this case at (206) 442-1275. For technical matters please contact Mr. Tom Johnson at (206) 442-1266.

DATED this 3RD day of May, 1979.

Lloyd A. Reed
Director, Enforcement Division

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. P, May 25, 1979, EQC Meeting

Request for Approval of an Amendment to the City of Woodburn's Stipulated Final Order.

Background

By letter dated April 16, 1979, the City of Woodburn has proposed interim sewage treatment plant effluent limits (Exhibit 1) to comply with Condition 1(b)3 of Stipulation and Final Order No. WQ-WVR-78-75 (Attachment 1).

Summation

1. Stipulation and Final Order WQ-WVR-78-75, Condition 1(b)3, required the City of Woodburn to submit interim effluent limitations. Effluent limitations were not established at the time the Order was signed because it was not possible to predict the best operational mode of the trickling filter plant/single cell aerated lagoon interim treatment facility.

2. The proposed effluent limits for the trickling filter plant are based on previous performance of the treatment plant and the potential impact on the receiving stream.

3. No effluent limit is proposed for the single cell aerated lagoon because:

   a. Aeration was not installed in the lagoon until October, 1978. No operating data is available on which to base a summer effluent limit, and winter data is limited.

   b. Aeration is the only treatment control variable in the lagoon. Continuous aeration is proposed by the City.

   c. The City has a record of conscientious operation of its sewage treatment facilities.

4. The City anticipates completion of its new sewage treatment facility by January, 1980.

Director's Recommendation

Based on the Summation, it is recommended that the Commission approve the Final Order (Attachment 2) amending Stipulation and Final Order WQ-WVR-78-75, DEQ v. City of Woodburn.

Bill

William H. Young
Director

John E. Borden:sb
378-8240
May 14, 1979

Attachments: (2)
1. Stipulation and Final Order No. WQ-WVR-78-75.
2. Addendum to Stipulation and Final Order No. WQ-WVR-78-75.

Exhibits: (1)
1. City of Woodburn letter dated April 16, 1979.

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY of the STATE OF OREGON, Department, v. CITY OF WOODBURN, Respondent.	)	STIPULATION AND FINAL ORDER WQ-WR-78-75 Marion County

WHEREAS

1. The Department of Environmental Quality ("Department") issued National Pollutant Discharge Elimination System Waste Discharge Permit ("permit") Number 2653-J to City of Woodburn ("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 wastewater treatment, control and disposal facilities and discharge adequately treated wastewaters into the waters of the State in conformance with the requirements, limitations and conditions set forth in the permit. The permit expires on April 30, 1982.

2. Condition 1 of Schedule A of the permit does not allow Respondent to exceed the following waste discharge limitations after the permit issuance date.

Parameter	Average Effluent Concentration Monthly	Weekly	Effluent Loadings Monthly Average kg/day (lb/day)		Weekly Average kg/day (lb/day)		Daily Maximum kg	(lbs)
Outfall Number 001 (Domestic Sewage Lagoon Outfall)								
Jun 1 - Oct 31: No discharge to public waters without prior DEQ approval.								
BOD	30 mg/l	45 mg/l	88	(193)	131	(289)	175	(385)
TSS	50 mg/l	75 mg/l	146	(321)	219	(482)	292	(642)
Nov 1 - May 31:								
BOD	30 mg/l	45 mg/l	182	(400)	272	(600)	363	(800)
TSS	50 mg/l	75 mg/l	303	(667)	454	(1001)	606	(1334)
Outfall Number 002 (Trickling Filter Outfall)								
Jun 1 - Oct 31:								
BOD	30 mg/l	45 mg/l	72.6	(160)	109	(240)	145	(320)
TSS	30 mg/l	45 mg/l	72.6	(160)	109	(240)	145	(320)
Nov 1 - May 31:								
BOD	30 mg/l	45 mg/l	109	(240)	163	(360)	218	(480)
TSS	30 mg/l	45 mg/l	109	(240)	163	(360)	218	(480)

3. Respondent proposes to comply with all the above effluent limitations of its permit by constructing and operating a new wastewater treatment facility. Respondent has not completed construction and has not commenced operation thereof.

4. The Department and Respondent recognize that the new wastewater treatment facility will be constructed on land which contains Respondent's existing primary domestic sewage lagoon. When the primary lagoon is drained to accommodate construction of the new treatment facility, the entire sewage load from the City of Woodburn will be treated by the remaining lagoon and the trickling filter plant. Neither the Department nor Respondent can predict at this time the best operational mode of the trickling filter plant/one-lagoon interim facility or the best and most practicable interim effluent limitations for BOD and TSS discharges from

outfall 001 to the Pudding River and outfall 002 to Mill Creek. Specific effluent limits can be determined and will be established by an addendum to this order following a grace period of trial and error operation.

5. Therefore, from the date that the order is issued by the Environmental Quality Commission ("Commission") and until the Commission modifies the interim effluent limitations set forth herein by issuing an addendum to this stipulated final order, the Respondent shall carefully monitor the effluent discharges from outfalls 001 and 002 and regulate the influent flows to Respondent's trickling filter plant and lagoon such that:

> All wastewater treatment facilities are operated as efficiently as possible to minimize the effluent concentrations and amounts of BOD and TSS discharged to public waters.

6. The Department and Respondent further recognize and admit that:

a. Until the proposed new wastewater treatment facility is completed and put into full operation, Respondent will:

(1) Violate the effluent limitations set forth in paragraph 2 above the vast majority, if not all, of the time that any effluent is discharged from outfalls 001 and 002.

(2) Violate the water quality standards of the Willamette River Basin the vast majority, if not all, of the time that any effluent is discharged from outfall 001 to Pudding River and outfall 002 to Mill Creek during low stream flow periods.

b. Respondent has committed violations of its previous NPDES

Waste Discharge Permit Number 1771-J and its current permit and related statutes and regulations. Those violations have been disclosed in Respondent's waste discharge monitoring reports to the Department, covering the period from October 31, 1974 through the date which the order below is issued by the Commission.

7. The Department and Respondent also recognize that the 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.

8. The Department and Respondent intend to limit the violations which this stipulated final order will settle to all those violations specified in paragraph 6 above, occurring through (a) the date that compliance with all effluent limitations is required, as specified in paragraph 1c6 below, or (b) the date upon which the permit is presently scheduled to expire, whichever first occurs.

9. This stipulated final order is not intended to settle any violation of any effluent limitations set forth in paragraph 5 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:

I. The Commission shall issue a final order:

a. Requiring the Respondent to meet the interim effluent limitations set forth in paragraph 5 above until such time as the Commission changes those limitations.

b. Requiring Respondent to:

1. Determine the best interim operational mode of the trickling filter plant and lagoon,

2. Evaluate the wastewater flow and treatment data, and

3. Submit proposed interim effluent limitations to the Department by January 31, 1979, which can be best practicably achieved until the new treatment facility is constructed.

c. Requiring Respondent to comply with the following schedule:

1. Submit complete and biddable final plans and specifications by June 30, 1978.

2. Submit proper and complete Step III grant application by July 31, 1978.

3. Start construction within four (4) months of Step III grant offer.

4. Submit a progress report within twelve (12) months of Step III grant offer.

5. Complete construction within twenty (20) months of Step III grant offer.

6. Demonstrate compliance with the final effluent limitations specified in Schedule A of the permit within sixty (60) days of completing construction.

d. Requiring Respondent to comply with all the terms, schedules and conditions of the permit, except those modified by paragraph I above.

II. Regarding the violations set forth in paragraph 6 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 a copy of the final order herein.

III. 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: JUN 17 1978

By William H. Young
WILLIAM H. YOUNG
Director

Date: 6/15/78

By _____
Name
Title

FINAL ORDER

IT IS SO ORDERED:

ENVIRONMENTAL QUALITY COMMISSION

Date: JUL 6 1979

By William H. Young
WILLIAM H. YOUNG, Director
Department of Environmental Quality
Pursuant to OAR 340-111-136(1)

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: Hearings Section

Subject: Agenda Item No. Q(1), May 25, 1979, EQC Meeting

Contested Case Review; DEQ v. Norman Steckley (AQ-MWR-77-298) Exceptions and Arguments

Attached are the proposed Findings of Fact, Conclusions of Law and Order of Hearing Officer Peter McSwain. Also enclosed are Respondent's Exceptions and Arguments and Department's Reply to Respondent's Exceptions.

It is contemplated that, should they so desire, the parties be accorded opportunity for brief oral argument in this matter.

Respectfully submitted,

Wayne Cordes
Hearings Officer

EWC:mg
Attachments (to Commission)
cc: (without attachments)
Laurence Morley
William H. Young
Fred Bolton
E. J. Weathersbee
Frank Ostrander
Scott Freeburn
John Borden

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

HEARINGS SECTION

DEPARTMENT OF ENVIRONMENTAL QUALITY, Department, v. NORMAN STECKLEY, Respondent.	No. AQ-MWR-77-298

DEPARTMENT OF ENVIRONMENTAL QUALITY'S
REPLY TO RESPONDENT'S EXCEPTIONS AND ARGUMENT

I.

The Department urges the Commission to accept the Recommended Findings of Fact, Conclusions of Law and Final Order of the Hearings Officer. All of Respondent's Exceptions have been previously fully considered by the Hearings Officer and found to be without merit:

(1) As to Respondent's Exception I, the Department calls the Commission's attention to page 3, lines 23-25, page 4, lines 11-15, and page 7, lines 1-17 of the Hearings Officer's Recommendation.

(2) As to Respondent's Exception II, the Department calls the Commission's attention to page 2, lines 18-22, and page 5, lines 14-24 of the Hearings Officer's Recommendation.

//

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Attorney General
500 Pacific Building
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Telephone 229-5725

(3) As to Respondent's Exception III, the Department calls the Commission's attention to page 3, lines 3-22, page 7, lines 1-7, and Attachment A of the Hearings Officer's Recommendation.

II.

Respondent's Exceptions do not include alternate findings of fact, conclusions of law, or an order, as required by OAR 340-11-132(4). For that reason, it is somewhat difficult for the Department to ascertain the basis on which the Respondent relies for his arguments. Nonetheless, the Department suggests that it is absurd for Respondent to suggest in his first Exception that less than 10 acres of his field was burning at 7:00 p.m. on the day in question, or to suggest in his third Exception that he was merely trying to control the fire. The Respondent admitted that he had spent the time beginning sometime after 3:00 p.m. and continuing after 5:00 p.m. on the day in question using his best efforts to burn his entire 130-acre field by cross-firing the field rather than attempting to extinguish the fire. Attachment A to the Hearings Officer's Recommendation, page 3, line 7 through page 5, line 4. (Transcript of Hearing Testimony). For the Respondent to now suggest that no evidence exists that a substantial part of his field was burning is therefore completely illogical.

Similarly, it is absurd for Respondent to suggest in his second Exception that the existence of prohibition con-

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ditions depends on the actual weather conditions that develop after the conditions have been forecast. The plain meaning of OAR 340-26-015(1)(c), as it was in effect in September of 1977, is that prohibition conditions occur on a forecast of northerly winds and a mixing depth of 3,500 feet or less:

> "(c) Prohibition conditions: Forecast northerly winds and maximum mixing depth 3500 feet or less.
>
> "* * *
>
> "(4)(a) Prohibition. Under prohibition conditions, no fire permits or validation numbers for agricultural open burning shall be issued and no burning shall be conducted, except where an auxiliary liquid or gaseous fuel is used such that combustion is essentially complete, or an approved field sanitizer is used." OAR 340-26-015(c) and (4)(a) (Filed July 22, 1977). (Emphasis added.)

The Respondent does not contest the Hearings Officer's Finding that such a forecast had been made on the day in question in this proceeding or that, based on the forecast, all fires were ordered out by 5:00 p.m. Hearings Officer's Recommendation, page 2, lines 18-22. The construction of OAR 340-26-015(1) urged by the Respondent would create chaos in regulating fieldburning. Each farmer's ability to burn and his liability for guessing wrong following a forecast of prohibition conditions would be dependent on a localized whim of nature. Similarly, in order to prove a violation, the Department would have to obtain detailed meteorological infor-

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mation above each field in question, an unreasonable burden of proof and an inefficient use of public funds.

For all of the above reasons, the Recommendations of the Hearings Officer should be adopted by the Commission.

Respectfully submitted,

JAMES A. REDDEN
Attorney General

FRANK W. OSTRANDER, JR.
Assistant Attorney General
Of Attorneys for Department of Environmental Quality

James A. Redden
Attorney General
500 Pacific Building
Portland, Oregon 97204
Telephone 229-5725

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing "Department of Environmental Quality's Reply to Respondent's Exceptions and Argument" upon Laurence Morley, attorney for the Respondent.

I further certify that said copy was placed in a sealed envelope addressed to said attorney at his last-known address, as follows, and was deposited in the United States Post Office at Portland, Oregon, on the 15th day of March, 1979, and that the postage thereon was prepaid:

LAURENCE MORLEY
Morley, Thomas and Kingsley
Attorneys at Law
80 East Maple Street
Lebanon, Oregon 97355

Sally A. Gillette
SALLY A. GILLETTE, Secretary

James A. Redden
Attorney General
500 Pacific Building
Portland, Oregon 97204
Telephone 229-5725

Young
Cordes

LAURENCE MORLEY
WILLIAM R. THOMAS
RICHARD E. KINGSLEY
THOMAS J. REUTER

MORLEY, THOMAS & KINGSLEY
ATTORNEYS AT LAW
80 E. Maple Street
LEBANON, OREGON 97355
(503) 258-3194

February 15, 1979

William H. Young, Director
Department of Environmental Quality
522 Southwest 5th Ave.
P. O. Box 1760
Portland, OR 97207

Dear Mr. Young: Re: DEQ v. Norman Steckley
No. AQ-MWR-77-298

Enclosed are Exceptions to the Findings of Fact and Conclusions in this cause and argument on the matter. I appreciate your permitting me this extension of time, and because of absence from the community and heavy pressure of business, I have been unable to accomplish this sooner.

Sincerely yours,

MORLEY, THOMAS & KINGSLEY

Laurence Morley

LM;mjs

Enc.

EQC
Hearing Section
FEB 21 1979

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
FEB 16 1979
OFFICE OF THE DIRECTOR

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY, Department,	)	
v.	)	EXCEPTIONS AND ARGUMENT
NORMAN STECKLEY, Respondent.	)	No. AQ-MWR-77-298

Comes now the Respondent, NORMAN STECKLEY, and through his counsel and excepts to the proposed Findings of Fact and Conclusions of Law entered in the above entitled cause.

I

Respondent excepts to the conclusions reached by the hearing officer that ten acres was burning at the time of the complaint or that any amount in excess of a few minor clumps of brush, was burning at said time.

II

Excepts to the pleadings in the cause alleging that prohibitive conditions existed and also excepts to any findings that prohibitive conditions did exist.

III

Excepts to the conclusion that the respondent, at the time of the complaint, was doing anything more than taking the appropriate actions to completely control the fire and was not engaged in the burning operation.

Respondent refers to the arguments already submitted in this cause and more fully reflected in the latter part of the tapes of the testimony in said proceeding and we take our argument in this instance

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TELEPHONE 258-3194

from the argument made at the time of the hearing and will quote directly from those provisions set forth in the Transcript:

Morley:

"1) That although we admitted that we burned on 10 acres that day we also admitted that we burned on 130, but the burden is upon the Department to establish that there was 10 acres, or 1 acre or ½ acre or two clumps of brush burning out there at that particular time. There has not been one iota of evidence in this instance refering to the fact that there were 10 acres burning at the time, 7:00 o'clock when the arrest was made or Citation was given; there is no evidence as to the amount. This hearing officer would have to guess at something that we couldn't even guess as to that item and for that ground alone they failed in the burden of proof.

2) My first----

McSwain:

Perhaps, before you go into your second reason, I should turn my tape over. I believe we are on the record now.

Morley:

2) We raise the issue that the pleading was totally inadequate, alleging that the burning was done during prohibitive conditions. Now prohibitive conditions, and by way of backing up a moment, I objected to it on two grounds:

1. That the pleading was inadequate; and
2. I maintain also the position that we have been unfairly dealt with in that we were not adequately notified and were surprised.

Morley contd: Now, in the first instance, we came in here knowing full well there was a "fire out" order and if that was the charge against us we would have defended on that ground; but if the only charge against us is "prohibitive condition" it is not our duty to establish that prohibitive conditions did not exist; we are not the meteorologist, we are not the weatherman, we are not the scientist; the scientist, the meteorologist, is supposed to provide the prohibitive conditions; the mere fact that Mr. Brannock was extremely fair in his testimony says that in his judgment it would be best to have a "fires out" order at 5:00 o'clock, does not make it prohibitive conditions and he, himself, admits that probably prohibitive conditions did not exist at 5:00 o'clock; the burden then is upon the department to establish the facts, not his opinion that the "fires out" order was the best way to go and as he said, "the conservative way to go" or "to err was the problem". Even if he erred he felt that he erred more safely. You have no proof before you

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that prohibitive conditions truly and actually existed, and they must, and there is no evidence of that in this instance. So therefor the pleading and the proof both fails and this constitutes a surprise because we are not able to even combat. We can't combat testimony when maybe it existed and maybe it didn't. We are not able to do that.

And then thirdly, again, as I say on the issue of fair play; on the issue of fair play and nothing else, this man did everything that was conceivably and reasonably possible to try to dispose of the matter within the time alloted to it. Common sense tells us that you cannot extend--make 60 minutes, an hour, into 70 minutes, nor can we make the sun shine, but we can do our best to meet the situation as existed, and this man as an extremely experienced operator did everything conceivably and reasonably proper and for years he has done so---he has an excellent record; we have alleged that he has a perfect record and there is no one denyint it. He has done it for years. Time and time again he has paid for it and been given a permit to burn and even on his own judgment he didn't burn because it would cause some offense. We take the position that on the question of fairplay and propriety, it should be dismissed. Certainly, on the other two grounds on the failure of proof.

McSwain: Mr. Fraley, do you want to be heard on this?

Fraley: Yes, the department's Notice of Assessment, we charged the Respondent with conducting open field burning on ten acres of a 130 acre field and named a specific location. In Respondent's Answer they admitted that they conducted burning on ten acres of a 130 acre field that was owned and controlled by Respondent at the very same location. We were under no burden of proof to prove the acreage because they actually admitted they used the same verbage--as a matter of fact, that we used in our notice.

Secondly, I think we did establish the prohibition conditions were in existence; whether or not they actually existed physically, it was the determination of the department on that day that prohibition conditions were in effect, or most probably would be in effect; therefor, the order was given for the fires to be out by a certain time which would make that anything after that time a prohibition condition.

And the third count---I have no answer. It is the third part of his Motion on the fairplay.

McSwain: That's interesting, because also I don't recall seeing any evidence that Mr. Steckley did anything other than make a miscalculation as to the amount of time it would take him to accomplish burning. All right, well I will take the easiest option that's available to a hearing officer and reserve a ruling on this matter until such time as I take the.....

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Morley: I want to add one response to Doug because I do---I know he is genuine in his feeling that we admitted the ten acres. In reading it I think you can see that we admit we burned that day ten acres---we deny that any other time but the time involved that we were burning ten acres. I want to make sure that my pleading doesn't say contrary and I presume that your ruling on the summary judgment took that fact into consideration. Thank you.

McSwain: All right then, perhaps we will stand adjourned at this time. Thank you."

You will observe that we humbly refer to some of the arguments even made by counsel for the department and comments of the court. Basically, our position in this instance is as outlined above:

1) That there was no adequate evidence of ten acres or any substantial number of acres being burned at the time of the complaint;

2) That prohibitive conditions as outlined in the statute were never set forth in the complaint and at no time during the proceedings was there concrete evidence that the true, prohibitive conditions existed; that in fact, the only complaint that was legitimately appropriate in this instance would be a complaint based on "fires out" and that was not a charge in this proceedings. We further allege that to permit the opinion of the hearing officer to stand, would be to be grossly unfair.

Respectfully submitted,

MORLEY, THOMAS & KINGSLEY

By: _____
Laurence Morley
Of Attorneys for Respondent

MORLEY, THOMAS & KINGSLEY
ATTORNEYS AT LAW
80 E. MAPLE STREET
LEBANON, OREGON 97355
TELEPHONE 258-3194

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY, Department	)	PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER
v.	)	
Norman Steckley, Respondent	)	NO. AQ-MWR-77-298

SUMMARY

Heard on June 9, 1978, this matter involves the assessment of a $200 civil penalty against respondent for an alleged violation of agricultural open field burning rule OAR 340-26-015(4)(a) which provides, inter alia , that no burning shall be conducted during prohibition conditions.

PRINCIPAL ISSUES

The Respondent contends the Department's assessment is fundamentally unfair; that the Department failed to prove acreage burned; that there was no effort to do other than extinguish the fire after burning hours were over; that the rules do not authorize an order to put fires out other than by the fire chief; that the Department did not allow sufficient discovery as to the nature of its case; and that the conduct required by by the Department of Respondent was impossible to perform.

While the Department's written Notice cited particularly the provisions of OAR 340-26-025(1) pertaining to a "per acre" fine for intentional or negligent burning, it cited also that the statutory provisions regarding air quality violations in general. At the commencement of hearing, when it became necessary to the hearing officer

to have definite and certain the pleadings, the Department elected to stand on the "per acre" provision alone in supporting its claim.

The Respondent admitted conducting open burning on ten acres of a 130 acre field. He denied all else. In opening statement, prior to the Department's going forward, the Respondent elaborated. He stated his denial that he burned ten acres or any specific acreage after five o'clock. The Department adduced no evidence going to acreage. The Department's representative contended in closing that the Respondent admitted to burning ten acres after his fire was to be out. Testimony as to the presence of fire and smoke after 5:00 p.m. was followed by no testimony as to what square area was emanating smoke or fire.

The presence of smoke and fire was acknowledged by the Respondent but his contention was there is no information as to what acreage was burned after 5:00 p.m.

Since ORS 468.140(5) addresses itself to intentional or negligent burning there arises an issue of culpability also.

FINDINGS OF FACT

At 2:40 p.m. on September 13, 1977 the Department's meteorologist forecasted impending prohibition conditions (northerly winds and a mixing depth of 3500 feet or less) and ordered that South Valley (see OAR 340-26-005(8)(27) open field burning fires be out by 5:00 p.m. that day.

At about 3:00 p.m. on the same day, the Respondent obtained a permit to open burn in a field owned and controlled by him and located on Tax Lot Number 500 in Section 13, Township 11, South, Range 3 West, Willamette Meridian in Linn County Oregon and in the South Valley.

When the Respondent received the permit he was made aware that the fires were to be out by 5:00 p.m.

After making his way to the field and at sometime before 5:00 p.m., Respondent commenced to burn the field. The field is approximately 130 acres in size.

The Respondent commenced with knowledge that the field was both somewhat green and wet. He did not know how slowly the field would burn. On previous occasions, even after paying the fee and obtaining a permit, the Respondent, who grows on over a thousand acres, has declined to burn due to poor conditions.

The Respondent spent the remainder of the burning time in a effort to flame the field in many places, get it all burning, and get it over with as soon as possible.

Drawing upon his many years of burning experience, Respondent was of the conviction that, under the circumstances, the fastest, least smoky way to be done with the burning was to get the entire field on fire and be done burning as soon as possible. To have attempted to put the fire out would have involved the risk of running out of water and leaving a slow burning, smoky fire.

Respondent failed to comply with the condition that his fire be out by 5:00 p.m. to the extent that fire and smoke were still present as late as 7:00 p.m. when a Departmental field inspector arrived on the scene.

There is no precise evidence as to the amount of acreage from which smoke and fire emanated after 5:00 p.m. The acreage upon which burning occurred after 5:00 p.m. totalled at least ten acres.

CONCLUSIONS OF LAW

Respondent was allowed an adequate opportunity to know and meet the Department's case, and the Department's Notice of Assessment in this matter adequately states the matters in issue pursuant to ORS 183.415 and 468.135. Respondent's contentions to the contrary are overruled.

As a technical matter, violation of ORS 478.960 through violation of OAR 340-26-015(4)(a) gives authority for a civil penalty pursuant to ORS 468.140. However, the Department's recital of ORS 408.140 was, we feel, sufficient warning of the Department's contention that one or more of the Statutes mentioned was violated.

Respondent's motion to dismiss should be denied.

The Department has made a showing by a preponderance of evidence that Respondent negligently burned not less that ten acres in violation of OAR 340-26-015(4)(a) and ORS 478.960 by failure to adhere to an oral condition of his field burning permit which required him to have his fire out by 5:00 p.m.

Respondent is liable as assessed by the Department in the sum of $200 for the unlawful open burning herein issue.

OPINION

We first examine whether the burning was unlawful. ORS 478.960 authorizes the fire chief to "....prescribe conditions upon which any permit is issued which are deemed necessary to be observed in setting the fire and preventing it from....endangering the air resources of this state." The same statute provides that the Environmental Quality Commission shall notify the State Fire Marshal of the type of and time for burning to be allowed on each day under schedules adopted pursuant to ORS 468.450 and 468.460. Finally, all fire chiefs and their deputies

are to be notified of the type and time for burning each day.

A provision of ORS 468.450 is that the Commission "....specify the extent and types of burning conditions that may be allowed under types of atmospheric conditions."

Pursuant to ORS 468.450, the Commission adopted OAR 340-26-015 which provides that prohibition conditions for the area here in issue would exist with a forecast of northerly winds and a mixing depth of 3500 feet or less and that under such conditions burning should cease.

It was the judgment of the Department's meteorologist on the afternoon in question that it was significantly likely that a marine air mass would come in at or shortly after 5:00 p.m. and, combined with a northerly wind, contain field burning smoke close to the ground and push it toward the populated area of Eugene, Oregon.

A usual meaning of "forecast" is served when one takes action to avert danger involved with a significant probability that certain weather conditions will occur. The meterologist forecasted prohibition conditions within the meaning of the Commission's rule and they were translated into a permit condition that required Respondent to have his fire out by 5:00 p.m. We find this to have been a reasonable exercise of powers given by ORS 478.960. We conclude further that to have violated such permit condition was to have conducted burning during prohibition conditions, i.e., forecast of northerly winds and a mixing depth of 3500 feet or less. It is not necessary to sustain a civil penalty that the forecast actually turns out to have been correct.

The facts indicate the burning of acreage after 5:00 p.m. would have been in violation of ORS 478.960. We have two more difficult issues to

resolve: 1) Was such burning accompanied by intentional or negligent behavior? 2) If so, how much acreage was burned?

On the first question, the evidence is close. We have transcribed Respondent's testimony as it pertains and studied it (Attachment A). We are left with the impression that Respondent's perception of his obligation under the permit was that he was obligated only to do the best he could to burn the field and be done by 5:00 p.m. There was more. Respondent was obliged not to start the fire if he was doubtful as to whether it could be finished soon enough. The permit issuing authority was not responsible for appraising the likelihood that acreage can be burned within the required time. Respondent owed a reasonable duty of care in this regard. It appears from his testimony that he felt the reverse was true. While he did as best he could to burn as quickly as he could, Respondent, a person with many years of experience, is deemed to have negligently risked violation in his attempt, within two hours, to burn a green, wet, 130 acre field which in fact, despite his best efforts, was still burning two hours <u>after</u> it was to be out. Smoldering, like burning, causes smoke. The emission of smoke is the circumstance whose control was the entire purpose for the prohibition condition.

Respondent argues it is fundamentally unfair to have charged him the fee and then issue a permit with a condition impossible of performance. It is up to the Respondent not to seek permission to burn where he finds he will be incapable of doing it in time.

Respondent argues with accuracy that there is no direct evidence as to the precise number of acres that may have been burned after five p.m.

By Respondent's own admission, however, he spent between three in the afternoon and seven in the evening in an earnest attempt to burn 130 acres. Respondent's refusal to estimate the success of his effort does not shed light on the situation. We are, however, left with the inference that he must have been experiencing success in burning or he would not have continued flaming the field for so many hours. Further, more than half the time spent in burning the field was after five p.m.

Respondent was present at all times conducting the burning. It was within his power either to explain what happened or explain why he could not explain what happened. Respondent did neither and he urges us to draw an inference that his efforts over something less than four hours to burn a 130 acre field resulted in less than ten percent of the acreage being burned during the last two hours. We do not feel the inference is warranted and we are constrained, in the absence of explanation, to infer, as the Department claims, that not less than ten acres of the field burned after 5:00 p.m. See e.g. Conn. v. United Food Corp. , Mass, 374 N.E. 2d 1331 (1977).

Finally, Respondent claimed difficulty in understanding precisely what was meant by the Department's charge that he burned during prohibition conditions. We feel this was remedied by Respondent's opportunity, at the close of the Department's case, to request additional time to prepare his case if such time was needed. Grog House, Inc. v. O.L.C.C. ,12 Or App. 426, 507 P 2d 419 (1973). Instead, Respondent offered no evidence of his own and moved for dismissal.

Peter W. McSwain
Hearing Officer

ATTACHMENT A

Q. You don't remember though whether you were told at any time prior to the fire that the fires were supposed to be out at five o'clock?

A. Oh, I think I knew it. But I mean I don't deny that. But it's just impossible to do. To get all the smoldering out.

Q. Right. From the time you got your permit until five p.m. when the fires out order went into effect, how much time did you have to burn your field?

A. Well, from three to five is two hours. But I mean it took me time to get out and get started and all that.

Q. Okay. You knew what the condition of the field was?

A. Well, sure, but you never know for sure until you light a field. I mean how it will burn.

Q. Uh huh. Would it not have been practical to start a small portion of the field to see how it was going to burn and then base burning your total field upon that?

A. Well, the best way is to try to burn it all as quick as you can or you're going to waste a lot of time and then it'll be worse yet.

Q. But you could have made a judgment by taking a small portion of the field to see....

A. Well....And wait an hour and then if I decide to burn and it will be later yet.

Q. Okay.

A. I mean it don't make sense. You got to be sensible about it.

Q. That's true. But did you....? You knew the field was green. And it was wet.

A. Well, it was getting late in the fall.

Q. Then you also knew the field would not burn very quickly.
A. I don't know. I probably did. I won't say I didn't. I was in hopes it would all burn right up.
Q. Okay. How long have you been conducting field burning? How many years?
A. Oh, thirty years.
Q. Have you ever run into this circumstance of having to burn a green field before?
A. Oh, sure. Yeah.
Q. And what has your past experience been with that? Has it burned fast or slow or....
A. That depends on the field. I mean I can't quote that.
Q. Okay. I guess. I have no further questions of this witness now.
(Morley)
Q. Mr. Steckley. It's a fact isn't it that you paid a dollar an acre for over a thousand acres last year?
A. Yes. I don't have the exact records with me.
Q. Did you get to burn all of it?
A. No.
Q. It's a fact isn't it that last year and the year before you've also paid an additional two dollars and a half an acre and some of it you didn't get to burn?
A. Well. That's right.
Q. And it's not because you were ordered not to. You used your best judgment even after you got your permit and decided not to burn.
A. Yes. Some fields I didn't want to burn.
Q. And you used your best judgment on this one and thought you could do it?

A. Why sure.

Q. All right, that's all.

(Hearing Officer)

Perhaps I may have a question or two and then Mr. Fraley can redirect and you can re-cross Mr. Morley if I raise something that I don't clarify sufficiently for one or the other of you.

Q. Between three o'clock and five o'clock, Mr. Steckley, you initiated the burning on September thirteenth?

A. Yes.

Q. At what time did you begin to attempt to extinguish the burning?

A. I can't say. Up until the last I tried to....When I seen it was going to smolder, I was trying to light it faster. You know cross fire it through the field. Hurry it along. That's what I was trying to do. Your best way is to hurry it. Get it over with rather than to try and put out a wet fire.

Q. From what stand point? How is it best?

A. Well, you could cross light. Light more in the field to get it to burn up.

Q. Could you describe cross lighting a little bit for me?

A. Well, drive back and forth through the field with a torch and light more of it so it don't take so long to get through.

Q. Well, what's the difference if you do that from if you attempt to put out a wet fire ? What happens if you try to put it out?

A. Well, you might run out of water and you've still got fire out there. If it burns up, then it's over with.

Q. In other words, after thirty years of field burning you calculated your behavior to be the best way to extinguish the fire soonest.

A. Oh, I was trying to get the fire out.

(Mr. Morley)

Q. Can you answer his question. Because he's asking a key question here. I'd appreciate your asking again.

(Hearing Officer)

I'm asking you if based on your experience of thirty years of field burning it was your judgment that your behavior after five o'clock on September thirteen was the best or fastest way to get the fire out?

A. Yes. That's right.

Q. To stop the smoke.

A. Yes.

(Hearing Officer)

Mr. Fraley, perhaps you could....If you wish, you can redirect and Mr. Morley can recross to some of the points I've raised on my own motion here. I'm not requiring you to do so, just giving.

(Mr. Fraley)

I understand.

(Mr. Morley)

I know I have no further questions unless he has.

(Mr. Fraley)

Q. If in your judgment it was better to light more of the field on fire to get it out, you must have had a judgment on how much longer it would have taken. Assume you could have got the field going on fire, how much longer would it have taken to burn the field?

A. Well, I don't quite understand what you're talking about.

Q. Well. If you would have....Let's go in another direction. Had you started putting the fire out, what, in your estimation, would have been the length of time to put it out?

A. Well, if it's lit all through the field, sometimes it's impossible to put it out. You just run out of water. Every little fire is going to take a tremendous amount of water. You just can't do it. If you've ever tried to burn, you'll know you can't do that.

Q. Okay. I'm trying to establish though why you felt it was quicker to burn the field than to try and put it out.

A Have you ever tried to put out a big field fire?

Q. No, I haven't. But I'm not on examination. I'm sorry.

A Well. It just can't be done when it's smoldering all through the field.

Q. Well, I guess I have no further questions.

(Mr. Morley)

I have none either.

#272557

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY Department	)	
v.	)	ORDER
Norman Steckley Respondent	)	No. AQ-MWR-77-298

The Commission hereby orders, as proposed by the hearing officer that Respondent, Mr. Norman Steckley, is liable in the sum of $200 pursuant to hearing on an assessment of civil penalty by the Director of the Department on November 17, 1977 and that the State of Oregon have judgment for and recover the same.

The Commission hereby further orders that if neither a party nor the Commission requests review of this order within fourteen days of its service upon them, the order shall become a final order of the Environmental Quality Commission of the State of Oregon which shall have added to the caption the words, "NOW FINAL" and, if unsatisfied for more than ten days after becoming final, may be filed with the clerk of any county and executions may be issued upon it as provided by ORS 468.135.

Dated this 17th day of November, 1978.

Respectfully submitted,

Peter W McSwain

Peter W. McSwain

Hearing Officer

I hereby certify I served the foregoing Proposed Findings of Fact, Conclusion of Law, and Final Order on Respondent Norman Steckley through his attorney Laurence Morley, of Morley, Thomas and Kingsley, 80 East Maple Street, Lebanon, Oregon 97355; on Joe B. Richards, Chairman of the Environmental Quality Commission; and on Robert Haskins, Department of Justice, by mailing each of them true copies, certified as such by me, on the 21st day of November, 1978.

Janeth Shaw

Janeth Shaw

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: Hearings Section

Subject: Agenda Item No. Q(3), May 25, 1979, EQC Meeting

Request for Commission interpretation of time computation for filing request for Commission review
DEQ v. Kenneth Brookshire (AQ-SNCR-76-178)

Attached are copies of correspondence from Roderic S. MacMillan, Esq., attorney for Mr. Brookshire and Robert L. Haskins, Assistant Attorney General, relating only to the above-mentioned matter. It is contemplated that, should they desire, the Department and Respondent's counsel be accorded opportunity for brief oral argument in this matter.

Respectfully submitted,

Wayne Cordes

Wayne Cordes
Hearings Officer

EWC:mg
cc: (without enclosures)
Roderic S. MacMillan
Robert L. Haskins
Fred Bolton
DEQ Willamette Valley Regional Office (Salem)

JAMES A. REDDEN
ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

PORTLAND DIVISION
500 Pacific Building
520 S.W. Yamhill
Portland, Oregon 97204
Telephone: (503) 229-5725

March 20, 1979

Mr. Roderick S. MacMillan
Helfrich and MacMillan, P. C.
Attorneys at Law
Lawyers Building
521 S. W. Clay
Portland, Oregon 97201

Re: DEQ v. Kenneth Brookshire
Before the Environmental Quality Commission
No. AQ-SNCR-76-178

Dear Mr. MacMillan:

Your March 6, 1979 letter regarding the subject case was referred to me for response.

In your letter you contested the Commission's interpretation of its own rule, OAR 340-11-005(6), which provides that "'filing' means the completed mailing to or service upon the Director." The Commission, relying upon the language "completed mailing," interpreted its rule as requiring receipt of a mailed document before it would be considered filed. Such, of course, is the usual interpretation given to filing requirements in courts and other administrative agencies.

In your letter you suggested that in the case of mailing of a document, instead of applying the language "completed mailing" the Commission instead should have looked to the language "service upon the Director." Then, you suggested that because the Commission did not specifically define "service" in its rules, that ORS 16.790 should be applied, which provides that in court cases "in the case of service by mail . . . service shall be deemed to be made on the day of the deposit in the post office, and not otherwise."

I compliment you on coming up with such an ingenious interpretation on behalf of your client. However, I cannot agree with that interpretation. First, it is not necessary to apply ORS 16.790 by analogy in order to interpret how the

language "service" would apply to service by mail. The reason being, of course, that the first part of the definition deals with a filing which is attempted to be made by mail and requires it to be a "completed mailing." Therefore, there is no need to borrow from ORS 16.790. The interpretation which you propose on behalf of your client would render the Commission's chosen language "completed mailing" meaningless. In its context, it is clear that the reference to "service" means that a document that was not received through the mails would be deemed to be filed when it is personally served upon the Director. Of course it is a well-established principle of statutory and regulatory interpretation that an interpretation which would give meaning to the entire rule is preferred over one which would give meaning to only part of a rule and render the remainder meaningless. It is also another well-established principle of administrative law that the interpretation given by an administrative agency (the Commission) of its own rules will be given a great deal of deference. Finally, as you point out in your letter, it is clear that by means of the Hearing Officer's November 22, 1978 letter to your client, your client was informed of the Commission's interpretation of its rule by the Hearing Officer's statement in that letter that "a request for desired review by the Commission will be considered filed with the Commission after being date stamped as received in the office of the Department of Environmental Quality at 522 S. W. Fifth Avenue, Portland, Oregon 97204."

For the above reasons, I recommend that the Department and Commission take no action on your request.

Sincerely,

Robert L. Haskins

Robert L. Haskins
Assistant Attorney General

RLH:kth
cc: ✓William H. Young
Fred Bolton
E. J. Weathersbee
Scott Freeburn
John Borden

HELFRICH & MACMILLAN P.C.
ATTORNEYS AT LAW
LAWYERS BUILDING
521 S. W. CLAY
PORTLAND, OREGON 97201

MARVIN E. HELFRICH
RODERIC S. MACMILLAN

PHONE (503) 224-2165

March 28, 1979

Environmental Quality Commission
P. O. Box 1760
Portland, Oregon 97207

Attention: William H. Young, Director

Re: DEQ v. Kenneth Brookshire
No. AQ-SNCR-76-178

Dear Mr. Young:

In response to Mr. Haskins' letter of March 20, 1979, I do not agree that the statements in the Hearings Officer's letter of November 22, 1978 to Mr. Brookshire (written on DEQ stationery) constitute an interpretation by the Environmental Quality Commission of OAR 340-11-005(6), in particular, the language "completed mailing" as that term is used therein. I would also take issue with Mr. Haskins' statement that the "usual interpretation. . . in courts and other administrative agencies" of the langugage "completed mailing" encompasses receipt in addition to the deposit of mail in the post office.

Whether the language "service upon the Director" in OAR 340-11-005(6) is limited to personal service or service in general, ORS 16.790 is certainly one expression by the legislature that completed mailing does not require receipt by the addressee.

The Hearings Officer's letter of November 22, 1978 advised my client that he had ". . . 14 days from the date of this mailing. . . to file . . . a request . . . (for) review . . . ." There was no provision that Mr. Brookshire had 14 days from the date of receipt to make his request. November 22, 1978 served as the date the 14-day period began. If, for some reason, there had been a 15-day delay in mailing, according

to the interpretation by the Department of Justice, Mr. Brookshire would have been precluded from review even if he had sent the request immediately.

Again, I believe that any judgment rendered for a civil penalty in this case would be subject to collateral attack because the Order did not become final on December 6, 1978. However, I feel that the rational solution to the problem is to allow Mr. Brookshire to have his "day in court" and not to preclude review for a dispute as technical as the one at issue here.

Very truly yours,

Roderic S. MacMillan

RSM:cph
cc: Kenneth Brookshire
Robert L. Haskins

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RODERIC S. MACMILLAN

PHONE (503) 224-2165

March 6, 1979

Department of Environmental Quality
P. O. Box 1760
Portland, Oregon 97207

Attention: William H. Young
Director

Re: DEQ v. Kenneth Brookshire
No. AQ-SNCR-76-178

Dear Mr. Young:

Kenneth E. Brookshire has retained this office to represent him in connection with the above-captioned case. We are obviously entering this case at a late juncture, however, it is clear from a review of the correspondence generated in the case that the Hearings Officer has misinterpreted OAR 340-11-132(2) and that, as a result, the proposed order of November 22, 1978 did not become final. Moreover, any judgment arising out of the proposed order will be subject to collateral attack.

A review of the Commission's file will show the following:

1. The Hearings Officer's letter of November 22, 1978 advised Mr. Brookshire that pursuant to OAR 340-11-132(2), the parties had fourteen (14) days to file with the Commission a request that the proposed order of November 22, 1978 be reviewed. The letter further stated:

> "A request for desired review by the Commission will be considered filed with the Commission after being date stamped as received in the office of the Department of Environmental Quality at 522 S.W. Fifth Avenue, Portland, Oregon 97204";

2. On December 8, 1978, the Commission received a letter from Mr. Brookshire dated December 6, 1978 specifically expressing dissatisfaction with the proposed Findings of Fact, Conclusions of Law and Final Order and Judgment and also requesting a 30-day extension;

3. On December 11, 1978 the Hearings Officer forwarded a copy of Mr. Brookshire's request to the attorney for the DEQ asking whether the DEQ would resist Mr. Brookshire's request;

4. In response, the DEQ's attorney, recognizing that Mr. Brookshire's letter of December 6, 1978 amounted to a request to the Environmental Quality Commission that it review the Hearings Officer's ruling, advised the Hearings Officer that Mr. Brookshire's letter was not filed within 14 days and that the Proposed Order thereby became final by operation of law.

5. The Commission, adopting the position of the Assistant Attorney General, advised Mr. Brookshire by letter of February 12, 1979 that the Commission had ruled against him in his "request for reconsideration of the order" because the proposed Order became a Final Order of the Commission on December 6, 1978.

It is clear that Mr. Brookshire's letter to the DEQ dated December 6, 1978 and admittedly received on December 8, 1978 was construed by the Commission as a request for review of the proposed final order and was, in fact, such a request despite Mr. Brookshire's failure to phrase the request in the specific language of OAR 340-11-132(2). Moreover, the validity of any judgment arising out of this matter hinges upon whether Mr. Brookshire's response was timely filed, i.e., filed within 14 days from the date of mailing of the Proposed Order.

OAR 340-11-132(2) provides:

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

OAR 340-11-005(6) defines "Filing" as follows:

> "(6)'Filing' means the completed mailing to or service upon the Director."

Since there is no specific definition of "service" in the Oregon Administrative Rules, The Oregon Revised Statutes would apply. The ORS specifically provides for service by mail, and with regard to timeliness ORS 16.790 provides:

> "That service shall be deemed to be made on the day of the deposit in the post office, and not otherwise."

It is our position that Mr. Brookshire filed a timely request for review and that consequently the proposed order of the Hearings Officer never became a final order. This, of course, renders the judgment defective.

Mr. Brookshire's principal desire is still simply to have the proposed order of the Hearings Officer reviewed by the Commission and this letter is primarily to make such a request on his behalf. In view of the "technical" aspect of this procedural dispute and in view of the potential litigation in connection with a collateral attack on the judgment, allowing the Hearings Officer's determination to be reviewed by the Commision would be the most equitable and reasonable solution to the problem.

I would appreciate it if you would contact me after your review.

Thank you for your consideration.

Very truly yours,

Roderic S. MacMillan

RSM:cph

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. Q(4) May 25, 1979, EQC Meeting

Request for Approval of Stipulation and Final Order In the Matter of Teledyne Industries, Inc., dba Teledyne Wah Chang Albany, Contest of Conditions of Air Contaminant Discharge Permit No. 22-05470.

On November 17, 1977, the Department issued ACD Permit No. 22-0547 ("Permit") to Teledyne Wah Chang Albany ("Petitioner"). Petitioner contested certain conditions of the Permit and filed a request for hearing with the Commission on December 8, 1977.

Representatives from the Department and Petitioner have met and corresponded on many occasions to resolve the outstanding issues. The issues have now been resolved without going through a contested case hearing. The proposed amendments to the Permit are contained in the attached Stipulation and Final Order.

I recommend the Commission approve the Stipulation and Final Order. Subsequent to the Commission's approval, the Department will modify the Permit to reflect these amendments using standard permit issuing procedures.

WILLIAM H. YOUNG

V. A. Kollias:mg
229-6232
May 9, 1979
Attachment: Stipulation and Final Order, ACDP No. 22-0547

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

In the Matter of TELEDYNE INDUSTRIES, INC., dba TELEDYNE WAH CHANG ALBANY, Contest of Conditions of Air Contaminant Discharge Permit No. 22-0547	)	STIPULATION AND FINAL ORDER ACDP No. 22-0547

W H E R E A S:

1. On November 17, 1977, the Department of Environmental Quality ("Department") issued to Teledyne Industries, Inc., doing business as Teledyne Wah Chang Albany ("Petitioner") air contaminant discharge permit No. 22-0547 ("Permit"), pursuant to Petitioner's application No. 0583, received on September 8, 1975.

2. On December 8, 1977, the Environmental Quality Commission ("Commission") received Petitioner's Request for Hearing contesting certain of the conditions of the Permit for certain stated reasons.

3. In an effort to compromise and settle their differences, representatives of the Petitioner and the Department have met and corresponded on numerous occasions to resolve the outstanding issues. The Petitioner and the Department having come to a meeting of the minds,

NOW, THEREFORE, pursuant to ORS 183.415(4) and in consideration of the mutual covenants and conditions contained herein, the Petitioner and the Department stipulate and agree as follows:

A. The Petitioner hereby withdraws its Request for Hearing and waives its right to a contested case hearing and judicial review thereon, and consents to the entry of an order by the Commission dismissing its Request for Hearing with prejudice.

B. The Department agrees to amend the Permit as set forth in Exhibit "A" which is attached hereto and made a part hereof, subject to approval by the Commission.

C. Regarding condition no. 5 of the Permit, it is understood between the parties that the current inspection, monitoring and data maintained by the Permittee, with which both parties are familiar and which consists of various log books, operating manuals, operating procedures, both with respect to operation of process equipment and control equipment, charts, etc., comply with the conditions imposed by permit condition no. 5.

D. Regarding Permit condition no. 6, it is understood between the parties that the emission components to be measured or required by that condition are those components identified and enumerated in Permit condition no. 2 and, further, that should the Department wish to require some tests for other materials not contained in permit condition no. 2, such will constitute a modification of the Permit, unless otherwise agreed to by Petitioner.

E. The parties recognize that although the language of Permit condition no. 3 would be amended and condition no.

19 would be deleted if the above proposals are approved by the Commission, Petitioner, nevertheless, may be subjected to administrative rules in effect which impose additional conditions, and should the Department seek to enforce upon Petitioner those rules or impose those standards contained in those rules, the matter will be determined in an appropriate forum. This will leave Petitioner free to comply with or challenge those rules should it become necessary for the Department to seek to enforce them against Petitioner. It also eliminates the implication that Petitioner would somehow waive any objection to those rules by agreeing to a permit which contains the specific language of the rule.

F. The parties hereby waive their rights to notice, hearing, appeal and judicial review of the action taken pursuant to this stipulated order.

G. The stipulations and agreements contained herein are conditional upon gaining the Commission's approval thereof and of the proposed amendments to the Permit.

TELEDYNE INDUSTRIES, INC. dba
Teledyne Wah Chang Albany

April 20, 1979

Vincent De Poix, President

DEPARTMENT OF ENVIRONMENTAL QUALITY

May ~~April~~ 7, 1979

William H. Young, Director

IT IS SO ORDERED AND APPROVED:

ENVIRONMENTAL QUALITY COMMISSION

Date: _____, 1979

_____
JOE B. RICHARDS, Chairman

Date: _____,1979.

_____
GRACE PHINNEY, Member

Date: _____,1979.

_____
JACKLYN HALLOCK, Member

Date:_____,1979.

_____
RONALD SOMERS, Member

Date:_____,1979.

_____
ALBERT DENSMORE, Member

EXHIBIT "A"

Proposed Amendments to Air Contaminant
Discharge Permit No. 22-0547
Issued to Teledyne Industries, Inc.
dba Teledyne Wah Chang Albany

I. Permit condition no. 1 is proposed to be amended to read as follows:

> "1. The permittee shall at all times maintain and operate all air contaminant generating processes and all contaminant control equipment such that the emissions of air contaminants are kept at the lowest practicable levels."

II. Permit condition no. 3 is proposed to be amended to read as follows:

> "3. The permittee shall, in conjunction with the compliance schedules hereinafter contained and those approved in writing by the Department, seek to control through the best practicable means available the odor (3 Mercapto-4 Methyl-2 Pentanone)."

III. Permit condition no. 7 is proposed to be amended as follows:

> "7. The permittee shall maintain and operate in a manner approved by the Department, emission monitoring systems for continually monitoring and recording emissions of chlorine and chloride from the sand chlorination offgas system and the pure chlorination emission control system, of sulfur dioxide from the zirconium oxide calciner emission control system, and carbon monoxide from the sand chlorination offgas and pure chlorination emission control systems. The monitoring of sulfur dioxide from the ZrO_2 calciner emission control system shall be installed and operated by June 1, 1979.

IV. Permit condition no. 10 is proposed to be amended to read as follows:

> "10. The permittee shall not increase the base level production (which is defined as the number of pounds per day of total oxide produced, averaged over a calendar month, as processed through the separations plant) over 50,000, until the permittee (a) has notified the Department in writing of the proposed increase, and (b) has demonstrated that the conditions of the permit are being met and will continue to be met at the proposed increased rate of production, provided however that the above shall not be deemed to foreclose the permittee from requesting, in connection with a requested increase in production, a change in the level of its discharge rate. If a change in discharge rate is granted then the permittee shall not be required to demonstrate that the existing permit conditions will be met at the proposed increased rate of production, but rather that the permit conditions, as modified, will be met at the proposed increased rate of production."

V. Permit condition no. 11 is proposed to be amended to read as follows:

> "11. The permittee shall not increase production capacity in any portion of the zirconium or hafnium processes which would significantly increase air contaminant emissions without prior notice to the Department, whether or not such notice would be required by law."

VI. Permit conditions no. 12 and G3 are proposed to be deleted.

VII. Permit condition no. 19 is proposed to be amended to read as follows:

> "19. If the Department determines that an upset condition is chronic and it is

practical to correct it by installing new or modified process or control procedures or equipment, a program and schedule to effectively eliminate the deficiencies causing the upset shall be submitted. Such recurring upset conditions causing emissions in excess of applicable permit limits will be subject to civil penalty or other appropriate action."

PROPOSED AMENDEMENTS TO
AIR CONTAMINANT DISCHARGE PERMIT NO. 22-0547
ISSUED TO TELEDYNE INDUSTRIES, INC.,
dba TELEDYNE WAH CHANG ALBANY
(Showing Proposed Additions and Deletions)

The following shows the additions (in underlining) and deletions (in brackets) proposed to be made to certain conditions of air contaminant discharge Permit No. 22-0547 issued to Teledyne Industries Inc., dba Teledyne Wah Chang, Albany ("Wah Chang") pursuant to the Stipulation and Final Order prepared for execution by Wah Chang, the Department of Environmental Quality and the Environmental Quality Commission.

1. The permittee shall at all times maintain and operate all air contaminant generating processes and all contaminant control equipment [at full efficiency and effectiveness,] such that the emissions of air contaminants are kept at the lowest practicable levels.

3. [By no later than June 1, 1978, the permittee shall control the "cat-box" odor (3-Mercapto-4-Methyl-2-Pentanone) emissions so as:]

   [a. Not to cause a public nuisance;]

   [b. No two measurements made beyond the plant site boundaries within a period of one (1) hour, separated by fifteen (15) minutes, are equal to or greater than a scentometer No. 0 or equivalent dilutions in areas used for residential, recreational, educational, institutional, hotel, retail sales or other similar purposes; and]

   [c. No single measurement made in all land use areas other than those cited in (b) above shall equal or be greater than a scentometer No. 2 or equivalent dilutions.]

The permittee shall, in conjunction with the compliance schedules hereinafter contained and those approved in writing by the Department, seek to control through the best practicable means available the odor (3 Mercapto-4 Methyl-2-Pentanone).

7. [By no later than June 1, 1978 the] The permittee shall [install, calibrate,] maintain and operate in a manner approved by the Department, emission monitoring systems for continually monitoring and recording emissions of chlorine and chloride from the sand chlorination [off

gas] offgas system[,] and the pure chlorination emission control system, [silicon tetrachloride refining and storage vent emission control system,] of sulfur dioxide from the zirconium oxide calciner emission control system, and carbon monoxide from the sand chlorination [off gas] offgas and pure chlorination emission control systems. The monitoring of sulfur dioxide from the ZrO_2 calciner emission control system shall be installed and operated by June 1, 1979.

10. The permittee shall [limit or control the level of] not increase the base level production [as necessary such that the limits of this permit are immediately and continuously met. (Base level production for the purpose of this permit shall be 50,000] (which is defined as the number of pounds per day of total oxide produced, averaged over a calendar month, as processed through the separations plant [.]) over 50,000, until the permittee (a) has notified the Department in writing of the proposed increase, and (b) has demonstrated that the conditions of the permit are being met and will continue to be met at the proposed increased rate of production, provided however that the above shall not be deemed to foreclose the permittee from requesting, in connection with a requested increase in production, a change in the level of its discharge rate. If a change in discharge rates is granted then the permittee shall not be required to demonstrate that the existing permit conditions will be met at the proposed increased rate of production, but rather that the permit conditions, as modified, will be met at the proposed increased rate of production."

11. The permittee shall not increase [current] production [levels] capacity in any [of those] portion of the zirconium or hafnium processes which [cause or contribute to atmospheric] would significantly increase air contaminant emissions without [specific written approval of] prior notice to the Department, whether or not such notice would be required by law.

12. Deleted. [The permittee shall not increase production capacity of any of those portions of the zirconium or hafnium processes which cause or contribute to atmospheric emissions until the ability to comply with the limits of conditions 2, 3 and 4 has been demonstrated, or until acceptable programs and time schedules for meeting these conditions have been submitted to and approved in writing by the Department.]

19. [In the event that the permittee is temporarily unable to comply with any of the provisions of this permit due

to upsets or breakdowns of equipment, the permittee shall notify the Department by telephone within one hour, or as soon as is reasonably possible, of the upset and of the steps taken or to be taken to correct the problem. Upset operation shall not continue longer than forty-eight (48) hours without approval confirmed in writing by the Department. Upset operation shall not continue during Air Pollution Alerts, Warnings, or Emergencies or at any time when the emissions present imminent and substantial danger to health.]

If the Department determines that an upset condition is chronic and it is [correctable] practical to correct it by installing new or modified process or control procedures or equipment, a program and schedule to effectively eliminate the deficiencies causing the upset conditions shall be submitted. Such re-occurring upset conditions causing emissions in excess of applicable permit limits will be subject to civil penalty or other appropriate action.

G3. Deleted. [The permittee shall:]

[a. Notify the Department in writing using a Departmental "Notice of Construction" form, and]

[b. Obtain written approval]

[before:]

[a. Constructing or installing any new source of air contaminant emissions, including air pollution control equipment, or]

[b. Modifying or altering an existing source that may significantly affect the emission of air contaminants.]

Rec'd 5/24/79
CS

NORTH PORTLAND CITIZENS COMMITTEE

NPCC

7508 N. Hereford
Portland, Oregon 97203
248-4524

May 23, 1979

Environmental Quality Commission
P.O. Box 1760
Portland, Oregon 97207

RE: Agenda Item G
Public Hearings on Proposed Rules for Airport Noise

Dear Commissioners:

North Portland Citizens Committee, Inc. has been involved not only as a complainant about aircraft noise at Portland International Airport but also as a participant on the Citizens Advisory Committee, in the PIA Masterplan. The citizens of North Portland have been subjected for many years to aircraft noise both commercial and military and have to date been totally ineffectual in obtaining any help from the governmental jurisdiction involved at PIA, the buck passing has been monumental.

Complaints about military, commercial or private aircraft noise are said to be beyond local controls and should be taken up with the appropriate federal agencies. The federal agencies are usually more interested in the industries complaints than the citizens unless a serious problem has arisen such as the recent misfortune of the United plane or local jurisdiction decides to take up the issues raised by its citizens.

The result of the above two incidents was the redoing of the take off and landing patterns which according to the little information we have been able to obtain should help not only the residents east of the airport but also those living west of the airport. NPCC has received numerous calls from residents of North Portland about aircraft noise waking them at night and disturbing their conversations during the day which seems to indicate that either the information we received is in error or some of the airlines are not complying. The complaints to NPCC have more than doubled in the last month.

During the initial stages of the PIA Masterplan it was suggested that some noise readings be taken in North Portland even though it was beyond the study area. The idea was dropped without even an honorable mention, it seems unless you live within yelling distance of an airport, noise is not relevant.

NORTH PORTLAND CITIZENS COMMITTEE
NPCC
7508 N. Hereford
Portland, Oregon 97203
248-4524

There is a need for some kind of uniform rules and an agency that will accept responsibility of coordinating all the various jurisdictions. The average citizen who is not versed in the technical language nor able to get an effective response about complaints needs to have one agency that they can contact. NPCC urges the Commission to direct their staff to go forward with the criteria for airport noise, a method for handling noise problems and to hold the necessary public hearings. It is very difficult for those unfamiliar with the appropriate language to articulate their concerns but the citizens do know what noises bother them and have trusted those in government to take into consideration their concern.

Thank you.

Sincerely,

Richard D. Harris, President
North Portland Citizens Committee

Barbara Jaeger, Vice-President
North Portland Citizens Committee

SANDY RICHARDS
MULTNOMAH COUNTY
DISTRICT 22

REPLY TO ADDRESS INDICATED:

☐ HOUSE OF REPRESENTATIVES
SALEM, OREGON 97310

☐ 19103 NE HASSALO STREET
PORTLAND, OREGON 97230

COMMITTEES
CHAIRPERSON:
AGING
MEMBER:
JUDICIARY

HOUSE OF REPRESENTATIVES
SALEM, OREGON
97310

May 24, 1979

Mr. Joe Richards
Environmental Quality Commission
522 S.W. 5th Ave.
Portland, Ore. 97207

Dear Mr. Richards:

For several months, the Environmental Quality Commission has been considering the establishment of noise controls on Oregon airports. I urge the Commission to adopt this master noise plan.

This master noise plan is the only tool that environmental agencies can use to deal with aircraft noise on the local level. Without the local authority, the agencies must, in effect, tell residents of East Multnomah County that they will continue to be disturbed by irritating, disruptive noise from airplanes which fly over established neighborhoods and that they have no official recourse to stop it.

It is my understanding that there is considerable, perhaps founded, objection to these rules also being applied to rural airport facilities. I see no need to regulate where there is no problem. However, there is a problem in the Portland metro area, and I ask your support.

Therefore, the adoption of this plan is necessary to maintain a quality of life that East Multnomah County residents, like other Oregon residents, deserve.

Sincerely,

Sandy Richards

Rep. Sandy Richards
House District 22

REMARKS OF ROBERT W. SHELBY BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

MAY 25, 1979

MR. CHAIRMAN, MEMBERS OF THE COMMISSION:

WE HAVE BEEN MONITORING WITH INTEREST THE EFFORTS OF THE DEQ TOWARD ADOPTION OF AIRPORT NOISE CONTROL NOISE REGULATIONS. IN THAT REGARD, WE HAVE BEEN FORTUNATE IN BEING ABLE TO RECEIVE THE EXCELLENT AND CONSTRUCTIVE CRITICISM/SUGGESTIONS FURNISHED FROM OREGON AERONAUTICS DIVISION, PORT OF PORTLAND ENVIRONMENTAL STAFF, FEDERAL AVIATION ADMINISTRATION, AIRCRAFT OWNERS AND PILOTS ASSOCIATION, AND MOST NOTABLY, THE AIRTRANSPORT ASSOCIATION OF AMERICA.

ONE CANNOT HELP BUT RECALL SOME REMARKS OF GOVERNOR-ELECT ATIYEH TO DELEGATES OF THE OREGON LEAGUE OF CITIES CONFERENCE IN PORTLAND LAST NOVEMBER. HE POINTED OUT THAT, TOO OFTEN, MUNICIPAL OFFICIALS FIND THEMSELVES TRYING TO "FIX SOMETHING THAT ISN'T BROKEN." WE RESPECTFULLY SUGGEST THAT THIS ~~MALADY~~ MAY ~~ALSO AFFECT~~ BE TRUE OF STATE AGENCIES. SPECIFICALLY, WE WONDER WHY STAFF IS ASKING FOR AUTHORIZATION TO HOLD PUBLIC HEARINGS ON AIRPORT NOISE WHEN PARTICIPANTS IN YOUR AIRPORT NOISE WORKSHOPS DID NOT SUBSTANTIATE REASONS FOR ACTION OF THE MAGNITUDE CONSIDERED HERE TODAY.

LEST WE PROJECT AN IMAGE OF BEING INSENSITIVE TO PROBLEMS INVOLVING AIRCRAFT NOISE, LET ME CLARIFY THAT OUR ASSOCIATION HAS LONG ADVOCATED DEALING WITH AIRCRAFT NOISE PROBLEMS WHEN SUCH REALLY EXIST. RESULTS OF YOUR WORKSHOPS, HOWEVER, TEND TO SUGGEST THAT THE PROBLEM YOU ARE ATTEMPTING TO DEAL WITH IS, IN FACT, LOCAL IN NATURE AND NOT STATEWIDE. YOU ARE REACTING TO A GROUP IN THE PORTLAND INTERNATIONAL AIRPORT VICINITY AND WE ASK, WHY NOT SEE WHAT IS AND CAN BE DONE IN THAT LOCAL AREA TO ADDRESS A SPECIFIC PROBLEM RATHER THAN THE "BROAD BRUSH" APPROACH.

MAY WE SUGGEST YOU JOIN FORCES WITH OTHER CONCERNED AGENCIES TO EFFECTUATE MORE BASIC SOLUTIONS. SPECIFICALLY, HELP THE LAND CONSERVATION AND DEVELOPMENT COMMISSION ASSURE THAT AIRPORT SPONSORS WHO, IN MANY INSTANCES, CANNOT CONTROL THE OFF-AIRPORT LAND USES IN THEIR ENVIRONS GET THE ZONING PROTECTION THEY DESERVE. COMPREHENSIVE PLANS MUST BE REQUIRED TO INCLUDE AIRPORT COMPATIBLE ZONING IF AIRPORT INCOMPATIBLE USES ARE TO BE AVOIDED. POLITICAL MOTIVATION TO DILUTE EXISTING AIRPORT ZONING MUST BE COUNTERED AND PREVENTED. OUR ASSOCIATION IS INTERESTED IN SEEING AMENDMENTS TO THE BUILDING CODE WHICH WOULD REQUIRE SOUNDPROOFING OF NEW CONSTRUCTION IN THE AIRPORT ENVIRONS -- HELP US. WE CAN PROVIDE THE SPECIFICATIONS, BUT WE NEED YOU AS A "PRIME MOVER".

UNCOMPENSATED EFFORT / CONCEPT LAND BANKING ADAP

WE SUPPORT THE OREGON TRANSPORTATION COMMISSION'S RESOLUTION CALLING FOR AN APPROPRIATE ANALYSIS AND REPORT OF THE FISCAL IMPACT OF YOUR NOISE PROPOSAL. WE EARNESTLY BELIEVE SUCH A REPORT WILL SHOW A MONUMENTAL COST IMPACT WHICH CAN BE VALIDATED BY EXAMINING THE EXPERIENCES OF THE STATE OF CALIFORNIA IN THE AREA OF AIRPORT LAND ACQUISITION, CONTINUING CITIZEN LITIGATION, FEDERAL PREEMPTION DISPUTES, MONITORING PROGRAMS, AND ON AND ON.

THIS CONCERNS OUR MEMBERS, AND RIGHTFULLY SO. WE HAVE FOUND VERY FEW OF YOUR PROPOSED REMEDIES ELIGIBLE FOR FUNDING EITHER UNDER THE FEDERAL AIRPORT DEVELOPMENT AGENCY PROGRAM OR THE STATE OF OREGON AID TO MUNICIPALITIES PROGRAM. IN SHORT, YOU ARE IMPLYING THAT THE AIRPORT SPONSORS, THE AIRCRAFT OWNERS, AND THE TAX PAYERS SHOULD SHOULDER THE ENTIRE BURDEN. WE FIND THIS UNACCEPTABLE.

WE ASK YOU TO RECONSIDER THE ACTUAL NEEDS FOR SO ENCOMPASSING A PROGRAM. WE ASK YOU TO REMEMBER THAT THE AIRCRAFT IS THE SOURCE OF THE NOISE, NOT THE AIRPORT, AND THAT NUMEROUS BILLS NOW IN CONGRESS ARE AIMED SPECIFICALLY AT ACHIEVING COMPLIANCE WITH PART 36 OF THE FEDERAL AVIATION REGULATIONS REGARDING SOURCE NOISE. YOUR PREVIOUS PETITION, TO WHICH YOU ARE REACTING, IMPLIES THAT PORTLAND INTERNATIONAL AIRPORT HAS A PROBLEM. EXAMINE WHAT THEY HAVE ALREADY DONE, ARE DOING, AND PLAN TO DO; HELP THEM ACHIEVE THEIR GOALS. LOOK TO THE AERONAUTICS DIVISION, THE FEDERAL AVIATION ADMINISTRATION, THE EXTREMELY CAPABLE PORT STAFF, AND OUR ASSOCIATION TO ASSIST YOU. LET'S WORK ON ANY PROBLEMS WHERE THEY EXIST -- DON'T EXTEND CONTROLS TO EVERY AIR CARRIER SERVED FACILITY UNLESS THERE HAS BEEN A DEMONSTRATED NEED. WE REITERATE YOUR "WORK SHOPS" DID NOT DISCLOSE THAT NEED.

IN CLOSING, LET ME RESTATE OUR ON-GOING CONCERN FOR COMPATIBILITY BETWEEN AIRPORT AND AIRPORT NEIGHBORS. HELP US HELP YOU. DO NOT LEVY REGULATIONS WHICH PRODUCE ENORMOUS FISCAL IMPACT UPON LOCAL COMMUNITIES, YET SCARCELY TOUCH THE SOURCE OF THE ENVISIONED PROBLEM. SET THESE DRAFT RULES ASIDE PENDING THE FINAL ACTION ON THE FAA'S NOTICE OF PROPOSED RULE-MAKING ON A SURPRISINGLY SIMILAR PROPOSAL AND THE OUTCOME OF THE VARIOUS NOISE BILLS CURRENTLY BEFORE CONGRESS. THANK YOU VERY MUCH.

BS:er/THb1

G

OREGON AIRPORT MANAGEMENT ASSOCIATION

Reply to:

4800 Thunderbird St.
Eugene, Oregon 97404

May 23, 1979

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

Dear Mr. Young:

We have been monitoring with intense interest the efforts of the DEQ toward adoption of Airport Noise Control Regulations. In this regard, we have been fortunate in being able to receive the excellent constructive technical criticisms/ suggestions furnished you from Oregon Aeronautics Division, Port of Portland Environmental Staff, Federal Aviation Administration, Aircraft Owners and Pilots Association and most notebly the Air Transport Association of America.

One cannot help but recall the remarks of Governor-elect Atiyeh to delegates of the Oregon League of Cities Conference in Portland last November. He pointed out that too often municipal officials find themselves trying to "fix something that isn't broken". We respectfully suggest that this may also be true of state agencies. Specifically, we wonder why staff is asking for authorization to hold public hearings on aircraft noise when participants in your Airport Noise Workshops did not substantiate reason for action of the magnitude being proposed.

Lest we project an image of being insensative to problems involving aircraft noise, let me clarify that our Association has long advocated dealing with aircraft noise problems when such really exist. Results of your workshops, however, tend to suggest that the problem you are attempting to deal with is, in fact, local in nature and not state wide. You are reacting to a group in the Portland International Airport vicinity and we ask why not see what is and can be done in that localized area to address a specific problem rather than the proposed "broad brush" approach.

May we suggest that you join forces with other concerned agencies to effectuate more basic solutions. Specifically, help the Land Conservation and Development Commission assure that airport sponsors who, in many localities, cannot control the off-airport land uses in their environs get the zoning protection they deserve. Comprehensive plans must be required to include airport compatible zoning if airport incompatible uses are to be avoided. Political motivation to dilute existing airport zoning must be countered and prevented. A concentrated effort must be made to revise the concept of land banking being financed from the federal Airport Development Aid Program. Our Association is also interested in seeing amendments to the Building Code which would require sound proofing of new construction in the airport environs. Help us assure that those who insist on developing near airports share in the responsibility for alleviating effects of aircraft noise. We can provide the specifications, but we need you as a "prime mover".

We support the Oregon Transportation Commission's resolution calling for an appropriate

analysis and report of the fiscal impact of your noise proposal. We earnestly believe such a report will show a monumental cost impact which can be authenticated by examining the experiences in the State of California in the areas of airport land acquisition, continuing citizen litigation, federal preemption disputes, monitoring programs and on and on.

This concerns our members and rightly so. We have found very few of your proposed remedies eligible for funding under either the Federal Airport Development Aid Program or the State of Oregon's Aid to Municipalities Program. In short, you are implying that the airport sponsors, the aircraft owners and the tax payers will shoulder the entire cost burden of this program. We find this unacceptable.

We ask you to reconsider the actual need for so encompassing a program. We ask you to remember that the aircraft is the source of the noise, not the airport and that numerous bills now in Congress are aimed specifically at achieving aircraft compliance with Part 36 of the Federal Aviation Regulations regarding source noise. The petition to which you are responding implies Portland International has a problem. Examine what they have already done, are doing, and plan to do to alleviate this situation; help them achieve their goals; look to the Aeronautics Division, the FAA, the extremely capable Port staff and our Association to assist you. Let's work the problems together where they exist. Do not extend controls to every air carrier served facility unless there has been a demonstrated need. And, we reiterate,your work shops did not disclose that need.

In closing, let me restate our ongoing concern for compatability between airports and airport neighbors. Help us help you. Do not levy regulations which produce enormous fiscal impact on local communities, yet scarcely touch the source of the envisioned problem. Set your draft regulations aside, pending the final action on the FAA's Notice of Proposed Rule Making, on a surprisingly similar proposal and the outcome of the various Noise Bills currently before Congress.

Sincerely Yours,

Robert Shelby, A.A.E.
President

rws/ss

TESTIMONY

before the ENVIRONMENTAL QUALITY COMMISSION

KERANS/FADELEY PETITION

May 25, 1979

It is difficult for us to understand why the staff report discussing our petition deals with offsets and the EPA Offset Interpretive Ruling. Our petition is related to the SIP and the alterations that must be made to the SIP now that increased field burning acreage will be allowed. Although the intention of both of offset policy and the SIP are the same - - to achieve and maintain clean air - - they use different techniques for achieving that goal.

The staff report discusses the offset program on page two. The staff report analyzes growth margins vs. the offset provisions of the Interpretive Rule. The staff report continues to discuss the petition in view of offsets and the EPA Interpretive Rule. The report classifies the Interpretive Rule as applicable to the non-attainment areas in the state, addresses growth management, quantifies those sources which are applicable under the Interpretive Rule, and reviews which major sources must provide for greater than one-for-one offset under the Ruling. This however, is beside the point of our petition.

Our petition does not deal with offsets, but with the action of the state in revising its SIP in light of new pollution allocations. That is very different than the offset program for new major stationary sources which is addressed by the EPA Offset Interpretive Ruling. The SIP revisions are covered

under different sections of the Clean Air Act, have different federal guidelines, and different federal regulations.

Let me explain some of the federal regulations and guidelines which deal with SIP revisions. A about a month and a half ago, Mr. Dave Hawkins, assistant administrator for air, noise, and radiation at EPA issued the "General Preamble for Proposed Rule-making on Approval of Plan Revisions for Non-Attainment Areas." 44 FR 20372. This document will serve as the major consideration guiding EPA in evaluating SIP's for non-attainment areas. These are the guidelines that must be used when revising Oregon's SIP to reflect a field burning acreage of 250,000 acres. Listed in that document are the "basic requirements" for revised SIP's. Requirements for all Part D SIP's will include:

> -Require[ing] reasonable further progress in the period before attainment, including regular, consistnat reductions sufficient to assure attainment by the required date. (emphasis added)
>
> -Include[ing] an accurate, current inventory of emissions that have an impact on the nonattainment area, and provide for annual updates to indicate emissions growth and progress in reducing emissions from existing sources. (emphasis added)
>
> -expressly quantify the emissions growth allowance, if any, that will be allowed to result from new major sources or major modifications of existing sources, which may not be so large as to jeopardize reasonable further progress or attainment by the required date. (emphasis added)
>
> 44 FR 20375

The SIP revision must therefore contain decreases in pollution emissions entering the Portland airshed or the Eugene/Springfield airshed - - the two non-attainment areas in Oregon.

A misconception by the staff has lead them to beleive that only the EPA Interpretive Ruling applies. In the

staff report, they state that "the growth management strategy can either provde a built in growth margin or provide an offset provision similar to the current interpretive ruling with the exception that growth from minor sources must be taken into account when evaluating the offset requirement of major sources." But growth from such sources must also be taken into account when revising SIP's , and that is the subject of our petition. Growth from both minor and major sources must be taken into consideration when revising the SIP. The DEQ staff ignores that all all cources must be evaluated and compensated when the SIP is revised.

This requirement flows from the language in the Clean Air Act that requires that "annual incremental reductions in emissions" must be acheived in non-attainment areas (Section 171, CAA) In a memo published in the Federal Register on May 19, 1978 the EPA administrator, Mr. Douglas Costle, stated the criteria for approval of the 1979 SIP revisions:

> The growth rates established by states for mobile sources and new minor stationary sources should also be specified, and in combination with the growth associated with major new or modified stationary sources will be accepted so long as they do not jeopardize the reasonable further progress test and attainment by the prescribed date. 43 FR 21675. (emphasis added)

It is clear that growth of both major and minor emissions must be subordinate to the overall progress toward attainment. In criteria 6 of that memo "reasonable further progress is defined as annual incremental

> reductions in total emissions (emissions from new as well as existing sources) to provide for attainment by the prescribed date. 43 FR 21675 (emphasis added)

Clearly the position of the staff in trying to identify "sources and operations that might be exempt (from the Clean Air Act and

supporting regulations is futile. (Staff memo, May 18, 1979, page 2). And the staff position that growth from minor souces need only be taken into account when evaluating the offset requirements of major sources is wrong. Actual emissions from all sources must be included in the SIP revision, regardless of the size of the impact on the non-attainment status. These inventories and santions may also apply to pollution sources outside the actual attainment area.

> [First] because air pollution emissions are transported from one area to another, the sources that cause or contribute to a violation, or affect a clean locality, may be in different locations from the violation or clean locatity itself. Controls will therefore often have to apply to sources outside the area that the controls are intended to protect. 43 FR 40413.

Our petition addresses itself to the types of things that we see necessary if the state SIP is to comply with the EPA regulations and the Clean Air Act with field burning acreage increased to 250,000 acres. It is clear to us that allowing pollution emissions to increase or even to decrease more slowly in non-attainment areas due to the increased field burning acreage is inexcusable in light of federal law. And even in attainment areas, this increased field burning will severely limit growth in the area, will require emission decreases by current emitters, and will possibly result in reclassification of the mid-Willamette Valley as a non-attainment area.

In the attainment areas of the Valley, pollution must be decreased in order to "prevent significant deterioriation"(Section 160(4) CAA) with the increased field burning pollutants. This is also a serious concern. We agree with the staff that the increased field burning will "use a significant portation of the PSD

increments over a broad area of the Willamette Valley and could even exceed allowable limits (Staff Report, May 18, 1979, page 4). This emphasizes the importance of starting the deliberation process now, and not delaying to identify possible reductions in that region.

This thesis was expressed by Congressman Rogers from Florida as he carried the technial admendments to the Clean Air Act on the House Floor on November 1, 1977:

> It would be a perversion of clear congressional intent to construe part D [of the Clean Air Act] to authorize relaxation or delay of emission limits for particular sources. The added time for attainment of the national ambient air qulaity standards was provided, if necessary, because of the need to tighten emission limits or bring previously uncontrolled sources under control. Delays or relaxation of emission limits were not generally authorized or intended under Part D.

Congressman Rogers went on to say:

> Generally proposed plan revision under part D should add, not substitute, more stringent emission limits for sources already subject to regulation.

The disagreement between the staff position and our position center around two issues: 1. the fairness of imposing strigent curtailments in one part of the Valley and not in other parts of the Valley, and 2. Wither or not smoke management and dispersion techniques are credits against the increased emissions of field burning.

I would direct your attention to page 3 of the staff report. In discussing particulate offsets the report states:

> [since] emission reductions from other sources would likely give much greater air quality benefits than equivalent emission reductions from field burning due to the closer proximity of some sources to the non-attainment area...

That is exactly the reasoning behind this petition, and our worst fears have been confirmed. Even when confronted with our petition, the staff position is that emission reductions should best be located nearer the non-attainment area - - that industry in the south valley only should be affected.

We do not believe that credit can be taken for smoke managment-dispersion techniques. Section 123 of the Clean Air Act states:

> The degree of emission limitation required for control of any air pollutant under an appliable implementation plan under this title shall not be affected in any manner by... (2) any other dispersion technique. The preceeding sentence shall not apply with respect to stack heights in existance before the date of enactment of the Clean Air Amendments of 1970 of dispersion techniques implemented before such date.

The Department maintains that because a smoke management plan was in existance before 1970, that smoke managment and dispersion techniques may be used as credit to offset the impacts of field burning. We disagree. The dispersion techniques currently employed to control smoke are not the techniques used in 1970. The Commission had substantially revised the smoke managment program since 1970; most notably techniques such as strip lighting, back burning, and moisture controls have been added. We beleive these substantial alterations to the smoke managment plan have changed its character to the extent that the pre-1970 exemption contained in section 123 no longer applies.

In our petition we are asking for two policies to be endoresed:

1. That in fairness, the emission compensations required by the increase in field burning acreage should be spread thoughout the Willamette Valley.
2. That the Commission direct the staff to start finding those emission compensations on a firm schedule which should commence as soon as possible.

If you agree with these policies, then our petition has been sucessful, and we are glad to accept your commitments without a hearing or moving into rule-making. However, should you disagree with our policies, we would ask that you schedule a public hearing in order to hear more of the public address these concerns.

Port of Portland

Box 3529 Portland, OR 97208
503/231-5000
TWX:910-464-6151

Offices also in Hong Kong, Manila, Seoul,
Singapore, Taipei, Tokyo, Sydney,
Chicago, Pasco, Washington D.C.

May 25, 1979

Joe B. Richards, Chairman
Grace S. Phinney, Vice-Chairman
Jacklyn S. Hallock
Ronald M. Somers
Albert H. Densmore

Environmental Quality Commission
P.O. Box 1760
Portland, OR 97207

TESTIMONY ON REQUEST FOR AUTHORIZATION TO HOLD PUBLIC HEARINGS
ON PROPOSED NOISE CONTROL REGULATIONS FOR AIRPORTS

The Port of Portland believes that before any public hearings on the proposed rule for airport/aircraft noise are authorized, modifications should be made. We believe language revision is necessary so that the responsibilities of each level of government are clear. This will allow the public to understand what we expect from the rule. Without revisions, the Port would have to oppose the rule. The most critical points we recommend be revised are:

Item 1

The Statement of Purpose should be revised to specifically include the prevention of new noise sensitive uses from locating near airports. The rule, if implemented today, does not prevent new noise sensitive uses from being constructed in noise impact areas. The rule does not address how DEQ will prevent new construction by public or private actions in areas it deems necessary to protect the health, safety and welfare of residents. The Commission is requested to make clear in its Statement of Purpose that it intends to prevent encroachment of noise sensitive land uses in the noise impact boundary.

Item 2

The provision in the Statement of Purpose of the rule "the principal goal of an airport proprietor who has the responsibility for developing an Airport Noise Abatement Program under this rule should be to shrink the noise contours which reflect aircraft operations, and to

address in an appropriate manner the conflicts which occur within the higher noise contours" is in conflict with adopted national policy as to the role of the airport proprietors in noise abatement.

The U.S. Department of Transportion Aviation Noise Abatement Policy, November 18, 1976, stipulates:

"Authorities and Responsibilities Under the Policy

- The Federal Government has the authority and responsibility to control aircraft noise by the regulation of source emissions, by flight operational procedures, and by management of the air traffic control system and navigable airspace in ways that minimize noise impact on residential areas, consistent with the highest standards of safety. The federal government also provides financial and technical assistance to airport proprietors for noise reduction planning and abatement activities and, working with the private sector, conducts continuing research into noise abatement technology.

- Airport Proprietors are primarily responsible for planning and implementing action designed to reduce the effect of noise on residents of the surrounding area. Such actions include optimal site location, improvements in airport design, noise abatement ground procedures, land acquisition, and restrictions on airport use that do not unjustly discriminate against any user, impede the federal interest in safety and management of the air navigation system, or unreasonably interfere with interstate or foreign commerce.

- State and Local Governments and Planning Agencies must provide for land use planning and development, zoning, and housing regulation that will limit the uses of land near airports to purposes compatible with airport operations.

- The Air Carriers are responsible for retirement, replacement, or retrofit of older jets that do not meet federal noise level standards, and for scheduling and flying airplanes in a way that minimizes the impact of noise on people.

- Air Travelers and Shippers generally should bear the cost of noise reduction, consistent with established federal economic and environmental policy that the adverse environmental consequences of a service or product should be reflected in its price.

o Residents and Prospective Residents in areas surrounding airports should seek to understand the noise problem and what steps can be taken to minimize its effect on people. Individual and community responses to aircraft noise differ substantially and, for some individuals, a reduced level of noise may not eliminate the annoyance or irritation. Prospective residents of areas impacted by airport noise thus should be aware of the effect of noise on their quality of life and act accordingly."

Item 3

The language throughout the rule indicates a shift of responsibility for land use planning from local units of government to an airport proprietor.

If this is not the intent of the rule, the language should be revised.

Local government must retain their direct responsibility to prevent new noise sensitive uses from locating near airports and to require appropriate acoustical treatment in new construction.

Item 4

The language of the rule should be revised to explicitly indicate that Noise Sensitive Use Deviations are guidelines and that existing guidelines developed by the Federal Aviation Administration, U.S. Department of Housing and Urban Development and Oregon State Aeronautics Division must also be considered. We know of no agreement by the other agencies to the DEQ staff guidelines.

Recommended Language

Following is specific language we recommend to address the four points we have identified. These would replace the Statement of Purpose, provisions for Land Use and Development Control Plans and Noise Sensitive Use Deviations in the existing rule.

Section 35-045

1. Statement of Purpose: The Commission finds that noise pollution caused by Oregon airports may threaten the public health and welfare of citizens residing in the vicinity of airports. To mitigate airport noise impacts a coordinated state-wide program is desirable to ensure that effective Airport Noise Abatement Programs are implemented. An abatement program includes measures to prevent the

creation of new noise impacts or the expansion of existing noise impacts to the extent necessary and practicable [.] and to prevent the location of new noise sensitive uses in areas of significant noise impact.

Each abatement program developed by the airport proprietor will primarily focus on airport operational measures [to prevent increased and, to lessen existing noise levels.] to reduce the areas of significant noise impacts. The program will also analyze the effects of aircraft noise emission regulations [and land use controls].

[The principal goal of an airport proprietor who has responsibility for developing an Airport Noise Abatement Program under this rule should be to shrink the noise contours which reflect aircraft operations, and to address in an appropriate manner the conflicts which occur within the higher noise contours.]

Each noise control program developed by local jurisdictions shall focus on the prevention of new noise sensitive uses in areas of noise impacts through land use planning measures.

The Airport Noise Criterion is established to define a perimeter for study and for noise sensitive use planning purposes. It is recognized that [some or many means of addressing aircraft/airport noise at the Airport Noise Criterion level may be beyond the control of the airport proprietor.] no single agency has responsibility for all aspects of noise abatement programs. It is therefore necessary that abatement programs be developed with the cooperation of federal, state and local governments and the airport proprietor to ensure that all potential noise abatement measures are fully evaluated.

This rule is designed to cause the airport proprietor, aircraft operator and government at all levels to cooperate to prevent and diminish noise and its impacts. These ends may be accomplished by encouraging compatible land uses and controlling and reducing the airport/aircraft noise impacts on communities in the vicinity of airports to acceptable levels.

Section 35-045

(5)(c) A proposed land use and development control plan [, and evidence of good faith efforts by the proprietor to obtain its approval, to] shall be prepared by each local jurisdiction within the noise impact boundary. This plan shall protect the area within the airport noise impact boundary from encroachment by non-compatible noise sensitive uses and to resolve conflicts with existing unprotected noise

sensitive uses within the boundary. The affected [local government] airport proprietor shall have an opportunity to participate in the development of the plan, and any written comments offered by the [local government] proprietor shall be made available to the Commission. Appropriate actions under the plan may include:

(List unchanged)

Section 35-045

(6) Noise Sensitive Use Deviations. The airport noise criterion is designed to provide adequate protection of noise sensitive uses based upon out-of-doors airport noise levels. Certain noise sensitive use classes may be acceptable within the airport Noise Impact Boundary provided that all necessary and practicable measures approved by the Commission are taken to adequately protect interior activities. Guidelines to be used to determine acceptable uses within the airport noise impact boundary include: Airport-Land Use Compatibility Planning (1977, AC 150/5050-6) published by the U.S. Department of Transportation; Noise Assessment Guidelines (TE/NA-171, August 1971) published by the U.S. Department of Housing and Urban Development; Airport Compatibility Planning (1978) published by the Oregon Department of Transportation, Aeronautics Division; and Oregon Department of Environmental Quality guidelines as defined in Sections (a)-(f) below. The appropriateness of noise sensitive uses should be evaluated on a case-by-case basis.

Oregon Department of Environmental Quality guidelines for acceptable [the following] noise sensitive use classes which may be acceptable within the airport Noise Impact Boundary are as follows:

(Section (a) through (f) unchanged)

Clifford Hudsick will represent the Port at your meeting Friday, May 25, 1979, and be available to answer any questions you may have. Port staff will cooperate in further development of revisions in line with our comments.

Lloyd Anderson
Executive Director

Attachment

cc: Fred Klabo, ODOT
Paul Burkett, State Aeronautics Division
Lee Camphouse, United Airlines
Robert Brown, FAA
Sam Sherer, United Airlines
PL48E-R

MULTNOMAH COUNTY OREGON

DIVISION OF PLANNING AND DEVELOPMENT
2115 S.E. MORRISON
PORTLAND, OREGON 97214
(503) 248-3591

COUNTY COMMISSIONERS
DON CLARK, Chairman
DAN MOSEE
EARL BLUMENAUER
DENNIS BUCHANAN
GLADYS McCOY

Testimony by Multnomah County before the Oregon Environmental Quality Commission on Noise Control Rules - Richard Daniels

In November, 1978 the Multnomah County Planning Commission and Board of County Commissioners adopted a resolution requesting the Environmental Quality Commission to develop an approach to the Airport/Aircraft noise problem. Specifically, the resolution requested:

1. That the Department of Environemntal Quality coordinate the development of a noise abatement program for Portland International Airport;

2. That a common set of land use guidelines be developed relating to aircraft noise exposure, and

3. That airport operational modifications be included as a part of noise abatement program.

It is our conclusion that the noise control rule proposed by DEQ establishes a process which will satisfy the Board of Commissioner's request.

The County has just completed a Community Plan for the unincorporated area east and south of the airport. During this project, as well as throughout the two year development of the PIA Master Plan, aircraft noise has been identified by citizens as a problem affecting their quality of life. In response to their concerns, residential areas of significant and severe noise impacts were designated for future industrial use.

The proper way of addressing the problem is through a coordinated program involving local governments (Zoning and Land Use Planning) Airport Proprietor (noise generator), State Commerce Department (Building Codes/ Noise Insulation) State Real Estate Division (notice to buyers), Aernautics Division of the State Department of Transportation (Airport development assistance) and Federal Aviation Administration (Noise Control Legislation, Air Traffic Control). The logical coordinator of such an approach is DEQ. The proposed rule approaches the problem in such a manner and we support its adoption.

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

In the Matter of Portland International Airport Master Plan.	)))	RESOLUTION PC 16-78

WHEREAS, the Multnomah County Planning Commission, at their regular meeting of November 14, 1978, did hold a public hearing on the Portland International Airport Master Plan, and on November 16, 1978, voted unanimously in favor of submitting this resolution for Board of County Commissioners approval; and

WHEREAS, Multnomah County is participating in a cooperative planning effort with the Port of Portland, the City of Portland and CRAG for Portland International Airport and the Vicinity Area around the airport; and

WHEREAS, recommended plans for PIA and the Vicinity Area around the airport have now been prepared and approved and endorsed, respectively, by the Port of Portland Commission; and

WHEREAS, it is now desirable to provide certain statements of intent from the participating agencies in the PIA Master Plan to meet Federal Aviation Administration requirements and to assure the timely and orderly development of PIA; and

WHEREAS, the Multnomah County Comprehensive Framework Plan Policy #13 Air and Water Quality and Noise Levels requires a statement of compliance with State noise level regulations prior to legislative action, (such as that required for adoption of the Vicinity Area Sketch Plan) and to date no such statement of compliance has been received by the County; and

WHEREAS, it is in the public interest to discourage the development of noise sensitive uses in "Significant and Severe Noise Impact Areas" (L_{dn} 65) and other land use controls, regulatory and operational actions may be required for "Moderate Noise Impact Areas" (L_{dn} 55-65); now, therefore, be it

RESOLVED, that it is the intent of Multnomah County to abide by the Air, Water and Noise Level Policy #13 of the County Comprehensive Framework Plan in the preparation and revision of the Cully-Parkrose Community Plan and other land use plans for the unincorporated portion of the PIA Vicinity Area; and

RESOLVED, that it is the intent of Multnomah County to work with the Port of Portland and the Oregon Department of Environmental Quality to establish a common set of land use guidelines relating to aircraft noise exposure; and

RESOLVED, that it is the intent of the Draft Cully-Parkrose Community Plan to discourage the development of noise sensitive uses in "Severe and Significant Noise Impact Areas" (L_{dn} 65 and Higher).

RESOLVED, that Multnomah County request that D.E.Q. coordinate the preparation of a noise abatement program for Portland International Airport and its vicinity, and

RESOLVED, that it is the intent of Multnomah County to adopt by Spring, 1979, an updated height limitation ordinance for the area around Portland International Airport; and

RESOLVED, that it is the intent of Multnomah County to support the continuation of the golf courses near Portland International Airport through the use of an "Urban Future" land use classification and large lot zoning.

RESOLVED, that Multnomah County requests the Port of Portland to work with and provide input to the ongoing Multnomah County Comprehensive Planning Process; and

RESOLVED, that Multnomah County will include the Airport Vicinity Area Plan as input into the County Comprehensive Plan recognizing that it was developed through a public participation process coincident with and in collaboration with the County Comprehensive Plan Process; and

RESOLVED, that Multnomah County will work toward the adoption of a land use plan for the Vicinity Area around Portland International Airport as part of its Comprehensive Plan in accordance with the attached Multnomah County Comprehensive Plan tentative adoption schedule; and

RESOLVED, that Multnomah County approves the Airport Development Plan for Portland International Airport as approved by the Port of Portland Commission on November 8, 1978; and

RESOLVED, that Multnomah County requests that the Port of Portland continue to work with D.E.Q. on airport operational modifications as part of an Environmental Quality Commission approved Noise Abatement Program; and

RESOLVED, that Multnomah County approves the Airport Access and Parking Plan for the Portland International Airport as approved by the Port of Portland Commission on November 8, 1978, with the inclusion of the following statement:

> "One year after the opening of I-205 and Airport Way, a traffic analysis, including, but not limited to: (1) traffic volumes on relevant streets, (2) access needs of currently undeveloped land parcels, and (3) traffic safety (4) trip patterns and developed parcels, should be undertaken to determine whether Lombard Street between Airport Way and Marine Drive should remain open. This review should include Multnomah County, City of Portland, Port of Portland and the Oregon Department of Transportation."

November 30, 1978

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Donald Clark
Chairman

APPROVED AS TO FORM:

JOHN B. LEAHY
County Counsel

Laurence Kressel
Deputy Counsel
Multnomah County

JAMES A. REDDEN
ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

PORTLAND DIVISION
500 Pacific Building
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May 18, 1979

Mr. Joe B. Richards, Chairman
Environmental Quality Commission
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Eugene, Oregon 97401

Grace S. Phinney, Ph.D., Member
Environmental Quality Commission
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% Ted Hallock, Inc.
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Mr. Albert Densmore, Member
Medford City Hall
411 West 8th
Medford, Oregon 97501

Re: Teledyne Industries, Inc., dba Teledyne Wah Chang Albany, Contest of Conditions of Air Contaminant Discharge Permit No. 22-0547 Stipulation and Proposed Final Order

Dear Commissioners:

Following application, notice and public hearing, and with policy guidance from the Environmental Quality Commission, the Department of Environmental Quality issued air contaminant discharge permit no. 22-0547 ("the permit") to Teledyne Industries, Inc., doing business as Teledyne Wah Chang Albany ("Wah Chang") on November 17, 1977.

On December 8, 1977, Wah Chang filed a Request for Hearing contesting the permit conditions numbered 1, 2, 3, 5, 6, 7, 10, 11, 12, 19, 21 and G3 for specific reasons stated therein. Attached hereto as Exhibit "A" is a copy of Wah Chang's Request for Hearing. Attached hereto marked Exhibit "B" is a copy of the above specified contested conditions of the permit as originally issued.

With the express approval of the DEQ staff, the undersigned has negotiated with Wah Chang, through its attorneys,

a settlement of the subject contested case. The settlement has been reduced to writing in the form of a Stipulation and Final Order. It was executed by Vincent de Poix, President of Wah Chang on April 20, 1979. It is being submitted to the Commission for approval and execution. A copy of the Stipulation and Final Order is attached hereto marked Exhibit "C".

In the following paragraphs I will briefly discuss how the parties have agreed to deal with Wah Chang's objections and the Department's reasoning in support of the proposal.

Permit Condition 1 - Wah Chang objected to this condition on the ground that it is impossible at all times to operate and maintain their air contaminant control equipment "at full efficiency and effectiveness." The Department agreed and therefore the parties propose to delete the above quoted language. See Exhibit "D", Proposed Amendments to Air Contaminant Discharge Permit No. 22-0547 issued to Teledyne Industries, Inc., dba Teledyne Wah Chang Albany (showing Proposed Additions and Deletions). The DEQ believes that the remaining language requiring that the control equipment be maintained and operated such that "the emission of air contaminants are kept at the lowest practicable levels" sets a stringent standard that is not impossible to achieve.

Permit Condition 2 - Wah Chang objected on the ground that the emission limitations set in this condition purported to be immediately applicable although some of the sources were on compliance schedules that had not yet been completed. Therefore, for those sources which were in the process of completing compliance schedules, Wah Chang wanted to be issued an express variance from the applicable emission limitations. I informed Wah Chang's attorneys that there is a formal variance proceedure available in air quality matters. ORS 468.345. I indicated that the issuance of a permit does not constitute a formal variance. However, where an emission limit is established in a permit as immediately in effect but is also subject to a compliance schedule, it is the Department's policy not to enforce the emission limit during the period in which the schedule is followed. In other words, although there is no formal de jure variance, ORS 468.345, there is a practical de facto variance prior to the final date set in the schedule as long as the schedule is met. Wah Chang has accepted that interpretation in dropping its objection to Condition Number 2.

Of course, the above interpretation would not apply to Conditions 2.b.1) and 2), 2.d.2), or 2.e.2) and 3) because each imposes a more stringent limitation beginning on the

final date of the compliance schedule. In other words, the "variances" are already expressly written in those standards.

Permit Condition 3 - Wah Chang objected to the odor standards set forth in this condition on numerous substantive grounds. Wah Chang proposed to substitute new language requiring Wah Chang to "seek to control through the best practicable means available the odor . . . ."

The Department has accepted Wah Chang's proposal. Although the odor standards would be removed from the permit, nonetheless, they would remain in full force and effect. The reason being that those standards are taken directly from the Mid-Willamette Valley Air Pollution Authority ("MWVAPA") Rules §31-020. Although MWVAPA dissolved several years ago, those rules continue in effect to this day pursuant to statute. ORS 468.560(2).

In effect, the parties have agreed to postpone the resolution of their hypothetical disagreement regarding the full scope and effect of the MWVAPA odor rules until the matter is transformed into a concrete controversy i.e., an actual alleged violation. See Exhibit "C", Stipulation and Final Order ¶E.

Permit Condition 5 - Wah Chang objected to the inspection and monitoring requirements specified in this condition as being vague and in violation of due process. Wah Chang has agreed to drop its objection on the understanding that current monitoring practices comply with the condition. Exhibit "C", Stipulation and Final Order ¶C.

Permit Condition 6 - Wah Chang objected to the source testing requirements on the grounds that they are vague and violate due process. Wah Chang agreed to drop its objections on the understanding "that the emission components to be measured or required by that condition are those components identified and enumerated in Permit Condition No. 2 and, further, that should the Department wish to require some tests for other materials not contained in Permit Condition No. 2, such will constitute a modification of the Permit, unless otherwise agreed to by Petitioner". Exhibit "C", Stipulation and Final Order ¶D.

Permit Condition 7 - Wah Chang objected to this condition on the grounds that the required monitoring system has already been approved and that the requirement for future approval violates due process. The Department proposed an amendment that would recognize that part of the monitoring system already has been approved and installed and that part has not, and giving until June 1, 1979, to install the latter. See Exhibit D.

Permit Condition 10 - Wah Chang objected to this provision, which limits allowable production to not more than 50,000 pounds per day, as beyond the State's authority. An absolute limit of 50,000 pounds, without any regard to environmental considerations, would be of doubtful validity. In lieu of an absolute 50,000 limit, the parties have agreed to a proposal that would allow Wah Chang to exceed 50,000 only if it first gives written notice to the DEQ and demonstrates "that the conditions of the permit are being met and will continue to be met at the proposed increased rate of production". Exhibit "C", Stipulation and Final Order, Exhibit "A", ¶IV.

Permit Conditions 11, 12 and G3 - Wah Chang objected to these conditions, which prohibit increasing production capacity and levels without written approval of the DEQ, on the ground that it is beyond statutory authority.

Although the Department and Commission have authority to require by rule their prior review and approval of proposals to enlarge air contaminant sources (increases of production capacity), ORS 468.375 (Notice of Construction), ORS 468.310, .315 (permits) it is not clear that they have such authority to require such approval for proposals to increase production levels which would not "increase in volume or strength discharges . . . in excess of permissive discharges . . . specified under an existing permit." ORS 468.315(2).

The parties have agreed to deal with increases in production levels above 50,000 pounds per day (unrelated to increases in production capacity) by modifying condition 10. See discussion above. Increases in production levels below 50,000 pounds (unrelated to increases in production capacity) would not be dealt with in the permit and would only be subject to Department review if they would cause permit emission limits to be exceeded. ORS 468.315(2).

The parties have agreed to modify condition 11 so that it will deal with increases in production capacity rather than production levels. Exhibit "D". Therefore, condition 12, which also dealt with production capacity, would become unnecessary and would be deleted. Exhibit "C", Stipulation and Final Order, at Exhibit "A", §VI.

ORS 468.325 would also require notice when required by proposed condition 11. In addition, proposed condition 11 could theoretically require notice when not required by statute. By the same token, an application for a permit or a notice of construction might be required by statute where notice is not required by proposed condition 11. The statute would, of course, have to be met.

The parties have agreed to delete Condition G3, as it merely repeats the statutory requirement, ORS 468.325, which must also be met. Exhibit "C", Stipulation and Final Order, at Exhibit "A", §VI.

Permit Condition 19 - Wah Chang objected to this condition as being vague and in violation of due process. After negotiations, the parties have agreed to delete the first paragraph and make a minor revision to the second paragraph. The first paragraph is similar to MWVAPA rule §21-040, which remains in full force and effect.

Permit Condition 21 - Wah Chang objected to this condition as requiring more than is practicable. Wah Chang proposes to drop its objection to this condition if the proposed changes to condition 3, which the parties have agreed to, are adopted.

The Stipulation and Final Order, which is before you for your consideration and approval, represents the results of a long period of negotiations. As is the case with most settlements, neither party here convinced the other party to agree to each of its contentions. Instead, a middle ground was sought and found. In reaching the middle ground, the majority of the changes made were of a clarifying nature rather than substantive. In coming to an agreement, the Department has not compromised any of its legitimate environmental goals. It is my opinion that the settlement is reasonable and is in the best interests of the State. Therefore, I recommend that you approve and execute the Stipulation and Final Order.

I will be in attendance at your May 25, 1979 meeting to answer any questions you may have.

Sincerely,

Robert L. Haskins

Robert L. Haskins
Assistant Attorney General

pt/hk
cc/enc: Peter Powers
William H. Young
Fred Bolton
E. J. Weathersbee
Fred Skirvin
John Borden

REQUEST FOR HEARING

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

Re: Teledyne Wah Chang Albany Corporation,
a Division of Teledyne Industries
Air Contaminate Discharge Permit No. 22-547

Pursuant to OAR 340-14-025(5), Teledyne Wah Chang Albany, hereinafter referred to as permittee, requests a hearing before the Environmental Quality Commission to contest the following conditions of the above-described air contaminate discharge permit:

Permit Condition 1, Maintenance of Full Efficiency of Air Contaminate Control. Permittee's objections are based in part upon the following:

(1) It is impossible to at all times maintain and operate the permittee's plant and contaminate control equipment at full efficiency and effectiveness, and hence the provision is invalid on its face.

Permit Condition 2, Specific Emission Limitations. Permittee's objections are based in part upon the following:

(1) The limitations do not specifically provide for a variance in compliance for those sources that are subject to compliance schedules contained in other permit conditions.

Permit Condition 3, Control of Catbox Odor. Permittee's objections are based in part upon the following:

(1) The imposition of a public nuisance standard is inappropriate as a permit condition because the permittee is

subject to this standard as a matter of law.

(2) Condition 3-B contemplates a scentometer measurement of less than zero, and therefore is invalid on its face.

(3) The scentometer instrument, by admission of its own manufacturer, does not provide a measurement which is quantifiable and thus the requirements set forth in Permit Condition 3-B and C do not set limits capable of objective achievement.

(4) The scentometer instrument provides a subjective standard which will vary from instrument to instrument and from person to person using the instrument and, therefore, is not capable of objective achievement.

(5) The limits set forth in Permit Condition 3 are beyond the results achievable with any known technology available to the permittee.

(6) Other industries emitting similar odorous compounds are not being required to meet permit conditions even approximating the conditions contained in this permit.

(7) Permit Condition No. 20 requires the permittee to effectuate process modifications which, by the terms of Permit Condition 20, achieve the best practical control of the formation of the compound causing the ordor, yet Permit Condition 3 contemplates permittee reaching a standard of control which is not measurable by any practicable standards.

Permit Condition 5, Inspection and Monitoring of Operations and Maintenance of Plant. Permittee's objections are based in part upon the following:

(1) The permit condition requires the permittee to

effectively inspect and monitor its plant and associated air contaminate control facilities apparently over and above all of the other requirements required by the permit and normal day-to-day operation of the plant, without enumerating what is required.

(2) The permit condition is vague and indefinite and requires permittee to comply with future conditions without the benefit of administrative due process.

Permit Condition 6, Performance of Prescheduled Source Tests. The permittee's objections are based in part upon the following

(1) The permit condition is vague and indefinite and requires permittee to submit to future conditions without the benefit of administrative due process.

(2) The permit condition requires the permittee to perform tests to be enumerated by the Department, without any indication to the permittee of what tests may be required, what capital and manpower requirements may have to be met.

Permit Condition 7, Equipment for Monitoring and Recording Emissions. The permittee's objections are based in part upon the following:

(1) The manner of installation, calibration, maintenance and operations of the emission monitoring systems has already been approved by the Department.

(2) Subjecting permittee to additional approval by the Department allows the Department to impose additional conditions without affording permittee the benefit of administrative due process.

Permit Conditions 10, 11, 12, and General Condition G3,

Limitations on Production and Expansion of Production Facilities. Permittee's objections are based in part upon the following:

(1) The requirement of Permit Condition 10 that the permittee curtail production voluntarily is beyond the statutory and regulatory authority of the Department of Environmental Quality and Environmental Quality Commission.

(2) The requirement that the permittee not increase production without prior written permission of the Department is beyond the Department's statutory and regulatory authority.

Permit Condition 19, Upset Conditions. Permittee's objections are based in part upon the following:

(1) The permit condition is vague and indefinite and requires permittee to comply with future conditions without the benefit of administrative due process.

(2) The permit condition is beyond the statutory and regulatory authority of the Department of Environmental Quality and the Environmental Quality Commission.

Permit Condition 21, Additional Control Strategy for Reducing the Catbox Odor. Permittee's objections are based in part on the following:

(1) This provision apparently requires the permittee to go beyond what is practicable as that level has been achieved by compliance with Permit Conditions 20, 22 and 23.

(2) The same objections to this permit condition are applicable to Permit Condition 3.

(3) The condition on its face indicates that there is no known present practicable method to achieve the limits set

in Permit Condition 3.

Permittee further requests that the enforcement of the conditions to which objection is taken be stayed until a final determination as to their validity is obtained.

Respectfully submitted,

TELEDYNE WAH CHANG ALBANY

By _____
Attorney for the Company

cc: Ken Bird
Admiral dePoix
Spencer Letts

Performance Standards and Emission Limits

1. The permittee shall at all times maintain and operate all air contaminant generating processes and all contaminant control equipment at full efficiency and effectiveness, such that the emissions of air contaminants are kept at the lowest practicable levels.

2. The permittee shall comply with the following emission limitations:

   a. Particulate emissions from any single air contaminant source unless noted otherwise shall not exceed any of the following:

      1) 0.1 grains per standard cubic foot (0.23 gm/m^3); and

      2) An opacity equal to or greater than twenty percent (20%) for a period aggregating more than three (3) minutes in any one (1) hour.

   b. Particulate emissions from the zirconium oxide calciner shall not exceed the following:

      1) Until September 1, 1978, 0.2 grains per standard cubic foot (0.46 gm/m^3); and

      2) After September 1, 1978, 0.1 grains per standard cubic foot (0.23 gm/m^3).

   c. Particulate emissions from all zirconium/hafnium production processes shall not exceed a total of 25.0 pounds per hour (11.4 kg/hr) or 110 tons per year (100 mt/yr).

   d. Gaseous emissions from any single air contaminant source shall not exceed any of the following:

      1) A maximum total concentration of chlorine (Cl_2) and chloride ion (Cl^-) equal to 100 ppm;

      2) Until September 1, 1978, excluding the zirconium oxide calciner, a maximum concentration of sulfur dioxide (SO_2) equal to 1000 ppm and

         After September 1, 1978, including the zirconium oxide calciner, a maximum concentration of sulfur dioxide (SO_2) equal to 400 ppm; and

      3) A maximum total concentration of ammonia (NH_3) and ammonium ion (NH_4^-) equal to 50 ppm.

e. Gaseous emissions from all zirconium/hafnium production processes shall not exceed any of the following:

1) Thirty (30) tons per year (27 mt/yr) of total chlorine (Cl_2) and chloride ion (Cl^-);

2) Until September 1, 1978, 600 tons per year (550 mt/yr) of SO_2;

3) After September 1, 1978, 90 tons per year (82 mt/yr) of SO_2; and

4) Two (2) tons per year (1.8 mt/yr) of total ammonia and ammonium ion.

3. By no later than June 1, 1978, the permittee shall control the "cat-box" odor (3-mercapto-4-methyl-2-pentanone) emissions so as:

a. Not to cause a public nuisance;

b. No two measurements made beyond the plant site boundaries within a period of one (1) hour, separated by fifteen (15) minutes, are equal to or greater than a scentometer No. 0 or equivalent dilutions in areas used for residential, recreational, educational, institutional, hotel, retail sales or other similar purposes; and

c. No single measurement made in all land use areas other than those cited in (b) above shall equal or be greater than a scentometer No. 2 or equivalent dilutions.

* * * *

Monitoring and Reporting

5. The permittee shall effectively inspect and monitor the operation and maintenance of the plant and associated air contaminant control facilities. A record of all such data shall be maintained for a period of one year and be available at the plant site at all times for inspection by the authorized representatives of the Department.

6. The permittee shall perform at least three prescheduled source tests per year on all emission control systems in the zirconium/hafnium production process. The emission components to be measured in each of these stacks shall be specified by the Department. All tests shall be conducted in accordance with the testing procedures on file at the Department or in conformance with applicable standard methods approved in advance and in writing by the Department.

7. By no later than June 1, 1978, the permittee shall install, calibrate, maintain and operate in a manner approved by the Department, emission monitoring systems for continually monitoring and recording emissions of chlorine and chloride from the sand chlorination off gas system, the pure chlorination emission control system, silicon tetrachloride refining and storage vent emission control system, of sulfur dioxide from the zirconium oxide calciner emission control system, and carbon monoxide from the sand chlorination off gas and pure chlorination emission control systems.

* * * *

Special Conditions

10. The permittee shall limit or control the level of production at or below base level production as necessary such that the limits of this permit are immediately and continuously met. (Base level production for the purpose of this permit shall be 50,000 pounds per day of total oxide produced averaged over a calendar month as processed through the separations plant.)

11. The permittee shall not increase current production levels in any of those portions of the zirconium or hafnium processes which cause or contribute to atmospheric emissions without specific written approval of the Department.

12. The permittee shall not increase production capacity of any of those portions of the zirconium or hafnium processes which cause or contribute to atmospheric emissions until the ability to comply with the limits of conditions 2, 3 and 4 has been demonstrated, or until acceptable programs and time schedules for meeting these conditions have been submitted to and approved in writing by the Department.

* * * *

19. In the event that the permittee is temporarily unable to comply with any of the provisions of this permit due to upsets or breakdowns of equipment, the permittee shall notify the Department by telephone within one hour, or as soon as is reasonably possible, of the upset and of the steps taken or to be taken to correct the problem. Upset operation shall not continue longer than forty-eight (48) hours without approval confirmed in writing by the Department. Upset operation shall not continue during Air Pollution Alerts, Warnings, or Emergencies or at any time when the emissions present imminent and substantial danger to health.

    If the Department determines that an upset condition is chronic and is correctable by installing new or modified process or control procedures or equipment, a program and schedule to effectively eliminate the deficiencies causing the upset conditions shall be submitted. Such re-occurring upset conditions causing emissions in excess of applicable permit limits will be subject to civil penalty or other appropriate action.

AIR CONTAMINANT PERMIT PROVISIONS

* * * *

Compliance Schedule

* * * *

21. By no later than January 1, 1978 the permittee shall submit any additional control strategies for reducing the fugitive odor (cat box) required to comply with Condition 3, including detailed plans and specifications and the schedule for implementation (increments of progress) to the Department for review and approval.

* * * *

General Conditions and Disclaimers

* * * *

G3. The permittee shall:

a. Notify the Department in writing using a Departmental "Notice of Construction" form, and

b. Obtain written approval

before:

a. Constructing or installing any new source of air contaminant emissions, including air pollution control equipment, or

b. Modifying or altering an existing source that may significantly affect the emission of air contaminants.

* * * *

EXHIBIT "C"

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

In the Matter of TELEDYNE INDUSTRIES, INC., dba TELEDYNE WAH CHANG ALBANY, Contest of Conditions of Air Contaminant Discharge Permit No. 22-0547	))))	STIPULATION AND FINAL ORDER ACDP No. 22-0547

W H E R E A S:

1. On November 17, 1977, the Department of Environmental Quality ("Department") issued to Teledyne Industries, Inc., doing business as Teledyne Wah Chang Albany ("Petitioner") air contaminant discharge permit No. 22-0547 ("Permit"), pursuant to Petitioner's application No. 0583, received on September 8, 1975.

2. On December 8, 1977, the Environmental Quality Commission ("Commission") received Petitioner's Request for Hearing contesting certain of the conditions of the Permit for certain stated reasons.

3. In an effort to compromise and settle their differences, representatives of the Petitioner and the Department have met and corresponded on numerous occasions to resolve the outstanding issues. The Petitioner and the Department having come to a meeting of the minds,

NOW, THEREFORE, pursuant to ORS 183.415(4) and in consideration of the mutual covenants and conditions contained herein, the Petitioner and the Department stipulate and agree as follows:

A. The Petitioner hereby withdraws its Request for Hearing and waives its right to a contested case hearing and judicial review thereon, and consents to the entry of an order by the Commission dismissing its Request for Hearing with prejudice.

B. The Department agrees to amend the Permit as set forth in Exhibit "A" which is attached hereto and made a part hereof, subject to approval by the Commission.

C. Regarding condition no. 5 of the Permit, it is understood between the parties that the current inspection, monitoring and data maintained by the Permittee, with which both parties are familiar and which consists of various log books, operating manuals, operating procedures, both with respect to operation of process equipment and control equipment, charts, etc., comply with the conditions imposed by permit condition no. 5.

D. Regarding Permit condition no. 6, it is understood between the parties that the emission components to be measured or required by that condition are those components identified and enumerated in Permit condition no. 2 and, further, that should the Department wish to require some tests for other materials not contained in permit condition no. 2, such will constitute a modification of the Permit, unless otherwise agreed to by Petitioner.

E. The parties recognize that although the language of Permit condition no. 3 would be amended and condition no.

19 would be deleted if the above proposals are approved by the Commission, Petitioner, nevertheless, may be subjected to administrative rules in effect which impose additional conditions, and should the Department seek to enforce upon Petitioner those rules or impose those standards contained in those rules, the matter will be determined in an appropriate forum. This will leave Petitioner free to comply with or challenge those rules should it become necessary for the Department to seek to enforce them against Petitioner. It also eliminates the implication that Petitioner would somehow waive any objection to those rules by agreeing to a permit which contains the specific language of the rule.

F. The parties hereby waive their rights to notice, hearing, appeal and judicial review of the action taken pursuant to this stipulated order.

G. The stipulations and agreements contained herein are conditional upon gaining the Commission's approval thereof and of the proposed amendments to the Permit.

TELEDYNE INDUSTRIES, INC. dba
Teledyne Wah Chang Albany

April 20, 1979

Vincent De Poix, President

DEPARTMENT OF ENVIRONMENTAL QUALITY

April ____, 1979

William H. Young, Director

IT IS SO ORDERED AND APPROVED:

ENVIRONMENTAL QUALITY COMMISSION

Date: _____, 1979

_____
JOE B. RICHARDS, Chairman

Date: _____,1979.

_____
GRACE PHINNEY, Member

Date: _____,1979.

_____
JACKLYN HALLOCK, Member

Date: _____,1979.

_____
RONALD SOMERS, Member

Date: _____,1979.

_____
ALBERT DENSMORE, Member

EXHIBIT "A"

Proposed Amendments to Air Contaminant
Discharge Permit No. 22-0547
Issued to Teledyne Industries, Inc.
dba Teledyne Wah Chang Albany

I. Permit condition no. 1 is proposed to be amended to read as follows:

> "1. The permittee shall at all times maintain and operate all air contaminant generating processes and all contaminant control equipment such that the emissions of air contaminants are kept at the lowest practicable levels."

II. Permit condition no. 3 is proposed to be amended to read as follows:

> "3. The permittee shall, in conjunction with the compliance schedules hereinafter contained and those approved in writing by the Department, seek to control through the best practicable means available the odor (3 Mercapto-4 Methyl-2 Pentanone)."

III. Permit condition no. 7 is proposed to be amended as follows:

> "7. The permittee shall maintain and operate in a manner approved by the Department, emission monitoring systems for continually monitoring and recording emissions of chlorine and chloride from the sand chlorination offgas system and the pure chlorination emission control system, of sulfur dioxide from the zirconium oxide calciner emission control system, and carbon monoxide from the sand chlorination offgas and pure chlorination emission control systems. The monitoring of sulfur dioxide from the ZrO_2 calciner emission control system shall be installed and operated by June 1, 1979.

IV. Permit condition no. 10 is proposed to be amended to read as follows:

> "10. The permittee shall not increase the base level production (which is defined as the number of pounds per day of total oxide produced, averaged over a calendar month, as processed through the separations plant) over 50,000, until the permittee (a) has notified the Department in writing of the proposed increase, and (b) has demonstrated that the conditions of the permit are being met and will continue to be met at the proposed increased rate of production, provided however that the above shall not be deemed to foreclose the permittee from requesting, in connection with a requested increase in production, a change in the level of its discharge rate. If a change in discharge rate is granted then the permittee shall not be required to demonstrate that the existing permit conditions will be met at the proposed increased rate of production, but rather that the permit conditions, as modified, will be met at the proposed increased rate of production."

V. Permit condition no. 11 is proposed to be amended to read as follows:

> "11. The permittee shall not increase production capacity in any portion of the zirconium or hafnium processes which would significantly increase air contaminant emissions without prior notice to the Department, whether or not such notice would be required by law."

VI. Permit conditions no. 12 and G3 are proposed to be deleted.

VII. Permit condition no. 19 is proposed to be amended to read as follows:

> "19. If the Department determines that an upset condition is chronic and it is

practical to correct it by installing new or modified process or control procedures or equipment, a program and schedule to effectively eliminate the deficiencies causing the upset shall be submitted. Such recurring upset conditions causing emissions in excess of applicable permit limits will be subject to civil penalty or other appropriate action."

PROPOSED AMENDEMENTS TO
AIR CONTAMINANT DISCHARGE PERMIT NO. 22-0547
ISSUED TO TELEDYNE INDUSTRIES, INC.,
dba TELEDYNE WAH CHANG ALBANY
(Showing Proposed Additions and Deletions)

The following shows the additions (in underlining) and deletions (in brackets) proposed to be made to certain conditions of air contaminant discharge Permit No. 22-0547 issued to Teledyne Industries Inc., dba Teledyne Wah Chang, Albany ("Wah Chang") pursuant to the Stipulation and Final Order prepared for execution by Wah Chang, the Department of Environmental Quality and the Environmental Quality Commission.

1. The permittee shall at all times maintain and operate all air contaminant generating processes and all contaminant control equipment [at full efficiency and effectiveness,] such that the emissions of air contaminants are kept at the lowest practicable levels.

3. [By no later than June 1, 1978, the permittee shall control the "cat-box" odor (3-Mercapto-4-Methyl-2-Pentanone) emissions so as:]

   [a. Not to cause a public nuisance;]

   [b. No two measurements made beyond the plant site boundaries within a period of one (1) hour, separated by fifteen (15) minutes, are equal to or greater than a scentometer No. 0 or equivalent dilutions in areas used for residential, recreational, educational, institutional, hotel, retail sales or other similar purposes; and]

   [c. No single measurement made in all land use areas other than those cited in (b) above shall equal or be greater than a scentometer No. 2 or equivalent dilutions.]

The permittee shall, in conjunction with the compliance schedules hereinafter contained and those approved in writing by the Department, seek to control through the best practicable means available the odor (3 Mercapto-4 Methyl-2-Pentanone).

7. [By no later than June 1, 1978 the] The permittee shall [install, calibrate,] maintain and operate in a manner approved by the Department, emission monitoring systems for continually monitoring and recording emissions of chlorine and chloride from the sand chlorination [off

gas] offgas system[,] and the pure chlorination emission control system, [silicon tetrachloride refining and storage vent emission control system,] of sulfur dioxide from the zirconium oxide calciner emission control system, and carbon monoxide from the sand chlorination [off gas] offgas and pure chlorination emission control systems. The monitoring of sulfur dioxide from the ZrO_2 calciner emission control system shall be installed and operated by June 1, 1979.

10. The permittee shall [limit or control the level of] not increase the base level production [as necessary such that the limits of this permit are immediately and continuously met. (Base level production for the purpose of this permit shall be 50,000] (which is defined as the number of pounds per day of total oxide produced, averaged over a calendar month, as processed through the separations plant [.]) over 50,000, until the permittee (a) has notified the Department in writing of the proposed increase, and (b) has demonstrated that the conditions of the permit are being met and will continue to be met at the proposed increased rate of production, provided however that the above shall not be deemed to foreclose the permittee from requesting, in connection with a requested increase in production, a change in the level of its discharge rate. If a change in discharge rates is granted then the permittee shall not be required to demonstrate that the existing permit conditions will be met at the proposed increased rate of production, but rather that the permit conditions, as modified, will be met at the proposed increased rate of production."

11. The permittee shall not increase [current] production [levels] capacity in any [of those] portion of the zirconium or hafnium processes which [cause or contribute to atmospheric] would significantly increase air contaminant emissions without [specific written approval of] prior notice to the Department, whether or not such notice would be required by law.

12. Deleted. [The permittee shall not increase production capacity of any of those portions of the zirconium or hafnium processes which cause or contribute to atmospheric emissions until the ability to comply with the limits of conditions 2, 3 and 4 has been demonstrated, or until acceptable programs and time schedules for meeting these conditions have been submitted to and approved in writing by the Department.]

19. [In the event that the permittee is temporarily unable to comply with any of the provisions of this permit due

to upsets or breakdowns of equipment, the permittee shall notify the Department by telephone within one hour, or as soon as is reasonably possible, of the upset and of the steps taken or to be taken to correct the problem. Upset operation shall not continue longer than forty-eight (48) hours without approval confirmed in writing by the Department. Upset operation shall not continue during Air Pollution Alerts, Warnings, or Emergencies or at any time when the emissions present imminent and substantial danger to health.]

If the Department determines that an upset condition is chronic and it is [correctable] practical to correct it by installing new or modified process or control procedures or equipment, a program and schedule to effectively eliminate the deficiencies causing the upset conditions shall be submitted. Such re-occurring upset conditions causing emissions in excess of applicable permit limits will be subject to civil penalty or other appropriate action.

G3. Deleted. [The permittee shall:]

[a. Notify the Department in writing using a Departmental "Notice of Construction" form, and]

[b. Obtain written approval]

[before:]

[a. Constructing or installing any new source of air contaminant emissions, including air pollution control equipment, or]

[b. Modifying or altering an existing source that may significantly affect the emission of air contaminants.]