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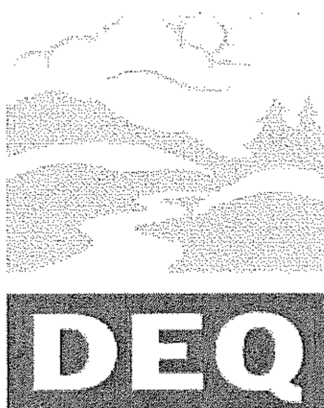
8/27/1982

OREGON ENVIRONMENTAL QUALITY COMMISSION MEETING MATERIALS



State of Oregon
Department of Environmental Quality

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OREGON ENVIRONMENTAL QUALITY COMMISSION MEETING

August 27, 1982

14th Floor Conference Room
Department of Environmental Quality
522 S. W. Fifth Avenue
Portland, Oregon

AGENDA

9:00 am **CONSENT ITEMS**

These routine items are usually acted on without public discussion. If any item is of special interest to the Commission or sufficient need for public comment is indicated, the Chairman may hold any item over for discussion.

A. Minutes of the July 16, 1982, EQC meeting.

B. Monthly Activity Report for June, 1982.

C. Tax Credits.

9:05 am **PUBLIC FORUM**

This is an opportunity for citizens to speak to the Commission on environmental issues and concerns not a part of this scheduled meeting. The Commission may discontinue this forum after a reasonable time if an exceptionally large number of speakers wish to appear.

HEARING AUTHORIZATIONS

D. Request for authorization to conduct a public hearing on revisions to the Emission Standards for Hazardous Air Contaminants 340-25-450 to 480 to make the Department's rules pertaining to control of asbestos and mercury consistent with the federal rules and to amend Standards of Performance for New Stationary Sources 340-25-505 to 645 to include the federal rule for new lime plants.

ACTION AND INFORMATIONAL ITEMS

Public testimony will be accepted on the following except items which a public hearing has previously been held. Testimony will not be taken on items marked with an asterisk (*). However, the Commission may choose to question interested parties present at the meeting.

E. Mr. John Mullivan: Appeal of subsurface variance denial.

F. Request for a variance from noise control regulations for industry and commerce, OAR 340-35-035, for Medford Corporation, Rogue River Division.

G. Proposed adoption of a temporary revision of Administrative Rule 340-81-020 regarding the definition of the eligibility of land costs used in providing state financial assistance to public agencies for pollution control facilities.

(MORE)

H. Request for declaratory ruling as to the applicability of OAR 340-61-031 to the application of the Metropolitan Service District for preliminary approval of a solid waste disposal site known as Wildwood Landfill in Multnomah County.

I. Pollution Control Bond Fund - Request for approval of resolution authorizing issuance and sale of Pollution Control Bonds in the amount of $15 million.

J. Status report: Portland-area backyard burning.

K. Public meeting: Oregon's Hazardous Substances Response Plan.

L. Informational report: METRO Waste Reduction Program.

* M. Proposed adoption of amendments to rules for equipment burning salt-laden wood waste from logs stored in salt water, OAR 340-21-020(2), as an amendment to the State Implementation Plan.

* N. Proposed adoption of amendments to rules governing on-site sewage disposal: fees for Multnomah County, OAR 340-72-070; and fees for Jackson County, OAR 340-72-080.

* O. Proposed action to:
  (a) Approve the Clatsop Plains Groundwater Protection Plan as a revision to the Statewide Water Quality Management Plan for the North Cost/Lower Columbia Basin.
  (b) Amend the On-Site Sewage Disposal Rules for the Clatsop Plains.

WORK SESSION

The Commission reserves this time, if needed, for further consideration of any item on the agenda.

Because of the uncertain length of time needed, the Commission may deal with any item at any time in the meeting except those set for a specific time. Anyone wishing to be heard on any item not having a set time should arrive at 9:00 am to avoid missing any item of interest.

The Commission will breakfast (7:30 am) at the Portland Motor Hotel, 1414 S. W. Sixth Avenue, Portland; and will lunch at DEQ Headquarters, 522 S. W. Fifth Avenue, Portland.

At the conclusion of the Commission's regularly scheduled agenda, they will continue in work session to discuss legislative concepts and current budget matters.

THESE MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

MINUTES OF THE ONE HUNDRED FORTY-FIRST MEETING

OF THE

OREGON ENVIRONMENTAL QUALITY COMMISSION

July 16, 1982

On Friday, July 16, 1982, the one hundred forty-first meeting of the Oregon Environmental Quality Commission convened at the Department of Environmental Quality, Portland, Oregon. Present were Commission members Mr. Joe B. Richards, Chairman; Mr. Fred J. Burgess; Mr. James Petersen, Mr. Wallace B. Brill; and Mrs. Mary V. Bishop. Present on behalf of the Department were its Director, William H. Young, and several members of the Department staff.

The staff reports presented at this meeting, which contain the Director's recommendations mentioned in these minutes, are on file in the Office of the Director of the Department of Environmental Quality, 522 S.W. Fifth Avenue, Portland, Oregon. Written information submitted at this meeting is hereby made a part of this record and is on file at the above address.

BREAKFAST MEETING

The breakfast meeting convened at 7:30 a.m. at the Portland Motor Hotel in Portland. Commissioners Richards, Petersen, Brill, Burgess and Bishop were present, as were several members of the Department staff.

The following items were discussed:

1. 83-85 budget preparation status: Mike Downs, Management Services Administrator, reviewed for the Commission the projected timetable and current status of the 83-85 budget for the Department.

2. Job climate report: The Director reviewed for the Commission a report describing four recommendations brought forth by the Oregon Job Climate Task Force in connection with air quality requirements in the state that apply to new and existing air pollution sources wishing to expand or locate in Oregon.

3. The Commission was asked and agreed to hear an additional unscheduled agenda item during the formal meeting. This was a request for authorization to conduct a public hearing on the Medford carbon monoxide portion of the State Implementation Plan.

FORMAL MEETING

Commissioners Richards, Petersen, Burgess, and Bishop were present for the formal meeting. Commissioner Brill was temporarily absent, arriving at the start of discussion on Item C.

AGENDA ITEM A - MINUTES OF THE JUNE 11, 1982 MEETING

It was MOVED by Commissioner Bishop, seconded by Commissioner Burgess, and carried unanimously that the Minutes be approved as submitted. Commissioner Brill was temporarily absent.

AGENDA ITEM B - MONTHLY ACTIVITY REPORTS FOR MAY, 1982

It was MOVED by Commissioner Burgess, seconded by Commissioner Bishop, and passed unanimously that the Director's Recommendations be approved. Commissioner Brill was temporarily absent.

AGENDA ITEM C - TAX CREDITS

Terrill Henderson, corporate counsel for Time Oil Co., argued against the proposed denial of Time Oil's tax credit applications T-1142 and T-1172 and presented written testimony.

It was MOVED by Commissioner Petersen, seconded by Commissioner Bishop, and passed that the Director's Recommendation be approved but granting tax credits to Time Oil Co. in the 20% range. [Commissioner Brill was present; Commissioner Burgess voted no.]

PUBLIC FORUM:

John Charles, Oregon Environmental Council, was concerned about spraying of the pesticide "Sevin" in Tillamook Bay. He asked the Department to assert some jurisdiction on the issue and require the filing of a water quality permit application or some similar action.

Jim Johnson, Oregon City Commissioner, requested the appointment of a Health Effects Advisory Panel, consisting of doctors and pollution scientists, to address the health effects of potential dangers from garbage burners. The Commission declined to insert themselves into the permitting process at this point.

AGENDA ITEM E - REQUEST FOR AUTHORIZATION TO CONDUCT PUBLIC HEARINGS ON: AMENDMENTS TO RULES GOVERNING ON-SITE SEWAGE DISPOSAL; FEES FOR MULTNOMAH COUNTY, OAR 340-72-070, AND FEES FOR JACKSON COUNTY, OAR 340-72-080

Agenda Item E is a request for authorization to conduct public hearings on the question of amending rules governing on-site fees to be charged by Jackson County and amending fee rules for Multnomah County.

Director's Recommendation

Based on the summation, it is recommended that the Commission authorize public hearings to take testimony on the question of amending rules governing on-site fees to be charged by Jackson County OAR 340-72-080, and amending fee rules for Multnomah County, OAR 340-72-070.

It was MOVED by Commissioner Burgess, seconded by Commissioner Petersen, and passed unanimously that the Director's Recommendation be approved.

UNSCHEDULED ITEM - REQUEST FOR AUTHORIZATION TO CONDUCT A PUBLIC HEARING ON THE MEDFORD CARBON MONOXIDE PORTION OF THE STATE IMPLEMENTATION PLAN

Director's Recommendation

Based upon the summation, it is recommended that the Commission authorize a public hearing to take testimony on the Medford carbon monoxide portion of the State Implementation Plan as soon as it is finalized by Jackson County.

It was MOVED by Commissioner Bishop, seconded by Commissioner Burgess, and passed unanimously that the Director's Recommendation be approved.

AGENDA ITEM F - MR. JOHN MULLIVAN - APPEAL OF SUBSURFACE VARIANCE DENIAL

In a letter dated July 8, 1982, the appellant's attorney, Mr. Mark P. O'Donnell, requested that this matter be set over to the next regular EQC meeting, August 27, 1982.

It was MOVED by Commissioner Burgess, seconded by Commissioner Bishop, and passed unanimously that this matter be set over to the next meeting.

AGENDA ITEM H - STIPULATED COMPLIANCE ORDERS FOR WATER POLLUTION SOURCES--STATUS REPORT AND PROPOSED ACTION

At the last Commission meeting, the question was raised as to the status of the outstanding Stipulated Consent Orders in the Water Pollution Control Program. Agenda Item H presents a summary of the status of those orders. The consent Order has been a valuable tool in achieving compliance and most of them have achieved their goal. Of the 35 orders, only seven require additional follow-up.

Director's Recommendation

Based upon the findings in the summation, it is recommended that the Commission direct the staff to negotiate new compliance schedules as appropriate, not contingent on federal grants, for Coquille, Cannon Beach, Astoria, Happy Valley, Newport, and Silverton, and return to the Commission for their approval at the October meeting.

It was MOVED by Commissioner Burgess, seconded by Commissioner Bishop, and passed unanimously that the Director's Recommendation be approved.

AGENDA ITEM I - REQUEST BY THE TOWN OF BUTTE FALLS FOR A VARIANCE FROM RULES PROHIBITING OPEN BURNING DUMPS, OAR 340-61-040(2)

The town of Butte Falls in rural Jackson County has requested a variance to allow continued open burning of solid waste. The town has operated a disposal site for many years but could not previously apply for a permit or a variance since they did not have legal control of the property. Recently, the town obtained a lease and the Department has drafted a permit which will ultimately lead to upgrading or replacement of the site. A variance is now required to allow interim operation.

Director's Recommendation

Based upon the findings in the summation, it is recommended that the Commission grant a variance from OAR 340-61-040(2), until July 1, 1985 to the town of Butte Falls. Such a variance to be conditioned upon the submission of progress reports in July 1983 and July 1984.

It was MOVED by Commissioner Bishop, seconded by Commissioner Burgess, and passed unanimously that the Director's Recommendation be approved.

AGENDA ITEM J - INFORMATIONAL REPORT: ACCEPTANCE OF WASTE REDUCTION PROGRAMS (LINCOLN COUNTY - METRO - YAMHILL COUNTY)

Senate Bill 925, passed by the 1979 Legislature, requires local governments to prepare waste reduction plans and implement programs under certain conditions. Several plans have been submitted and three accepted by the Department. This informational item reports on the status of the programs and the direction staff would like to proceed.

Director's Recommendation

It is recommended that the Commission concur with staff's intention to prepare rule amendments clarifying the rules and requiring annual reporting on accepted waste reduction programs. It is further recommended that the Commission concur in the direction the Department has taken regarding acceptance of waste reduction programs.

Jim Johnson, Oregonians for Clean Air, complained that METRO provides no assistance in source separation and waste recycling problems to outlying areas, such as Oregon City. He noted that their solid waste program consisted almost entirely of flow control of solid waste instead of any control over volume of that waste stream.

John Charles, Oregon Environmental Council, noted his objections to the staff recommendation contained in the staff report and described several inconsistencies he claimed are listed in the Director's June 3, 1982, letter to METRO's Executive Director, Rick Gustafson. He suggested delaying acceptance of the Solid Waste Plan until the August 27 EQC meeting.

It was MOVED by Commissioner Bishop, seconded by Commissioner Burgess, and carried unanimously that the Director's Recommendations regarding rulemaking preparation be approved; to invite METRO to meet with the Commission to further define Conditions 4, 5 and 7 from the Director's June 3 letter; and to defer concurrence in the direction the staff has taken in the acceptance of the Plan.

AGENDA ITEM K - REQUEST FOR THE COMMISSION TO (1) ADOPT REVISIONS TO ADMINISTRATIVE RULES 340-53-005 THROUGH 53-035, DEVELOPMENT AND MANAGEMENT OF THE STATEWIDE SEWERAGE WORKS CONSTRUCTION GRANT PRIORITY LIST; AND (2) APPROVE THE FY83 CONSTRUCTION GRANT PRIORITY LIST DEVELOPED IN ACCORDANCE WITH THE AFOREMENTIONED RULES

This item is the request that the Commission adopt several revisions to the administrative rules governing the management of the sewage works construction grants program and the proposed priority list for federal fiscal year 1983. The report on a public hearing held on June 3, 1982, on these subjects is included in the item.

There are a few changes proposed to the Administrative Rules: the most notable is the creation of new special funds reserved for specific purposes required by the 1981 Clean Water Act Amendments. The FY83 priority list itself is basically a continuation of the FY82 list. There were a few new projects entered on the list and only a few priority rating changes.

Despite the lack of FY82 appropriations during FY82, we have been able to recover as carryover from prior years enough funds to complete several high-priority projects that will eliminate public health hazards. (Projects in Albany and Medford are now under construction and two others, in Sheridan and Silverton, are expected to be funded before September 30, 1982.)

Director's Recommendation

Based upon the summation, the Director recommends that the Commission adopt the Administrative Rules regarding the development and management of the statewide priority list, OAR 340-53-005 through 035 as revised, and the FY83 Construction Grants Priority List.

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

AGENDA ITEMS M AND N - PROPOSED ADOPTION OF:
1) THE CARBON MONOXIDE CONTROL STRATEGY FOR THE PORTLAND-VANCOUVER INTERSTATE AQMA (OREGON PORTION) AS A REVISION TO THE STATE IMPLEMENTATION PLAN; AND
2) THE OZONE CONTROL STRATEGY FOR THE PORTLAND-VANCOUVER INTERSTATE AQMA (OREGON PORTION) AS A REVISION TO THE STATE IMPLEMENTATION PLAN

Agenda Item M concerns adoption of the ozone control strategy for the

Portland metropolitan area. The control strategy would be a revision to the State Implementation Plan and demonstrates attainment of the federal

ozone standard by 1987. The majority of testimony from the public hearing supported adoption of the plan. The control strategy needs to be immediately adopted to avoid potential imposition of federal sanctions codified into the Federal Clean Air Act.

Director's Recommendation

Based on the summation, the Director recommends that the EQC adopt the Portland-Vancouver AQMA (Oregon portion) ozone attainment strategy and direct the Department to forward it to EPA as a revision to the State Implementation Plan.

Agenda Item N concerns adoption of the carbon monoxide control strategy for the Portland metropolitan area which would also be a revision to the State Implementation Plan. Attainment of the CO standard is projected by 1985. No adverse comments were received at the public hearing. The control strategy needs to be immediately adopted to avoid possible federal economic sanctions.

Director's Recommentation

Based on the summation, the Director recommends that the EQC adopt the carbon monoxide attainment strategy for the Portland-Vancouver AQMA (Oregon portion) and direct the Department to forward it to EPA as a revision of the State Implementation Plan.

It was MOVED by Commissioner Bishop, seconded by Commissioner Burgess, and passed unanimously that the Director's Recommendations for both Item M and Item N be approved.

AGENDA ITEM O - PROPOSED ADOPTION OF AMENDMENTS TO NOISE CONTROL REGULATIONS FOR THE SALE OF NEW SCHOOL BUSES, OAR 340-35-025

General Motors Corporation has petitioned the Commission to amend its noise standards for the sale of new school buses to reset the effective date for 80-decibel school buses to 1986. Thus, school buses would revert to the 83-decibel standard until 1986.

As school buses are built on medium-duty truck chassis that are controlled under pre-emptive federal standards, GM argues the Oregon school bus standard should reflect the federal schedule due to their common engine and chassis.

GM has evaluated the cost to reduce noise from the current school bus model that cannot be offered for sale under the 80-decibel standard. This model, powered by a naturally-aspirated diesel engine, would require an additional $1,000 of noise control package, and added maintenance would cost $200 to $400 per year.

Staff review of school bus noise emission standards in other states has found that most have adopted schedules identical to the EPA truck schedule or are in the process of making such amendments.

Our recommendation is to reset the 80-decibel effective date for school buses to 1986 as requested by the petitioner.

Director's Recommendation

Based upon the summation, it is recommended that the Commission adopt rule amendments for the sale of new school buses as proposed by the petitioner to make them consistent with federal and other state's rules as described in Attachment A hereto as a permanent rule to become effective upon its prompt filing with the Secretary of State.

Keith Cherne, General Motors, answered questions and claimed that GM had intentions of meeting the 80-decibel level by the January 1986 deadline.

It was MOVED by Commissioner Burgess, seconded by Commissioner Bishop, and passed unanimously that the Director's Recommendation be approved.

AGENDA ITEM P - PROPOSED ADOPTION OF AMENDMENTS TO THE MOTOR VEHICLE EMISSION CONTROL TEST CRITERIA METHODS AND STANDARDS OAR 340-24-300 THROUGH 24-350

Agenda Item P requests the amendment of the inspection program rules. At the April 16, 1982, EQC meeting, authorization was given for a public hearing and the hearing was held June 2, 1982. Based on the comments received, the proposed rule revisions were finalized. The Commission is now being asked to adopt revisions to the inspection program rules. The proposed amendments would:

1) Delete the definition for "non-complying imported vehicle."

2) Increase the time that the steady state raised rpm portion of the test cycle is maintained.

3) Allow a key off-restart retest provision for 1981 Ford vehicles that initially fail the emission test.

4) Amend the engine exchange policy to preclude all pre-1970 vehicles.

5) Make minor language changes in the data procedures and correctly cite a specific statute.

Director's Recommendation

Based upon the summation, it is recommended that the proposed rule amendments as listed in Attachment 3 be adopted.

It was MOVED by Commissioner Petersen, seconded by Commissioner Brill, and passed unanimously that the Director's Recommendation be approved.

AGENDA ITEM Q - INFORMATIONAL REPORT: REVIEW OF FY83 STATE/EPA AGREEMENT AND OPPORTUNITY FOR PUBLIC COMMENT

Each year, the Department and EPA negotiate an agreement whereby EPA provides basic program grant support in return for commitments from the Department to perform planned work on environmental priorities of the state and federal government.

The Commission is asked at this time to provide an opportunity for comment on the draft State/EPA Agreement. They are also asked to provide staff their comments on the policy implications of the draft agreement.

Director's Recommendation

It is recommended that the Commission:

1) Provide opportunity for public comment at today's meeting on the draft State/EPA Agreement; and,

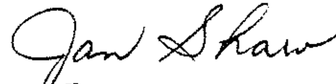
2) Provide staff its comments on the policy implications of the draft agreement.

Jim Johnson, Oregon City Commissioner, suggested that the Solid Waste goal listed on Page 28 of the draft Agreement should read "...solid waste disposal, waste reduction and recycling." [Underlined portion is suggested language.]

The Commission accepted the report.

There being no further business, the meeting was adjourned.

Respectfully submitted,



Jan Shaw
Commission Assistant

OREGON ENVIRONMENTAL QUALITY COMMISSION

August 27, 1982

BREAKFAST AGENDA

1.	Response to Job Climate Task Force	Biles
2.	Response to questions regarding tax credit program (see attached memo)	Haskins

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY — INTEROFFICE MEMO

TO: William H. Young — DATE: August 26, 1982

FROM: Stan Biles (SB)

SUBJECT: Attached

At its last meeting the Commission requested that a letter to statewide media and opinion leaders be drafted in response to recommendations contained in the recent "Job Climate Task Force Report." Since most of the recommendations related to the Air Quality program, I solicited assistance from Air Quality staff and prepared the attached draft letter. If the Commission is satisfied with this approach I would suggest that a final draft be prepared and initially mailed to the listed newspapers. Shortly thereafter, a member of the Commission could contact the editor(s) in his/her area and arrange a meeting during September. Prior to the meeting, additional background information could be prepared by staff for use during the discussion. I would also suggest that you participate in each of these meetings to provide additional expertise and respond to inquiries. Depending upon the success of these meetings we could expand the effort to include legislators and their opinion leaders.

SB:h
MH587
Attachment

Editorial Staff
Bend Bulletin
Medford Mail Tribune
Salem Statesman Journal
Eugene Register Guard
Portland Journal
Oregonian

Dear ________________:

In June, the Oregon Job Climate Task Force submitted a report designed to improve the state's "job climate." The strengths and weaknesses of Oregon's economic situation were evaluated and a series of recommendations were offered to enhance the state's economic future. The nineteen task force members deserve acknowledgement of the voluntary effort which made the report possible. Valuable information is contained within the report and the recommendations are already under consideration by groups charged with improving the state's economy.

Sixty-six recommendations were offered by the task force, four of which directly related to policies established by the Environmental Quality Commission or practices of the Oregon State Department of Environmental Quality. As the Commission considered the recommendations we determined that the public would profit by receiving additional information and our insights on each of these subjects. We hope that the following observations will help explain the relationship of environmental administration and the state job climate.

Recommendation:

The Department of Environmental Quality and the Environmental Quality Commission reduce the uncertainty about the meaning of Oregon environmental rules and their interpretations by utilizing adopted federal rules wherever possible.

Discussion:

We constantly seek to eliminate uncertainty regarding general policies and specific rules adopted by the Commission and administered by the Department. Discrepancies between federal and state requirements can be difficult to administer and confusing to an out-of-state developer or local business person. However, some differences are inevitable. A verbatum adoption is generally precluded by three factors. First, the Attorney General's Office has advised that federal rules cannot be adopted by

reference and differences in federal and state administrative rule formats require some modification. Second, federal requirements sometimes include items not applicable to Oregon or prescribe options from which states may select the approach best designed to meet local conditions. Third, unique state problems or geographical conditions may dictate more stringent requirements than federal standards. For example, our concern for water quality prompted tougher pollution standards for the Willamette River than federal law provides. Unusual poor ventilation circumstances may prompt more stringent air pollution standards. Although we seek conformity with federal rules whenever possible, the geographical and social factors which make Oregon unique sometimes require alternative approaches.

Recommendation:

The Governor discuss with the Environmental Quality Commission and Department Director the need for their attention and concern in the adoption of rules to the economic effect of such adoption upon permittees, potential permittees and the DEQ itself.

Discussion:

Historically the Commission and department have given serious consideration to the economic impacts of rules prior to final determination. Current state law requires a close review of economic impact with particular emphasis upon small businesses. Furthermore the Department has implemented programs specifically designed to lessen the adverse economic impacts of environmental regulation. For example, the Department's air quality rules contain the latest federal regulatory reform provisions such as "bubbling" and "banking" which are intended to give industries the maximum amount of flexibility in selecting control options to have the least economic impact. Oregon has been a leader in adopting these reforms and other states are closely monitoring our progress. As a final effort to lessen the economic impacts of our rules the legislature has authorized and the Commission oversees the provision of extensive tax credits to the private sector to partially compensate for the cost of installing pollution control equipment. Since 1969 more than $450,000,000 of the credits have been approved, symbolic of our attention to economic impacts.

Recommendation:

The Governor discuss with the EQC and Department Director the desirability in rulemaking of attempting to achieve reasonable uniformity of rules with our neighboring states most likely to compete with Oregon for new business and jobs.

Discussion:

Since 1970 the federal government has become more actively involved in environmental administration. One of the results of the expanded federal

role has been the establishment of nationwide pollution standards. Consequently, the amount and degree of variance from one state or region to another has declined considerably. For the most part, Oregon's rules and standards are not markedly different from other states'. however, differences do exist. In some instances Oregon is relatively more stringent. As previously mentioned, standards for the Willamette River are higher than normal. Yet, in several areas our rules are less stringent than those of nearby states. The following examples from our Air Quality regulations reflect such differences.

- Fifty percent (50%) of California land area is designated nonattainment and subject to stringent control requirements like offsets in contrast to 5% of the land area in Oregon.

- California requires high cost, low sulfur fuel oil (less than .5%) in many parts of the state in contrast to Oregon's 1.75% maximum sulfur content requirement.

- California has a tighter ozone standard of .1 ppm versus Oregon's .12 and also has visibility and sulfate ambient air standards, which Oregon does not have.

- Washington administers an offset requirement for new and expanding sources of VOC in their portion of the Portland-Vancouver airshed, while Oregon worked hard to establish a growth cushion to relieve industry from the financial and time burden of obtaining offsets.

- Washington requires a comprehensive Environmental Impact Statement for major sources which includes significant administrative processing time. Oregon has no such requirement.

Oregonians value their quality of life and work hard to maintain our environmental conditions. We are sensitive to unique characteristics which require greater pollution standards. However, we are equally cognizant of situations which allow for lower than normal pollution controls. The Commission and Department are committed to maintaining this balance.

Recommendation:

The Governor discuss with the EQC and the Department Director what specific plans they have to reduce the impact of non-traditional area sources which are substantially, causally related to our air quality non-attainment status, and which impose difficulties on the location of industry in the major urban areas of this state.

Discussion:

Non-traditional area sources of air pollution such as woodstoves, backyard burning, and motor vehicles are a rapidly growing cause of environmental

degradation. The Department is working hard to develop control programs but success has been limited. Beyond a motor vehicle inspection and maintenance program in the Portland metropolitan area, the lack of legal authority, public acceptance, or political support has stymied major progress. For example:

- Control of woodstoves and slash burning by DEQ is precluded by state law;
- Regulation of backyard burning was restricted by the 1981 Legislature, and,
- Grass field-burning acreage was increased by the 1979 Legislature.

In place of traditional methods of regulation to control area-wide sources of air pollution the Department has pursued methods to reduce the adverse impacts through:

- Better defining of the problem through state-of-the-art monitoring programs.
- Improved smoke management programs.
- Projects to develop alternatives to open burning.
- Extensive public information/education on wood heating.
- Development of potential legislation on wood heating.

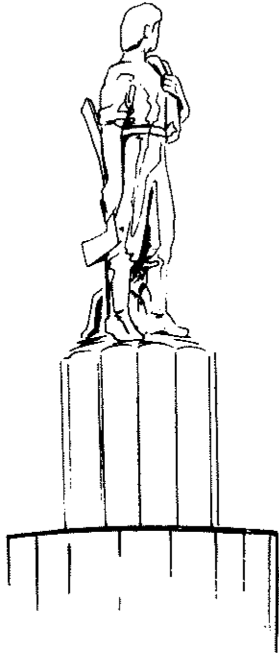
Unfortunately, it does not appear that any substantive control program for non-traditional sources such as backyard burning and woodstoves can be launched without stronger legislative support.

The issues raised by the Job Climate Task Force Report are critical to the future of our state. The enhancement of an adequate state economy and the maintenance of a high quality environment are responsibilities shared by all Oregonians. The Environmental Quality Commission and the Department of Environmental Quality will actively participate in these efforts by providing information, identifying opportunities, and where possible implementing solutions. Although the information provided above is one such effort, we would like to supplement these brief comments with a personal visit. In the near future a member of the Commission will contact your office to arrange a meeting for a more detailed discussion. We look forward to meeting with you.

Sincerely,

Environmental Quality Commission

SB:k
MK1216



Oregon Job Climate Task Force Report

1982

St[illegible] goes to member groups
i.e. A.O.I. Committees

Not a study done for Gov, only
with participation of Gov's office
i.e. [illegible] Thompson & Phil Bladine

VICTOR ATIYEH
GOVERNOR

OFFICE OF THE GOVERNOR
STATE CAPITOL
SALEM, OREGON 97310

June 7, 1982

Richard F. Olson, Chairman
Oregon Job Climate Task Force
P O Box 12519
Salem, OR 97440

Dear Dick:

Please accept my personal gratitude for the efforts given to accomplish this report of the Oregon Job Climate Task Force.

I heartily commend participating organizations and individuals for their efforts to help restore the state's economic vitality. The work of this Task Force is another example of the enthusiastic volunteerism that has served the best interest of Oregonians traditionally.

The gathering together of diverse interests to find common solutions to mutual problems does much to guarantee the high standards of Oregonians.

Sincerely,

Victor Atiyeh
Governor

VA/sb

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OREGON JOB CLIMATE TASK FORCE MEMBERS

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PURPOSE

Basic purpose of this report is to improve Oregon's job climate.

Efforts were made to examine both present strengths and weaknesses. Identifying strengths and emphasizing them is the first step toward creating a more positive attitude about the job climate.

Identifying weaknesses and recommending practical solutions is the second step toward lasting improvement.

Some solutions depend upon legislative action. Some may be accomplished by order of the Governor or by administrative action by state agencies. Every effort was made to specify appropriate action for each recommendation.

Although extensive, this report does not purport to be all-inclusive. Rather, it is designed to blend with and complement additional activities in many areas of concern.

Voluntary time and expertise to complete this report were freely given by all participants in the spirit of cooperation and dedication to the task.

Richard F. Olson
Chairman
Oregon Job Climate Task Force

R E C O M M E N D A T I O N S

NOTE: The following are not necessarily consensus recommendations nor do they represent policy of participating organizations until or unless adopted by those organizations.

ENERGY, ENVIRONMENT & TRANSPORTATION

1. The Governor undertake a study to determine if repealing the Jones Act would materially benefit Oregon industries. If study reveals repeal of the Act would be beneficial, the Governor is urged to make the results known to the Oregon Congressional Delegation. Further, the Oregon Legislature is urged to memorialize Congress to repeal the Jones Act, based on results of the gubernatorial study. (See page 4).

2. The Governor instruct Oregon's representatives on the Northwest Regional Energy Council that in their work on the Commission they insure, wherever possible, that Council decisions reflect certainty of the future supply of electrical energy. (See page 1)

3. The Department of Environmental Quality and the Environmental Quality Commission reduce the uncertainty about the meaning of Oregon environmental rules and their interpretations by utilizing adopted federal rules wherever possible. (See page 2)

4. The Governor discuss with the Environmental Quality Commission and department director the need for their attention and concern in the adoption of rules to the economic effect of such adoption upon permittees, potential permittees and the DEQ itself. (See page 3)

5. The Governor discuss with the EQC and department director the desirability in rulemaking of attempting to achieve reasonable uniformity of rules with our neighboring states most likely to compete with Oregon for new business and jobs. (See page 2)

6. The Governor discuss with the EQC and the department director what specific plans they have to reduce the impact of non-traditional area sources which are substantially, causally related to our air quality non-attainment status, and which impose difficulties on the location of industry in the major urban areas of this state. (See page 4)

7. Seek legislation which will require the Energy Facility Siting Council to site the disposal of low level radioactive wastes generated in this state for which no other site is available for its disposal. (See page 4)

INDUSTRIAL DEVELOPMENT

1. The Governor must be Oregon's "Number One" salesman with cooperation and assistance from the Legislature. (See page 5)

2. Move the Department of Economic Development permanently under control of the Governor's office with the Director a senior member of the Governor's staff, reporting directly to the Governor. (See page 8)

3. The Department of Economic Development should maintain development assistance facilities in the Portland metropolitan area. (See page 6)

4. Banks, utilities, transportation firms and others working with new business prospects should be allowed to expand development departments. (See page 6)

5. Increase selective trade show participation by state and local governments and private sector firms. (See page 5)

6. Department of Economic Development should rely on private sector for current information about availability of industrial sites instead of attempting a continuing state-wide land inventory. (See page 8)

7. Attempts to market Oregon industrial sites should be based on strengths and aimed at diverse industries. (See page 9)

8. The Travel Information Section of the Department of Transportation should be transferred to the Governor's Office under the Department of Economic Development. (See page 8)

9. Oregon should make a permanent commitment to support an office to facilitate motion picture, television, theatrical and commercial productions. (See page 8)

10. Long-term leases of some state park land to the private sector should be considered for campgroup and tourist/convention facilities. (See page 8)

11. Develop marketing logo and slogan to sell Oregon to targeted audiences, combining tourist and industrial promotion where possible. (See page 6)

12. Attract more promotional money by establishing matching funds for tourist-industrial advertising to assist local communities, Chambers of Commerce and others. (See page 8)

13. The Legislature should consider adequate funding and a joint state-private sector subsistence effort for International Trade Division of Department of Economic Development. (See page 7)

14. Enlist news media support in achieving wider public economic understanding. (See page 5)

15. Establish a gubernatorial task force to determine feasibility of conducting a 1992 Bicentennial Exposition celebrating discovery of the Columbia River. (See page 9)

16. Amend Urban Renewal Statute (ORS 457) to eliminate blighted area requirement for construction of major public improvements in industrial areas. (See page 6)

17. Amend ORS 457.420 to permit property owners and local taxing bodies to negotiate terms of tax increment financing for major public improvement construction. (See page 6)

18. Amend ORS 198, 199, 451 to allow formation of special service districts in industrial areas based on assessed value instead of registered voters but without encumbering residential property. (See page 6)

19. Industrial Revenue Bonds should be continued as a capital formation tool. (See page 7)

20. County Development Revolving Fund should be continued and increased. (See page 7)

21. Seek tax reform instead of tax incentives to stimulate industrial development. (See page 7)

22. Comprehensive, national and regional, business climate studies should be carefully evaluated by the Legislature and state agencies, because they are a factor utilized by those involved in new business location activities. (See page 9)

23. Achieve more emphasis on basic education, good work habits and discipline in public schools and initiate minimum proficiency testing of primary and secondary students and teachers. (See page 7)

24. Community colleges should place more emphasis on those vocational and technical courses necessary to support existing or anticipated job opportunities. (See page 7)

25. The Board of Higher Education should establish funding priorities to meet perceived occupational needs. (See page 7)

26. Limit higher education construction to actual, individual campus needs. (See page 7)

27. Oregon institutions of higher education must pay market rates to attract and hold quality faculties. (See page 7)

28. A continuing inventory of employment needs would provide schools with a better base for effective education. (See page 8)

29. High technology instruction capability should be upgraded. (See page 8)

LABOR LAWS

Workers' Compensation

1. Redefine the definition of accidental injury so it would include only those injuries which truly arise out of and in the course of employment. (See page 11)

2. Redefine the occupational disease section of the law to require that a disease or infection be originally caused by work exposure unique to the place of employment. (See page 11)

3. Strengthen current law with a definition that would make mental illness compensable only when the claimant can establish that unexpected, unusual and extraordinary job-related stress caused the illness. (See page 11)

4. Modify law pertaining to temporary total disability to reflect an historical wage approach, averaging wages received over the last year versus the current two-thirds of the wages at the time of injury. (See page 11)

5. Permanent total disability benefit offset be extended to include general social security retirement benefits. Also, the offset should be expanded to include the public employe retirement system and private disability plan benefits. (See page 11)

6. Serious consideration be given to adopting the "wage loss" concept to permanent partial disability. (See page 12)

7. Review of Workers' Compensation Board decisions be changed to "substantial evidence" approach at the Court of Appeals level. (See page 12)

8. Current law permitting an insurer or self-insured employer to close a claim that is nondisabling or is disabling but without a permanent disability be expanded to include claims involving permanent partial disability. (See page 12)

9. Remove prohibition of "compromise and release" which now exists except in claims where there is a bona fide dispute over compensability. (See page 12)

10. Consider "shared funding" of workers' compensation medical benefits by both employers and workers. (See page 12)

Unemployment Insurance

1. Modify law so benefits paid to an individual in any quarter of the individual's benefit year do not exceed the total wages paid to the individual during the corresponding quarter of the individual's wage base year. (See page 13)

2. Support Governor Atiyeh's program which suggests three major changes in the funding system to bring control back to the states:

   a. Congress should eliminate that part of FUTA which funds state administration. States would then have the flexibility to use their unemployment insurance trust fund accounts for administration of the program as well as payment of benefits. The states could determine tax levels commensurate with their individual needs, levels of benefits, greater enforcement or expanded job placement activities. (See page 14)

b. These same state trust funds should be removed from the federal unified budget, where they give a false impression of surplus or deficit. This can be accomplished by Presidential Order. (See page 14)

c. Federal law should be revised to provide only minimal conformity requirements to address national goals, maintain order in the system, and protect interstate workers. (See page 14)

Wage and Hour Legislation

1. Legislature take no action to move Oregon's minimum wage rates out of their current middle-of-the-road posture into a forerunner's position. (See page 14)

2. Determine the "true" prevailing wage rates within the state instead of accepting the highest as its minimum in administering Oregon's "Little Davis-Bacon Act". (See page 15)

Civil Rights

1. Legislature should be urged to reject "comparable worth" legislation for either the public or private sectors in the State. (See page 16)

Occupational Safety and Health

1. We strongly endorse the continued administration of this important area of industrial law at the state level. Our only recommendation is that the state not carry its standards beyond those required at the federal level. (See page 17)

LAND USE PLANNING (See page 17 - 21)

1. Decentralize ultimate decisions regarding land use planning from the state level and place them at an appropriate local level that is responsive to the particular characteristics of the different areas of the state.

2. Change mandatory state land use goals to advisory guidelines, to be flexibly applied in response to local circumstances and market demands.

3. Make the function of the state Land Conservation and Development Commission and Department advisory, providing needed information and technical assistance to serve local land use planning efforts.

4. Remove Land Use Board of Appeals and LCDC from the appeals process and establish a court-based system of appeals. Limit the ability to challenge local land use decisions (standing) from its present scope to those persons whose rights or substantial interests are actually affected by the decision. Require that the issues raised on appeal be realistically related to those affecting the appellant's rights or interests. Streamline time frames and procedures for review of land

use decisions. Make appellants of a local land use decision liable for the applicant's costs incurred by the delay of an appeal when the appeal is found to be without merit, such as through the posting of a bond when the appeal is filed.

STATE AND LOCAL REGULATIONS

1. Evaluate the effectiveness of Oregon's Regulatory Flexibility Act, ORS 183.310, 183.335, 183.540 to 183.550, to assure that state agencies are complying with its requirements. Additionally, evaluate the positive effect of increasing the scope of the Act. (See page 23)

2. Seek legislation to make Oregon's "one-stop" permit program effective. (See page 24)

3. Executive Department conduct a study to determine if statutory time requirements for issuance of permits are being complied with by state agencies. (See page 25)

4. Investigate methods to reduce state building code and local planning code restrictions which increase costs and deter construction of all forms of building, residential and commercial. (See page 25)

5. Study methods to reduce the front-end investment costs imposed by system development charges. (See page 26)

6. Explore methods to modify local government architectural regulations and esthetic controls. (See page 27)

TAXATION

1. Cut state personal and corporate income tax in half and reduce property taxes by one-third. In place of these reduced taxes, a general retail sales tax of approximately 4 to 5% should be adopted. The revenue generated by a sales tax to be used entirely to offset the reductions in the income taxes and the property tax. Sales tax to provide for a collection offset for retailers to cover their collection expenses. (See page 27)

2. Reduce personal income tax by widening the brackets and reducing the top rate. Make provisions for adjustments in the income tax rates or brackets to eliminate the effects of inflation on personal incomes. (See page 28)

3. Place on the ballot for approval by the voters a constitutional expenditure limitation on the state and all units of local governments in Oregon. Adopt procedures to ensure a more accurate reflection of voter attitude on property tax levies. (See page 28)

4. Eliminate the 30% property tax relief program and return the basis of property taxation to 100% of market value as it was in 1979. (See page 28)

ENERGY, ENVIRONMENT & TRANSPORTATION SUBCOMMITTEE

The subcommittee held its organizational meeting on March 4, 1982. The following preliminary determinations were made on the subjects to be considered.

ENERGY

The subcommittee recognized fully the effects of cost and availability of energy on jobs and job formation. The subcommittee, however, reached no firm conclusion for action that would affect these energy issues, except for a singular recommendation to the Governor. The reason for what may appear to be indecision on the part of the subcommittee is dictated by the following:

a. Oregon is almost totally dependent for its supplies of oil and natural gas from sources outside the State of Oregon, thus, Oregon industry has little, if any, opportunity to control either the price or availability of such energy sources.

b. Electrical energy cost and availability have been among Oregon's most favorable economic factors for increased jobs. The advent of the Northwest Regional Power legislation and the deteriorating situation of the Washington Public Power Supply System has created a situation of severe uncertainty of price to participating public owned entities.

In view of the above, the subcommittee did not feel adequately informed to make recommendations for action, particularly when the fundamental answers will not be made by Oregon legislative or administrative bodies.

Even more important in the long term is the issue of availability. There is an uncertainty which no industry can independently deal with adequately and which will negatively impact our job climate, even in so-called "high tech" industries, and even though our electric rates are projected to remain below the national average.

The subcommittee, therefore, requests the Governor to become fully aware of the serious concern of many Oregon industries regarding future electrical energy availability which vitally affects their planning for the future.

Recommendation

Availability of electrical energy is essential to the future economic health of Oregon and the Northwest. The subcommittee recommends that the Governor instruct Oregon's representatives on the Northwest Regional Energy Council that in their work on the Commission they insure, wherever possible, that Council decisions reflect certainty of the future supply of electrical energy.

ENVIRONMENT

The subcommittee reviewed those environmental areas for which Oregon has established programs to determine if those programs had had a deterrent effect on the creation of jobs in Oregon. They included water quality, hazardous waste, solid waste, low-level radioactive wastes and air quality.

In general, Oregon appears to have substantially similar laws to those of other states in the fields of air and water quality and solid and hazardous waste due to preemption of those fields by the federal government through the Environmental Protection Agency. Those same preemptive laws also, on each of those environmental issues, provide authority for each state to administer its own program if the state has:

a. Law that provides substantially similar authority as federal law.

b. Has adopted administrative rules to carry out state law which will enable the state to meet federal regulatory requirements.

c. Has provided adequate budget and manpower to administer and enforce the state law and rules.

d. Has provided substantially similar enforcement authority and penalties as provided by federal law.

Thus, since each state must meet the above standards there should not be significant differences from state to state in the basic laws and regulations affecting those environmental issues. However, closer examination suggests that Oregon air quality rules may have become somewhat more difficult for companies seeking to locate or expand in Oregon because the agency has elected in many instances to:

a. Rewrite the federal rules in a manner the Department of Environmental Quality believes is more understandable and more concise than the federal rules. The difficulty with this approach is that such a company seeking to locate in Oregon must familiarize itself with the Oregon rules and their interpretations which may vary somewhat from the federal rules and their interpretations. This is both time consuming, expensive and allows for some uncertainty with regard to Oregon requirements.

b. Utilize the provision in federal law that state laws and regulations may be more stringent than federal rules. Recently the state adopted new source rules which provide that new sources or major modifications of existing sources with emissions, after control, of greater than 25 tons of particulate and are in or impact a non-attainment area are subject to these rules. A major modification even in an attainment area with no impact is also subject. These new source rules may require extensive computer modeling and ambient air monitoring prior to construction if adequate existing data is not available. This requirement may cause significant added expense and delays of more than one year in securing needed permits. Federal rules do not require such review unless the source exceeds 100 tons per year. The potential costs and delays pose significant difficulty, but do not change the requirement that best available control technology (BACT) or lowest achievable emission rate (LAER) controls be installed.

The problem for jobs is that the delay and cost that may be occasioned by Oregon rules is not required by the State of Washington, which is following the federal rule, even in a shared airshed (Vancouver-Portland AQMA).

In addition, in the air quality field the Department of Environmental Quality recently adopted a unique rule for plant site emission limits (PSEL). This means that each existing industry, subject to limited adjustments, will have a PSEL assigned which initially limits its air emissions to the emissions of 1977 or 1978 or some earlier year if that year had a more representative operating rate. The 1977-78 period is the baseline from which growth in industrial emissions is to be measured. AOI and its Air Quality Committee took strong exception to the rule when it was proposed in late 1980 and due to those objections the rule was modified and adoption was delayed from January until August of 1981.

As adopted the rule may still affect job formation because:

a. It is significantly more difficult to comply with than the federal Prevention of Significant Deterioration rules which do not require industrial permits to show a plant site emission limit.

b. The PSEL not only limits emissions, it has the effect of limiting production because the emissions are denominated against units or tons, etc. of production. If you want to grow you must make application for additional use of the airshed and at some time, theoretically, there will be no more room, hence no more growth.

c. If the firm with the PSEL was utilizing natural gas during 1977-78 and now, for economic reasons, needs to burn oil, the firm may not be able to switch fuels.

d. This type of limitation is not now being utilized by the State of Washington, hence that state presents fewer location concerns for a new industry.

The subcommittee believes our environmental agencies may not recognize fully the effects of agency actions:

a. Which delay the decision-making process;

b. That result in uncertainty on the part of applicants for permits as to the intentions of the agency;

c. That are more restrictive than required by other states in which location is also feasible;

d. Which add significant cost without clear environmental benefit;

e. Which cause administrative encumberances on both the permittee and the agency without a clear environmental benefit.

While the above criticisms are difficult to quantify, the subcommittee believes there is sufficient substance to them to bring them to the attention of the Governor. It appears to the subcommittee that newly created positions in the Governor's office for persons to assist applicants in expediting their permit applications will be helpful in resolving some of these issues.

These recommendations are not suggested with any other intention than for our environmental agencies to do a better job, and are not intended to reduce the environmental achievements of Oregon.

To complete this part of the report the subcommittee notes the following:

a. The Environmental Quality Commission has within the past year acted to modify a rule that was more stringent than federal standards. This action was the adoption of federal EPA .12 ozone standard as the only ozone standard in Oregon.

b. The DEQ and EQC have been very responsible in their attitude toward the imposition of civil penalties.

c. The areas of water quality, solid and hazardous waste regulation and administration appear to the subcommittee to approximate federal law and standards and do not appear to adversely influence job formation.

d. At present, the non-attainment of ambient air quality standards appears more influenced by non-traditional area sources than by industrial sources. There is little or no statutory authority that addresses this issue, nor does it appear that the public is adequately informed of this development which has only been identified and evaluated within the last three years.

With regard to the issue of low-level radioactive waste, the Legislature has considered this matter for the last two sessions but has failed to fully resolve the issue.

Until the 1981 session, low-level radioactive wastes could not be disposed of in Oregon. The 1981 session made provisions for the Energy Facility Siting Council (EFSC) to site such wastes generated prior to July 1, 1981.

The problem that remains is that Oregon law and rules place the threshold for what is low-level waste lower than that recognized by other states, particularly the State of Washington. Washington has one of only three sites in the United States for disposal of this material and it is reluctant to accept material below its higher threshold and has refused to accept large quanitites of such material because it utilizes too much space in its disposal area. Oregon industries which may have to utilize such materials in their processes may not be able to dispose of such material under present circumstances. Oregon should assume the responsibility for determining the disposition of such wastes created in this state, and not assume that other states will assume that responsibility.

TRANSPORTATION

Increasing transportation costs have had an adverse impact on Oregon jobs, particularly for those industries which have lost a significant part of their market due to ever-increasing costs of freight shipment which has limited their ability to compete. Oregon industries so impacted are our lumber, plywood and food products industries. Further complicating the situation is the Jones Act which requires goods shipped from one American port to another be shipped on U.S. flag vessels. Our major lumber competitors are the Canadians who have no such restrictions. The subcommittee, with the exception of the Jones Act, concluded that there were few significant issues that could be resolved by the Oregon Legislature or administrative agencies because the issue is primarily one of an interstate nature and subject to federal jurisdiction.

INDUSTRIAL DEVELOPMENT SUBCOMMITTEE

OREGON'S BUSINESS CLIMATE

Oregon's business image is generally considered in negative terms rather than positive and friendly, both inside the state and nationally. Oregon must significantly improve its image if it hopes to attract new businesses to locate here. This also applies to expansion of existing Oregon firms.

The state has to make a long-term commitment to accomplish this change which must come from all elected officials, both state and local.

The "image" change must be reinforced with positive changes in the legislative arena that have created our "anti-business, anti-growth" reputation. Changes must be made in our taxing structure, land use laws, regulation and permit delays, labor laws, etc., which adversely affect business and industry in Oregon.

We must recognize also that Oregon has certain disadvantages that cannot be changed, such as geographical location, market proximity and transportation problems.

On the other hand, Oregon has some positive advantages such as livability, mild climate, generally recognized good education systems and research facilities, recreation opportunities and others.

Sales efforts for Oregon should emphasize the positive factors and discuss the negative factors in the light that our political leadership at all levels recognizes our non-competitive areas and are addressing changes necessary to improve our job climate.

Recommendation

The news media, through its trade associations, should be enlisted to assist in achieving public economic understanding. News media also can do much to create improved economic conditions here by reporting problem-solving methods utilized in other areas of the nation.

MARKETING OREGON

The State of Oregon has a limited marketing strategy at present. If we assume structural changes are made within the state to make it more "attractive" to industry, then the state, in conjunction with local communities and private enterprise, should expand marketing and advertising efforts. It must be emphasized that this will be effective only over the long term.

Recommendation

1. Increase participation in selective trade shows by state and local governments and private industry.

2. The Governor must be Oregon's Number One salesman and actively participate in recruiting industry. The Governor should travel in and out of the state to "sell" Oregon as a place to locate or expand. The Legislature must cooperate and assist the Governor.

3. The Department of Economic Development should establish a business development office in the metropolitan Portland area. The office would add to the effectiveness in working with prospective clients, as well as other professionals involved in the "siting" of industries. DED offices must coordinate and provide usable, up-to-date data for local communities, Chambers of Commerce, private sector developers and economic development specialists. Information useful in working with prospective industrial firms is not currently available at DED offices or any other centralized location. A "clearinghouse" is required to provide needed information quickly and avoid duplication.

4. Private sector firms that work with companies interested in locating or expanding in Oregon should be encouraged to expand their economic-industrial development activities. Regulated entities, such as public utilities, should be allowed to include the cost of such operations in their rate bases, fee schedules, etc.

5. Develop a marketing logo and slogan to sell Oregon. Target advertising to reach desired audiences. Combine tourist promotion with subtle advertisements for industry.

PUBLIC IMPROVEMENTS

It is necessary for the state, county and local communities to assist industry in funding public improvements such as roads, storm drainage systems, sanitary sewers, etc. The idea that an industry must pay for large dollar off-site improvements to "buy in" the community, without weighing the positive economic impact that industry would have on the community, is not realistic.

Recommendations

1. The urban renewal statute (ORS 457) should be amended to allow for setting up districts in industrial areas for the purpose of constructing major public improvements (streets, storm drainage, sanitary sewer, etc.) without the "blighted area" requirement. This would only apply to those projects that are of general benefit to large industrial areas (major collector streets, storm and sanitary sewer mains, etc.). It would not apply to "normal" development requirements for industrial subdivisions.

2. Tax increment financing should be used as a method for funding these "major" public improvements. A portion of the increased taxes collected (as a result of increased assessed valuation from new development) would assist in paying for the improvements necessary for orderly industrial development. ORS 457.420 should be amended to allow for a "split" in the tax increment which would allow the Urban Renewal Agency (property owners) to "negotiate" with the governmental taxing bodies affected by the tax increment financing. This would generally make tax increment financing more palatable to each of the individual taxing bodies.

3. It would also be helpful if special service districts in industrial areas could be set up based on assessed value, and not registered voters (allowing for exclusion of assessment or taxation of dwelling units). This is needed because industrial property owners usually are not registered voters within the industrial areas where their property is located, yet would pay for all of the improvements through assessments or taxes. (ORS 198, 199 & 451.)

CAPITAL FORMATION & TAX INCENTIVES RECOMMENDATIONS

1. Industrial Revenue Bonds are now being used in a limited way in Oregon and should continue as a tool for capital formation. Because of the cost of issuing bonds, they are not economically feasible for amounts less than $500,000. Also, the financial strength of the company provides the collateral, which tends to eliminate new business ventures from qualifying for IRB sales.

   Equity fund organizations, to provide small businesses with funding and long-term capital, should be encouraged. A study done in 1980 indicated about one-third of the small businesses contacted had to abandon or postpone expansion plans for lack of capital.

2. County Development Revolving Fund -- The continued and increased funding of this fund should be encouraged.

3. Without question, tax reform would be much more effective in stimulating industrial development than would tax incentives. Companies become suspicious of an area that must offer tax incentives to attract industry. They also tend to be discriminatory toward existing industry.

IMPORT/EXPORT RECOMMENDATION

The Legislature should consider adequate funding and a joint state-private sector subsistence effort for International Trade Division of Department of Economic Development.

EDUCATION

The public education system in Oregon has the potential to make a greater contribution to the economic vitality of the state. Changes are needed in educators' attitudes, dedication to quality of product and commitment to cost-effectiveness.

Recommendations

1. Primary and Secondary -- Completion of secondary education is sufficient for most jobs in business and industry. Oregon needs to emphasize basic studies, good work habits and discipline at all levels. Initiate minimum proficiency testing for primary and secondary school students and teachers.

2. Community Colleges should place more emphasis on those vocational and technical courses necessary to support existing or anticipated job opportunities.

3. Colleges and Universities -- More direction is needed to control the college and university system. Multiple duplication of programs offered cannot be justified at all schools. The multiple offerings of education degrees is only the most obvious. One-ups-manship in building construction must be halted. If there is a justifiable need to build one or more new buildings on one campus and none at another - so be it. Oregon institutions must pay the market rate to attract quality professors in the system.

4. More direct contact is needed between business and educators. A continuing inventory of employment needs within our state would provide a better education base. Students should be educated for employment opportunities that actually exist or have good potential to exist in the future in Oregon.

5. High-tech instruction capability should be upgraded in our educational system. In addition to classroom instruction at the major technical schools, specialized satellite centers could be located at other colleges, community colleges, employment centers, etc., using video and other electronic type means of communication.

6. In the opinion of this committee, the above can be initiated without an increase in educational expenditures beyond normal inflationary changes.

TOURISM & MOTION PICTURE INDUSTRY

The state must accept tourism as an Oregon industry, the same as wood products, agricultural and other manufacturing and service facilities. We should encourage the development of tourist and convention facilities, as well as encourage the upgrading of some of the existing facilities.

Recommendations

1. The State of Oregon should make a permanent commitment to support an office for motion picture, television, theatrical and commercial production. The office should provide professional liaison with the industry as well as the necessary advertising and promotion efforts vitally needed to succeed in this highly competitive field.

2. The Tourist Information Section should be removed from ODOT's jurisdiction and become a part of the Governor's Office (DED).

3. Consideration should be given to long-term leases of some state parks land to the private sector for campground and tourist/convention facilities.

4. We recommend an advertising matching fund for out-of-state advertising be studied, and if feasible, be initiated to assist local communities, Chambers of Commerce, etc., to stretch the advertising dollars for Oregon.

5. Additional funds may be considered for tourism promotion that would allow for special matching funds and more advertising at the state level.

6. A strong tourism campaign can be used for business image enhancement, as well as attracting tourists.

DEPARTMENT OF ECONOMIC DEVELOPMENT RECOMMENDATIONS

1. We strongly support the recent statutory change whereby the Department of Economic Development reports directly to and remains responsible to the Governor. The Director of the Department of Economic Development should be a senior member of the Governor's staff.

2. A state-wide land inventory is not a good investment. It is simply too expensive to complete and impossible to keep updated. The DED should rely on the private sector for current industrial site availability.

3. The Governor's Office should assess Oregon's major selling points and encourage competent industries to locate in the state, i.e., sell on strength. We should not, however, limit our marketing only to a select group of industries. It should be emphasized that Oregon is willing to discuss site locations with all industries. (This is not to say that any industrial plant by any company would necessarily be allowed to locate in any part of the state they desired.)

STUDIES ON OREGON'S BUSINESS CLIMATE RECOMMENDATION

Comprehensive, national and regional, business climate studies should be carefully evaluated by the Legislature and state agencies, because they are a factor utilized by those involved in new business location activities.

1992 BI-CENTENNIAL EXPOSITION

The Lewis & Clark Exposition, Portland 1905, was first conceived 10 years earlier in 1895 (during depression) as a method by which to spur the region's depressed economy and usher a new era of development in the coming century (1900). The success of that World's Fair is neatly chronicled in a new booklet published by the Oregon Historical Society, called "The Great Extravaganza". The Lewis & Clark Exposition turned a profit financially for its thousands of investors -- much money was raised by popular subscription for sums as small as $2.00.

Recommendation

We recommend a study be launched (gubernatorial task force) to determine the feasibility of conducting a Bi-Centennial Exposition in 1992 celebrating the discovery of the Columbia River.

Such an event would focus national and international attention on Oregon's friendly attitude toward creation of new employment opportunities.

LABOR LAW SUBCOMMITTEE

GENERAL FINDINGS

In general, Oregon's Labor Laws do not have a major negative impact on the State's ability to attract and retain business and industry. With effective input from business, labor, and private individuals, in recent years the Legislature has made significant progress in streamlining administrative procedures, reducing costs, and improving the quality, equity, and effectiveness of the State's statutes in regulating labor and employment practices. We view this trend as positive; however, there still remains areas for improvement which, when implemented, would further enhance the climate for business and industry within Oregon.

This report contains a comprehensive set of specific recommendations in the following areas:

Workers' Compensation — Unemployment Insurance
Wage and Hour Legislation — Civil Rights
Occupational Safety and Health

The effective implementation of these recommendations would not only continue the positive trend towards progressive labor legislation, but would also help establish Oregon as a leader in employment practices, policies, and legislation which will significantly enhance the State's ability to attract new industry and would also revitalize the business climate for existing firms.

WORKERS' COMPENSATION

Six years ago Oregon had developed a deserved reputation of being one of the very highest cost states for Workers' Compensation. In the past years, due to a cooperative executive branch and an intelligent approach by a bipartisan legislative group aided and abetted by a strong tenacious business lobby, the 1977, 1979, and 1981 Legislatures changed the picture materially. Today, the effective Workers' Compensation rates in the State of Oregon are at least 50 percent below what they were prior to the 1977 Legislature. Listed below are some of the legislated changes that have reduced costs appreciably.

1. The Legislature changed the definition of permanent total disability, required annual financial statements, and biennial physical exams on existing PTD awards which has virtually cut in half the number of potentially expensive claims in this area.

2. The 1977 Legislature changed the law to permit insurance companies to deviate from previously mandated Workers' Compensation rates. Most insurance companies providing Workers' Compensation Insurance in the State of Oregon deviate an average of 25 percent from the published rates. These deviations are over and above the 30 percent rate reductions in basic rates.

3. The Legislature made administrative changes which included the elimination of the circuit court review, making the Board strictly a case review body, which has had a salutary effect on costs.

4. Offsets were required for disability payments received under Social Security.

5. The competitive rating picture in Oregon is further enhanced by the liberal use of cash flow plans for premium payments. These plans are prohibited in some states, i.e. California.

The above changes and other minor ones which are too numerous to list, have effectively reduced Workers' Compensation costs in Oregon as mentioned above by approximately 50 percent and brings the Oregon Workers' Compensation costs into a more favorable comparison with other states. For example, a current comparison shows most Workers' Compensation effective rates by classification in Oregon are lower than California. We have made significant strides in correcting the Workers' Compensation costs in Oregon. It is important that we publicize this fact as most of the country is still reviewing Workers' Compensation costs in Oregon on the basis of national rating manuals which do not reflect the State's new posture and the true net costs that are resulting from the recent changes in the law.

There are four areas (i.e. high utilization, restructuring of entitelements, administrative procedures and funding) in which further changes are needed to truly bring the Workers' Compensation picture in Oregon into a competitive posture.

a. High Utilization

(1) Oregon has an extremely liberal system regarding entry into it. What is construed as an accidental injury or occupational disease in this state is often excluded in other states. As a consequence, Oregon has a much higher utilization of its program - resulting in higher costs. The Oregon law states that "An injury is accidental if the result is an accident, whether or not due to accidental means." That is hardly clear and concise language and has resulted in appellate court decisions that make it questionable that any "injury" could be excluded under the current law. We feel that the definition of accidental injury should be redefined so that it would include only those injuries which truly arise out of and in the course of employment.

(2) Another factor contributing to the high utilization of our system is the definition of occupational disease. We suggest that this should be redefined to require that a disease or infection be originally caused by work exposure unique to the place of employment.

(3) A third area where redefinition is desirable relates to mental illness or mental stress cases. There have been several Appeals Court and Supreme Court decisions that have affected this definition. We feel the current law should be further strengthened with a definition that would make mental illness compensable only when the claimant can establish that unexpected, unusual, and extraordinary job-related stress caused the illness.

Hopefully, the definitional changes suggested would convey to the Legislature that the Workers' Compensation system cannot accommodate every social problem; the price is too great. Workers' Compensation is merely an insurance system designed to protect both employers and employees financially for accidental injuries arising out of the workplace. It is a no-fault system - nothing more, nothing less.

b. Restructuring of Entitlements

(1) It is the suggestion of the Committee that the State of Oregon should return to a historical wage approach, averaging wages received over the last year versus the current two-thirds of wage rate in effect at the time of injury.

(2) It was mentioned earlier that the State of Oregon did adopt an offset of social security disability payments against Workers' Compensation payments. It is the recommendation of the Committee that general social security retirement benefits

also be an offset to Workers' Compensation costs. It was also discussed that possibly the offset should be expanded to include the public employee retirement system and also private disability plan benefits.

(3) The Committee recommends that serious consideration be given to adopting the "wage loss concept" to permanent partial disability as enacted in Florida in 1979. The Florida system to this date has proven to be quite beneficial both to the injured worker and the employer. It removes litigation from the Workers' Compensation system (which was the original intent in establishing Workers' Compensation laws in the early part of this century).

The "wage loss concept" has reduced Workers' Compensation rates in Florida, but maintains the integrity of delivering proper compensation to an injured employee. The states of Washington, Colorado, and California are among those that are considering this concept now and, of course, Oregon has considered it during the past two sessions when it was embodied in the Chrest Bill. It appears to the Committee that if this type of a program is embraced in the State of Oregon, we could further mitigate our Workers' Compensation cost problems while preserving the integrity and equity of benefits for the injured workers.

c. Administrative Procedures

The Committee feels that several areas of administrative procedures could be corrected or changed to benefit the system.

(1) A revision of the scope of review in Workers' Compensation cases, perhaps a "substantial evidence" approach rather than a "de novo" review at the Court of Appeals level.

(2) Expanding carrier closure of claims cases involving permanent partial disability.

(3) Permitting compromise and release.

d. Funding

(1) In some jurisdictions, employee contributions are required for portions of the Workers' Compensation benefits (i.e. Washington state employees pay one-half of medical costs.)

UNEMPLOYMENT INSURANCE

In general, Oregon's approach to unemployment insurance does not differ much from the majority of other states. The costs, administrative procedures, and employer responsibilities are not perceived as deterrents to business and industrial development. On the other hand, Oregon's unemployment insurance law in many respects could be used as a model to attract out-of-state firms contemplating operations in the state.

For example, at least 14 other states are in debt to the federal government for loans to pay benefits, while Oregon's unemployment insurance trust fund

is solvent in spite of our state's high unemployment rate. Accordingly, there is stability and predictability in our taxing structure for the program. Oregon law contains stringent disqualifications for persons involved in labor disputes. Due to changes in the law by the 1981 Legislature, persons who voluntarily quit or have been discharged with good cause can no longer collect benefits automatically after eight weeks. Additionally, Oregon has a strong and effective fraud control program which returns thousands of dollars to the trust fund every year.

Simply defined, unemployment insurance is a program of income maintenance for temporarily jobless workers whose unemployment is not of their own making. Its main function is to replace part of the unemployed person's lost wages and to tide the individual over until he/she finds a new job or is recalled to the old one. It is not intended to be a welfare program for the permanently unemployed, nor is it intended to subsidize the voluntary unemployed.

In some areas, however, the law has departed from the original concept of insurance and may be drifting into the welfare arena, or at least towards a salary supplement program. A good example is the payment of unemployment benefits to "secondary wage earners". This practice, coupled with no seasonality restrictions in the Oregon law, constitutes an annual drain on our trust funds.

Secondly, there is room for improving the funding and administrative procedures. It is in these two areas that we feel the law can be strengthened.

a. Seasonal Employment

There are a significant number of individuals in the Willamette Valley who work during the summer and early fall months in the packing and canning industry. Routinely, every year they establish eligibility by working 18 weeks and after the season they, just as routinely, apply for unemployment insurance and get it. Many, if not most of these individuals are secondary wage earners in their families. They are not the primary wage earner and are only working part-time to supplement the family income. We question whether the unemployment insurance system should accommodate this predictable labor pattern.

Although it does not generally involve secondary wage earners, a similar seasonal pattern of employment in the logging and construction industries can be documented. There is normally ten months of relatively steady employment and then two months of "vacation" with unemployment insurance benefits year after year. Again, it is questionable whether the system should accommodate this type of labor pattern. It does, however, and is extremely costly.

It is suggested that the Oregon law be modified to limit payments to workers involved in seasonal employment. One approach might be to limit payments to seasonal workers on the basis of the historical labor pattern of that particular person or industry. Specifically, benefits paid to an individual in any quarter of the individual's benefit year should not exceed the total wages paid to the individual during the corresponding quarter of the individual's wage base year.

b. Funding and Administration

One other area that should be looked at carefully is the funding for employment services and the unemployment insurance program. Currently, employers pay a tax (FUTA) to IRS for the administrative costs, both state and federal. Employers pay another tax through their state legislative structures, but indirectly into the federal budget, for the payment of jobless benefits. Thus, we have employers paying two taxes into two dedicated funds which reside in the federal budget as surplus or deficit. However, neither Congress nor the states' legislatures can make benefit adjustments to both funds based on the split of legislative taxing authority.

The States' employers pay for the system. The states should control the administration of the system through state legislative action with direct employer input to state legislators. Only then will the direction of a state's program meet the needs of any particular state. Governor Atiyeh suggests three major changes in the funding system to bring control back to the states:

(1) Congress should eliminate that part of FUTA which funds state administration. States would then have the flexibility to use their unemployment insurance trust fund accounts for administration of the program as well as payment of benefits. The states could determine tax levels commensurate with their individual needs; levels of benefits, greater enforcement or expanded job placement activities.

(2) These same state trust funds should be removed from the federal unified budget, where they give a false impression of surplus or deficit. This can be accomplished by Presidential Order.

(3) Federal law should be revised to provide only minimal conformity requirements to address national goals, maintain order in the system, and protect interstate workers.

WAGE AND HOUR LEGISLATION

In this section, we will examine the impact of minimum wage laws and the State's "Little" Davis Bacon Act.

a. Minimum Wage Law

Oregon's current minimum wage rate is $3.10 per hour. At present, 20 states have minimum wage rates lower than Oregon's rate, two have the same rate, 19 have a higher rate and eight have no minimum wage rate at all. The Federal minimum wage rate is currently $3.35 per hour. It is the conclusion of this subcommittee that the pervasive coverage of the higher federal statute, coupled with the relative comparability of Oregon's rate, makes it unlikely that Oregon's minimum wage law significantly deters the attraction of business to Oregon.

It must, however, be noted that minimum wage laws have a high degree of visibility to business. Action by the Oregon Legislature to

move Oregon's rates out of their current middle-of-the-road posture into a forerunner's position would signal the wrong message to business. The Oregon Legislature is to be commended for its passage of progressive sub-minimum wage provisions for student learners and handicapped persons.

b. The "Little" Davis Bacon Act

Oregon's "little" Davis Bacon Act requires the payment of prevailing wages and fringe benefits to workers who are employed on contracted public works projects. Its counterpart, the federal Davis Bacon Act, requires the same payments to workers employed in the construction of federal buildings and projects. Currently, all but 12 states have some form of "little" Davis Bacon legislation.

"Prevailing Wage" laws have been the subject of considerable criticism for much of their long history. Recently, however, the fervor to repeal the federal act has reached a high pitch. It has been the subject of numerous studies by both governmental agencies and outside researchers. Their findings have led to the uniform conclusion that prevailing wage laws are a highly inflationary vehicle which has outlived any possible purpose they may have once had and are, in fact, producing results which are the exact opposite of those intended by their originators. While the laws were intended to preserve local wage rates from roving contractors who would employ workers for less and thereby displace local employees, it is now resulting in the importation of higher metropolitan wage rates and thus adding significantly to the cost of public construction projects. Largely, as a matter of government convenience, the highest union rate embodied in statewide or regional labor agreement becomes the minimum wage rate even though it bears little relation to the true rate prevailing in a given area. The Economics of the Davis Bacon Act, Gould and Bittlingmayer; "Davis Bacon Act," General Accounting Office; "The Effect of the Davis Bacon Act on Construction Costs in Non-Metropolitan Areas of the United States," Oregon State University, Fraundorf, Farrell and Mason; "The Economics of the Davis Bacon Act", University of Chicago, Gujarati; Davis Bacon Act, Thiebolt; American Enterprise Institute are among the important studies which have all concluded that the effect of the Davis Bacon Act is higher than necessary labor and construction costs.

The same inequities which have led the press to describe the federal Davis Bacon Act as a fat, depression era relic which preserves artificially high wage rates in governmental construction jobs at a tremendous cost to the taxpayer, also apply to Oregon's little Davis Bacon Act.

Certainly, the effects of Oregon's Act on the attraction of industry to the state are less direct than its effects on the taxpayer. It does, however, appear that the introduction of inflated wage and benefit levels to localities may, through competition for qualified employees, drive labor costs up for both non-construction employers and construction employers not directly involved by attracting workers away from those jobs thus forcing employers to pay higher wages to retain their employees. Moreover, concerns over the inflated costs of providing

governmental service buildings and facilities may tend to discourage the efforts of municipalities and other governmental entities to actively solicit new businesses because of the high cost of providing public facilities to accommodate the resultant growth.

c. Repeal of Oregon's Davis Bacon Act

While it is not a strong likelihood that business will perceive these indirect effects and choose not to locate in Oregon because of them it is a strong likelihood that repeal of the "little" Davis Bacon will contribute to the creation of a fair and favorable climate for business in Oregon. The inequities inherent in present prevailing legislation are becoming increasingly visible to the public through attacks on the legislation by the press. Dissatisfaction with prevailing wage legislation is steadily increasing. The case for repeal is overwhelming. Inasmuch as prevailing wage laws are viewed very negatively by business, if Oregon were to join several other states in repealing its "little" Davis Bacon, we could significantly enhance our business image. Short of repealing the State's prevailing wage law, administratively the State could significantly alter the negative and inflationary impact. This could be accomplished by determining the "true" prevailing wage rates within the state instead of accepting the highest as its minimum. This change alone would substantially reduce labor costs on state and municipal projects; and at the same time, reduce the pressure on other business and industry to raise its wages in attempting to retain their employees.

CIVIL RIGHTS

There is a significant overlap of protections under Oregon's Fair Employment Practice Laws and their federal counterparts. Under both federal and state law, employers are prohibited from discriminating on the basis of race, color, national origin, sex, age, religion, and physical and mental handicaps. In addition to Oregon, at least forty other states have similar statutes.

a. Fair Employment Practices

The protection of employees against discrimination is a national standard. Although Oregon recognizes a greater number of protected classes than are recognized under federal law or the laws in other states, the most important of those classes are also protected in other jurisdictions as well. Prospective employers are not likely to consider Oregon's Civil Rights statutes to be a deterrent to locating in Oregon and, therefore, little, if anything, could be done in this area to improve our State's competitive posture.

b. Comparable Worth

The Oregon Legislature showed extreme wisdom last session in its total rejection of the concept of comparable worth. The passage of comparable worth legislation would have a devastating effect on the State's ability to attract new business not to mention the penalties it would impose on the State's current employers. The

issue of comparable worth is perhaps the most highly controversial subject in the area of employment discrimination today. It has, as its basic tenet, the notion that men and women should receive not only equal pay for equal work and equal pay for comparable work, but also equal pay for work of comparable value. Proponents of the comparable worth doctrine urge its use to dissolve disparities in wage rates between totally different jobs populated predominately by women and by men. As a practical matter, passage of comparable worth legislation necessitates substitution of the government's subjective judgment of the value of an employee for the objective determination of wage rates by an employer and the labor market. Attempts to pass comparable worth regulations within the framework established by Title VII have failed largely because of difficulties encountered in trying to draft legislation sufficient to give employers notice of what is needed to comply. Additionally, comparable worth, in its purest form, is predicated upon a total disregard for market forces. This is true because it is market forces that have perpetuated the very wage disparities that proponents are seeking to dissolve. Presumably, passage of comparable worth legislation would enable a secretary (predominantly female) to force comparison of the value of her job to that of a truck driver (predominantly male) employed by the same company without regard to what the going rate is for either job. Comparable worth is an extremely complicated doctrine with limitless application. It strikes fear in the hearts of employers. The passage of such legislation for either the public or private sectors in the state would seriously impair efforts to attract business to the state.

OCCUPATIONAL SAFETY AND HEALTH

Oregon's approach to occupational safety and health is both reasonable and positive. There is no harassment of business, yet the state competently and effectively administers the law, investigates employers with higher than normal accident frequencies, and generally remains responsible to its individual and business citizens.

Most employers viewed the broad entrance by the Federal Government into the field of occupational safety and health with considerable apprehension. Accordingly, the employer community supported the preparation of a state plan and actively lobbied during the 1973 Oregon Legislative Session for the successful passage of the Oregon Safe Employment Act. The vast majority of the state's employers felt that they could work with our state agency in a more effective and constructive manner than they could with a less responsive federal program.

Today, we strongly endorse the continued administration of this important area of industrial law at the state level. Our only recommendation is that the state not carry its standards beyond those required at the federal level.

SUMMARY AND CONCLUSION

In short, the status of Labor Laws in Oregon does not place the state at a competitive disadvantage when competing for new prospective industry.

We have made great strides in the last three legislative sessions which has done much to improve the business climate in the state. What needs to be done now is to actively communicate inside and outside the state, the reasonableness and equity of our major labor legislation.

Secondly, we need to act affirmatively on recommendations such as those we have proposed so as to continue the progressive trend that will ultimately put Oregon in a leadership position. It will, however, take both active selling and positive action to further enhance our competitive position.

LAND USE PLANNING SUBCOMMITTEE
Problems, Premises, and Effects on Job-Producing Investment

INFLEXIBILITY

Statement of the Problem: The state's land use planning process is inflexible and unresponsive to the needs of the private sector in encouraging job-creating investments.

Premises:

A. Plans are approved on the basis of what economic development is assumed to be "needed" by the community. Forecasts of industrial and commercial land needs are often mathematically determined on the basis of past trends and population projections. The plans are not based on what is "needed" by business and industry to locate.

B. The needs of industry to locate are extremely diverse. Site preferences vary in terms of location, services, size, type, design, access, price, etc. The sites necessary to accommodate development cannot be categorized into a few basic types. In addition, other market factors determine site location, including proximity to resources, markets or other operations, labor pool, wages, community size and amenities, complimentary or competing industries, etc.

C. Since industrial development follows market forces, not community needs, simply zoning enough industrial land to meet a community's needs will not make that economic development occur. Because the market ultimately determines site location, in one area all the land thought to be "needed" might lie idle, while in another area the demand for additional sites will far exceed what was assumed to be needed and was designated in the plan. Plans that are inflexible and unresponsive to the diverse needs of industry are an obstacle to job-producing economic development.

Effects on Job-Producing Investment:

1. The inflexibility of the goals and resulting plans limits the number of alternative sites from which an industry can choose to locate or expand. With fewer sites to choose from, there is less likelihood of finding a site

that meets all of the other locational factors needed by that industry. The less flexibility in alternative sites to choose from, the less the likelihood is that industry will find a suitable site.

2. Plans that lock up a few designated sites with features attractive to a few particular types of industry severely limit potential economic development. Many good job-producing enterprises may be lost while waiting for just the right industry that will fit the designated site. Furthermore, locking up specially designated sites creates an artificial monopoly that can diminish that site's attractiveness to potential industry.

3. In seeking increased economic development, local governments cannot freely balance among the competing interests that are of importance to the local community. Since plans must be based on justified "needs," not local desires, even if local officials wanted to accommodate more industry, or provide more flexibility, they would be unable to do so under the state's requirements.

   Local officials are hampered in attracting and retaining industry. Even when a project is strongly supported locally, the local officials cannot guarantee ultimate approval if any land use action is required to secure the site.

4. The sites (and areas) that are best suited for economic development based on market factors are not necessarily where that site can be "justified" or is "needed" under planning standards.

   For new development, the competition for economic development projects is fierce, the margin slim and time frames short. If industry cannot get the "best suited" site in Oregon, it will get it somewhere else where such sites are more readily made available for development. The private sector will not compromise optimum location to accommodate a land use plan so long as there are economic alternatives available in other states.

   As for expanding industries, at some point the disincentives for expanding in Oregon (a less than optimum site, or the time, expense and risk involved in obtaining approvals on the optimum site) can outweigh the advantages of continuing to invest in the state. If expansions are made despite the disadvantages, increased costs will ultimately affect the economy of operations and, ultimately, jobs.

5. Plans that are not responsive to change will be totally ineffective in accommodating economic development.

Industries evolve as resource bases, technologies and markets change. The locational factors important to an industry today are constantly changing with the many variables of the market. Inflexible land use requirements cannot accommodate these changing economic needs.

6. Plans are only as good as the assumptions upon which they are based. Since economic development in the private sector depends on so many diverse and changing variables, it is risky to draw superficial conclusions for the purposes of land use planning. The less flexibility in the planning process, the greater is the risk if those assumptions prove to be inaccurate. By clinging to faulty assumptions, the inflexible requirements can prevent the job-producing economic development that they were intended to encourage.

TECHNICAL ASPECTS

Statement of the Problem: The state's land use system is technically complex. The procedural requirements overshadow the merits of a development. The technical justification of a project (substantial evidence and findings) has taken on more importance than the actual impacts or value of the project. The land use planning system is not well-integrated with other state laws, being inconsistent with some and duplicative of others. Both substantive and procedural requirements of the land use planning system are ambiguous. While stated generally, they are interpreted very specifically on a case-by-case basis.

Premises:

A. Basic procedural requirements are necessary to assure due process of law. However, excessive requirements impose unnecessary delays and costs that create a disservice to the parties and to the public without adding any significant due process protections. These unnecessary technical requirements are a significant disincentive to economic development and are the major source of delay in the process

B. Policies and requirements in land use planning develop case-by-case, based on specific fact situations. Lacking a clear articulation of objective standards, there is uncertainty over how the ambiguous requirements will be applied in the next specific fact situation.

C. The complexity and ambiguity of the process is further complicated by its relationship to other state laws. Where there are inconsistencies or duplications with other state programs, the costs and uncertainty of the process are further increased.

Effects on Job-Producing Investment:

1. Business and industry will not invest where it cannot quantify the risks. The state's land use planning process contains so many variables (technical requirements with ambiguous standards) that the likelihood of success, ultimate conditions of approval, and the end costs cannot

be determined in advance with any certainty. Rather than take a chance on the unknown, business and industry will locate where the costs and risks, if any, can be reasonably projected in advance.

2. The multiplicity and complexity of requirements in justifying development costs time and money. All other factors being equal, if this time and expense can be avoided by locating elsewhere, it will be. If, on the other hand, the commitment is made to expend that time and money, it is diverted from productive to nonproductive use. Either way, economic development in this state is discouraged.

3. Because of the technical complexity and many procedural requirements for justifying a project under the land use planning process, projects are easily challenged, delayed, and stopped on technical grounds that bear no relationship to the merits of the project.

   On appeal, the reviewing body is not to "substitute its judgment" for that of the local government. However, because the technical requirements for approving a project are so numerous, complex, and ambiguous, the reviewing body has many opportunities to reverse the local government's approval because of perceived technical imperfections. Yet it is seldom shown what (or whose) substantial interest would be served by achieving technical perfection (more evidence on a point or differently-worded findings).

4. The requirements of the land use process are generally not related to the scale or impacts of the project. Whether large or small, great impacts or slight, for a given area, activity or type of action the technical requirements are essentially the same. This places a particularly onerous burden in developing smaller projects where the costs and risks simply cannot be absorbed. Smaller scale economic development is discouraged.

5. When major investment risks are no longer within the investor's control, investment will not continue. If the future use of the land (and therefore its value and utility) become uncertain due to land use planning restrictions, investment will not continue under unknown risks.

6. Lenders who rely upon real property as collateral also take a risk of having the value of that collateral significantly diminished due to land use planning restrictions. This uncertainty can discourage lending on certain lands and thereby inhibit economic development.

PRESERVATION BIAS

Statement of the Problem: The land use planning program is preservation biased, in the law and in the administration of the law. The appeals system favors the preservation of the status quo at the expense of economic development.

Premises:

A. The majority of the state goals address the preservation of lands in a way that limits economic development. The preservation elements have received the most attention in the administration of the program to the detriment of economic considerations.

B. The preservation of resource lands is maximized. (The maximum quantity of certain lands must be preserved with little regard for whether the lands are productive or are "needed.") Job-producing development is minimized. (The minimum housing, commercial, industrial development "needed" for the community is the maximum allowed, regardless of whether more may be desirable).

C. Taken together, the inflexibility, technical requirements and preservation bias of the process is advantageous to delaying or stopping job-producing development projects, regardless of the merits of the project or its real impact on the objectors.

Effects on Job-Producing Investment:

1. Urban growth boundaries are drawn to contain a minimum amount of developable land. Significant economic development outside of boundaries is all but impossible. The amount of land and alternative sites for economic development is limited.

2. The preservation of agricultural lands bears little relationship to the productivity of the land. This absolute preservation of marginal or nonproductive lands precludes a more economically productive use of the land.

3. While forest lands must be conserved, the intensive management of commercial forest lands is not given priority over non-productive forest uses. In many instances, commercial management of forest lands is considered a conflicting use with other resource values and must be specially justified. Limits or uncertainty in forest management affecting supply affect the continued investment of job-producing forest products industries.

4. Since the process favors maximum preservation, the preservation of land in restrictive zones generally requires very little justification, evidence or findings. However, any departure from preservation, usually for development or higher economic use, must be extensively justified. Thus lands can be easily removed from potential economic (job-producing) use, but are extremely difficult to restore to economic use.

5. The land use decision-making and appeals system favors opponents to economic development. The burden is on the applicant for a project to fully justify it with respect to every criteria applying to it. Objectors need only bring into question one technical deficiency

(usually in "substantial" evidence or "adequate" findings) on one criterion to reverse the project's local approval.

Access ("standing") to appeal local decisions is very broad. An objector can raise virtually any technical reason for reversing an approval, regardless of whether it relates to how that person has actually been affected by the decision, or to the argument the person used to establish standing to bring the appeal. The process allows spurious appeals and appeals for the purposes of delay.

There is no liability placed on the objectors to pay the increased costs of such delays if the appeal is unsuccessful.

The appeals process poses a significant uncalculable risk for the potential developer. Because land use planning requirements are complex and ambiguous, and the burden is on the applicant to meet all of them, the potential for appeal is great. Again, time and money are added to the costs of development. Potentially meritorious development is denied on superfluous technical requirements. Attempting job-producing economic development projects is discouraged from the beginning because of the unknown risks that lie ahead.

STATE AND LOCAL REGULATIONS SUBCOMMITTEE

It was not the intention of this subcommittee, nor is it the intention of this report, to deal with specific regulatory agencies addressed by other subcommittees of the task force.

REGULATORY FLEXIBILITY

Oregon has become famous for its business-chilling red tape. Multiple duplicating and overlapping regulations have escalated the costs of doing business and of business investments.

Oregon's lack of regulatory flexibility has diminished it's attractiveness to businesses from outside the state. It has also discouraged the expansion and growth of Oregon businesses.

The Governor should evaluate the positive effects of Chapter 755, Oregon Laws of 1981, which in part is based on The Federal Regulatory Flexibility Act to:

1. Assure that state agencies are in the process of establishing procedures and time frames for the required review, and

2. Determine if the scope of the Act should be broadened to include businesses larger than 50 employes, but still within federal definitions of small business to increase the scope of regulatory flexibility.

ONE-STOP PERMIT

The one-stop permit process has not been utilized and apparently does not work.

The one-stop permit process does not provide any real time advantages because of the procedural requirements contained in the law and the failure of the law to limit the jurisdiction of the agencies involved.

However, the one-stop format offers an opportunity for simplifying, accelerating, and coordinating the permit issuance process.

More importantly, a viable one-stop permit process would increase Oregon's attractiveness to outside industries.

The Governor should study changing the one-stop permit law along the following lines:

1. That ORS 447.800 to 447.865 relating to Oregon's "one-stop" permit process be removed from that chapter (which also related to the plumbing code and building standards for accessibility of the handicapped) and placed in its own chapter in Title 36, Public Health and Safety. Such a change would increase the visibility and accessibility of the law.

2. The provisions of ORS 447.825 through 447.865, which relate to consolidated hearings by affected permit issuing agencies, should be modified to accomplish the following:

   (a) The Executive Department or Department of Economic Development should be the only agency that an applicant should have to deal with. Therefore, the law would provide that once an applicant meets the threshold for utilization of the "one-stop" process all permits would be issued by the Executive Department or D.E.D., utilizing the law, rules, and personnel of the affected agencies.

   (b) ORS 447.820 (7) and (8), pertaining to applications for the issuance of necessary permits should be amended to provide that application forms are to be returned to the Executive Department and not to an individual issuing agency. The Executive Department would provide the agency with the applications specific to it.

   (c) The law should provide the procedural requirements for permit issuance, contested cases, etc.

   (d) Every agency which requires any approval prior to construction or operation of a project should have its law amended

to specifically provide that when an application is made through the "one-stop" process that agency has no further jurisdiction over the permit issuance and the procedural requirements of the "one-stop" agency are to be used.

(e) Study should also be undertaken as to whether local governments should also be made subject to the state "one-stop" permit process.

(f) Finally, studies should be undertaken to see if greater inter-governmental coordination between issuing agencies can take place. Such coordination could possibly decrease delays because it would reduce conflicts between agencies.

PERMIT DELAYS

The subcommittee did not have the time nor the resources to review the most pressing problem of Oregon's State and Local Regulations - the cost of permit delays.

Unquestionably, there appears to be permit delay at all levels of state and local governments. The primary cause of these delays appears to be that some agencies do not start the permit application process until they have received all the information the agency deems appropriate from the applicant.

It appears to the subcommittee that most legislation which calls for a permit to be issued on a certain time line commences that time line at submission of the application. These requirements, though, appear to be honored by the agency only in the breach.

The Governor should study this area and possibly suggest legislation or ruling that time lines commence at submission of application by applicant, or at a time that more nearly complies with legislative intent. Furthermore, these time lines should be extended only by agreement of applicant and agency.

BUILDING CODES

Oregon's building codes are overly restrictive. The restrictions placed on residential, commercial, and industrial construction are deterring construction.

Hence, reform of code restrictions, state and local, should enhance construction employment and plant installation in Oregon.

The Governor should investigate methods to reduce code restrictions on residential, commercial, and industrial construction. Suggested recommendations are:

1. That conditional permitting be created in the State of Oregon.

2. Oregon's building code (UBC) and many local planning codes are proving overly restrictive. Where excessive restrictions are placed on building, commercial and industrial construction, construction is deterred.

3. That particular attention be given to providing code flexibility in commercial and industrial siting regulations.

SYSTEM DEVELOPMENT CHARGES

System Development Charges (SDCs) are drastically adding to the costs of residential and building investment in Oregon. These costs, in turn, create an imbalance in Oregon's ability to compete with other areas for job producing industries.

Oftentimes, these SDCs are not assessed for present improvement, in which case the added cost of the SDC is not reflected by an increase in the investment's value.

Moreover, the assessing bodies oftentimes do not establish that the improvement the SDC is assessed for will directly benefit the property it is assessed against.

The Governor should study methods to reduce up-front investment costs due to SDCs. Four possible solutions are:

1. System development charges should be either waived or deferred during bad economic times to spur development and reduce costs.

2. In some instances, formation of local improvement districts may be a better alternative than the imposition of a systems development charge.

3. In any event it would seem that systems development charges could be bonded and deferred payments made under the Bancroft bonding system, and in addition bancrofting should be made applicable to a wider range of public improvements.

4. Finally, improvements for which SDCs are levied should be limited to those with a direct or immediate benefit to the property they are assessed against.

ARCHITECTURAL REGULATION

Architectural rules and regulations by state and local government agencies (such as local design review boards) are exceeding legitimate regulation. Increasingly, such regulations are being promulgated with the objective of esthetic control.

Besides substantially infringing freedom of expression, such esthetic regulations are increasing the costs of plant installation in Oregon. In turn, these costs diminish Oregon's attractiveness to businesses from outside the state.

The Governor should explore methods to modify architectural regulations and esthetic controls. Two possible solutions might be to:

1. Establish workable guidelines limiting state and local architectural review; or in the alternative,

2. Establish an expeditious civil remedy for infringement of architectural expression.

TAXATION SUBCOMMITTEE

Oregon's tax structure, with heavy reliance on the income tax and transfers from income tax collections to property taxpayers, is not conducive to economic development because it penalizes the most productive individuals. In tax vernacular, this means "progressivity" -- the more you earn, the greater proportion of that income is taken through taxation. Oregon has the most "progressive" tax system in the nation. At lower income levels Oregon's tax burden is one of the lowest, at higher income levels, Oregon's tax burden is one of the highest.

Both state and local level government spending in the past 10-15 years have exceeded the combination of both inflation and population growth. The 6% property tax limitation has not been an effective deterrent to excessive government growth.

The transfer of income tax dollars to alleviate individual property taxes has not served to hold down the growth of property tax levies. In fact, the opposite has occurred. Total levies grew by 41% over the first two years under the 30% homeowner tax relief program.

The Legislature has not reduced personal income tax rates to account for inflation over the past several years and the result has been a 25% increase in income tax burden borne by Oregonians.

The split property tax roll between residential and business property adopted by the 1979 Legislature has damaged our jobs climate.

Oregon's corporate income tax collections are 9th highest in the nation. It is too high and results in a diminished ability of business to expand and create jobs.

Recommended Tax Structure Changes

The subcommittee recommends the following changes in Oregon's state and local tax structure:

1. State personal and corporate income tax should be cut in half and property taxes should be reduced by one-third. In place of these reduced taxes, a general retail sales tax of approximately 4 to 5% should be adopted. The revenue generated by a sales tax must be

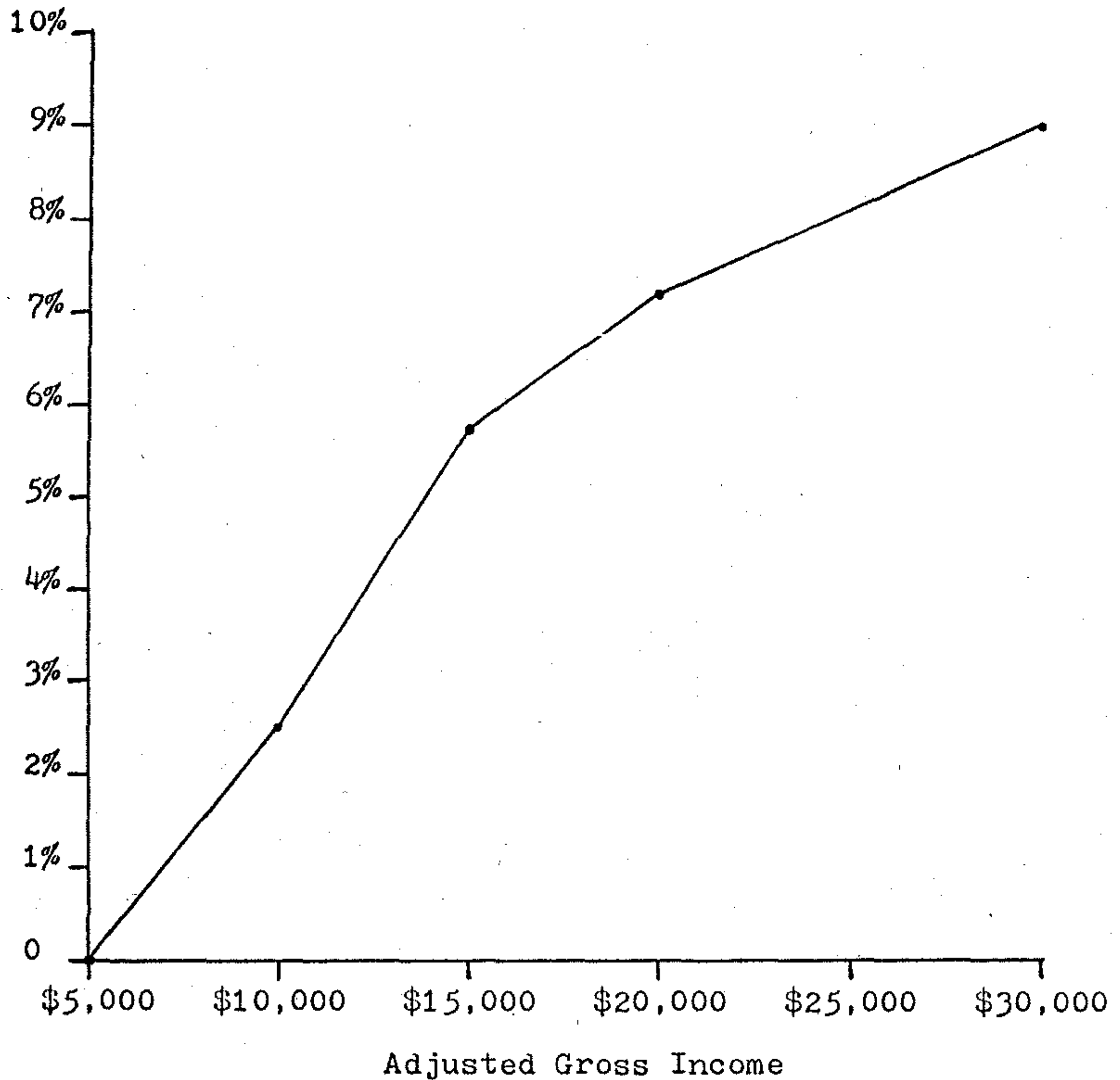
used entirely to offset the reductions in the income taxes and the property tax. The sales tax law must provide for a collection offset for retailers to cover their collection expenses.

2. The personal income tax should be reduced by widening the brackets and reducing the top rate. Provisions should then be made for adjustments in the income tax rates or brackets to eliminate the effects of inflation on personal incomes.

3. A constitutional expenditure limitation on the state and all units of local governments in Oregon should be placed on the ballot for approval by the voters. Procedures to ensure a more accurate reflection of voter attitude on property tax levies should be adopted. Possible alternatives include a vote by mail requirement, a minimum voter turnout requirement or a super majority approval requirement.

4. The 30% property tax relief program should be eliminated and the basis of property taxation should be returned to 100% of market value as it was in 1979.

OREGON STATE AND LOCAL TAX BURDEN
AS PERCENT OF INCOME—1982
(Joint Return—four exemptions)



Source: Income tax - Legislative Revenue Office
Property tax - Associated Oregon Industries

Study by Western Kentucky University

DISTRIBUTION OF MAJOR STATE-LOCAL TAX BURDENS RELATIVE TO FAMILY INCOME SIZE - 1976
(Tax Burdens as Percentages of Income)
COMPARISON BY DEGREE OF REGRESSIVITY

State	Adjusted Gross Income, Family of Four, 1976						Index of Regressivity
	$ 7,500	$10,000	$15,000	$17,500	$25,000	$50,000	
All States	9.8%	9.1%	7.9%	7.9%	7.6%	7.5%	1.31
Alabama	9.3	8.4	7.0	7.0	6.7	6.0	1.55
Arizona	10.6	9.5	7.7	7.6	7.4	7.1	1.49
Arkansas	8.4	7.7	6.6	6.6	6.6	7.1	1.18
California	10.5	9.0	8.7	8.6	8.6	10.3	1.02
Colorado	9.6	8.9	7.2	7.3	7.3	7.1	1.35
Connecticut	15.2	12.9	10.5	9.8	8.3	6.3	2.41
Delaware	10.1	9.7	8.8	9.3	9.8	11.3	0.89
Florida	6.4	5.4	4.4	4.0	3.4	2.5	2.56
Georgia	9.5	8.6	7.5	7.5	7.5	7.6	1.25
Idaho	7.6	7.5	7.1	7.4	7.0	8.3	0.92
Illinois	10.7	9.6	8.4	8.0	7.2	6.1	1.75
Indiana	11.5	10.2	8.8	8.3	7.4	6.2	1.85
Iowa	11.6	10.8	9.0	9.1	8.8	8.6	1.35
Kansas	9.3	8.5	7.1	7.0	6.6	6.5	1.43
Kentucky	11.5	11.1	9.5	9.5	9.2	8.5	1.35
Louisiana	5.1	4.9	4.4	4.2	3.7	3.4	1.50
Maine	11.8	10.3	8.9	8.7	8.6	9.7	1.22
Maryland	12.8	12.7	10.8	10.9	10.7	10.4	1.23
Massachusetts	17.5	16.0	14.2	13.7	12.7	11.4	1.54
Michigan	11.5	11.6	9.6	9.6	9.3	9.6	1.20
Minnesota	6.3	9.3	8.5	9.1	10.1	11.4	0.553
Mississippi	9.4	8.3	6.4	7.0	6.6	6.2	1.52
Missouri	10.9	9.8	8.6	8.5	8.2	7.6	1.43
Montana	8.4	8.1	6.4	6.6	6.9	6.9	1.22
Nebraska	10.2	9.4	8.8	8.5	7.9	8.1	1.26
Nevada	7.3	6.3	5.0	4.6	3.9	2.9	2.52
New Hampshire	11.3	9.6	8.0	7.5	6.5	5.1	2.22
New Jersey	14.8	13.3	11.6	11.1	10.0	8.7	1.70
New Mexico	6.1	5.7	5.5	5.6	5.7	6.8	0.90
New York	13.0	12.5	11.2	11.5	12.1	15.8	0.82
North Carolina	9.6	9.2	7.9	8.1	8.2	8.3	1.16
North Dakota	8.0	7.3	6.4	6.7	7.3	7.5	1.07
Ohio	9.4	8.5	7.7	7.5	7.2	7.0	1.34
Oklahoma	7.2	6.3	5.3	5.3	5.4	6.0	1.20
Oregon	5.5	7.2	7.8	8.7	9.0	10.0	0.550
Pennsylvania	14.8	13.6	12.3	11.9	11.1	9.9	1.49
Rhode Island	14.9	13.4	11.9	11.3	10.2	9.7	1.54
South Carolina	9.0	8.1	7.0	7.1	7.4	7.8	1.15
South Dakota	10.4	8.9	7.4	6.9	5.9	4.5	2.31
Tennessee	7.8	6.7	5.4	5.0	4.2	3.1	2.52
Texas	7.2	6.1	4.9	4.5	3.7	2.7	2.67
Utah	9.0	8.3	7.1	7.2	7.2	6.7	1.34
Vermont	7.7	8.5	9.5	10.1	9.9	10.6	0.73
Virginia	9.3	8.5	7.4	7.1	7.1	7.0	1.33
Washington	8.1	6.8	5.3	4.9	4.0	2.8	2.89
West Virginia	6.5	5.6	4.6	4.5	4.3	4.6	1.41
Wisconsin	12.6	14.1	12.8	13.0	13.2	13.3	0.95
Wyoming	7.4	6.2	5.0	4.6	3.8	2.3	2.64

INCOME AND PROPERTY TAX COLLECTIONS PER $1,000 OF PERSONAL INCOME 1980

State	Amount	Rank
Alaska	$101.09	1
Massachusetts	98.31	2
New York	90.70	3
OREGON	82.97	4
Montana	81.67	5
Wisconsin	78.08	6
Vermont	76.30	7
Minnesota	71.80	8
Rhode Island	68.99	9
Michigan	66.41	10
New Jersey	65.45	11
Maine	65.02	12
Iowa	64.84	13
Nebraska	63.27	14
Utah	61.81	15
Delaware	61.78	16
Arizona	60.25	17
Maryland	59.75	18
Hawaii	59.56	19
Wyoming	57.44	20
New Hampshire	57.44	21
California	56.76	22
Colorado	55.88	23
Illinois	55.36	24
Kansas	54.85	25
Idaho	54.44	26
Virginia	52.96	27
North Carolina	52.74	28
Georgia	50.18	29
Connecticut	49.83	30
South Carolina	47.96	31
South Dakota	47.11	32
Pennsylvania	46.11	33
Ohio	43.57	34
North Dakota	42.33	35
Missouri	41.37	36
Indiana	41.18	37
Arkansas	41.06	38
Kentucky	38.44	39
West Virginia	37.50	40
Texas	33.84	41
Mississippi	33.63	42
Oklahoma	33.32	43
Washington	31.94	44
Florida	28.85	45
Nevada	27.68	46
Oklahoma	26.77	47
New Mexico	24.69	48
Tennessee	23.45	49
Louisiana	23.43	50

Source: Oregon Taxpayers Association

INCOME TAX LIABILITIES BY INCOME LEVEL IN OREGON: TAXABLE YEAR 1979

Income Group (thousands)	Number of Returns	Percent of Total	Taxes Paid as Percent of Total
$ 0- 10	431,541	42.3%	6.6%
10- 20	279,529	27.4	21.8
20- 30	181,059	17.8	26.9
30- 40	74,746	7.3	17.3
40- 60	32,806	3.2	11.9
60-100	10,748	1.1	7.4
100+	4,190	0.4	8.1
Total	1,021,081	100.0	100.0

Note: In 1979;

30% of the taxpayers (those earning over $20,000) paid 72% of the total taxes
12% of the taxpayers (those earning over $30,000) paid 45% of the total taxes

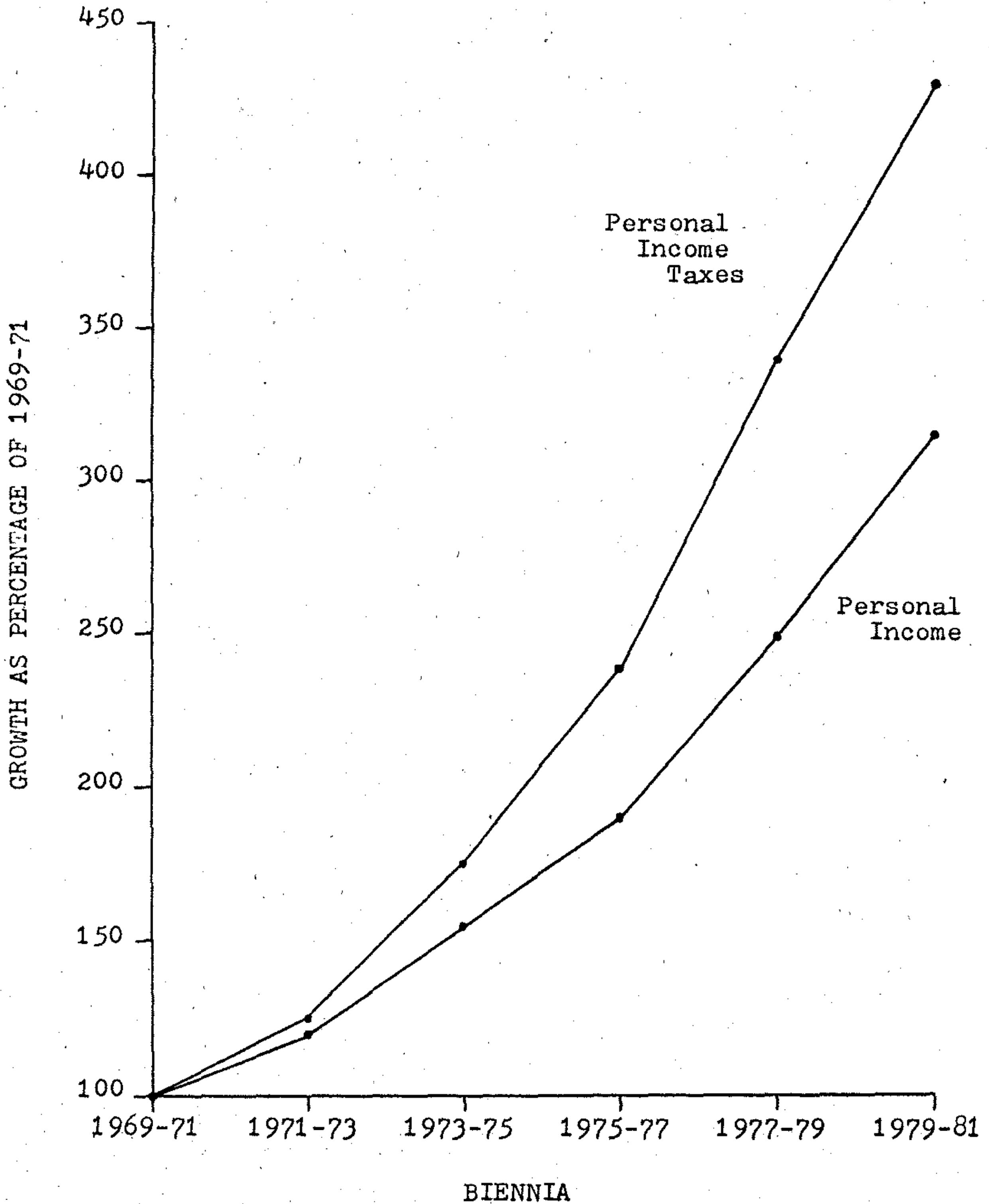
Source: Oregon Department of Revenue

OREGON PERSONAL INCOME TAXES—1979

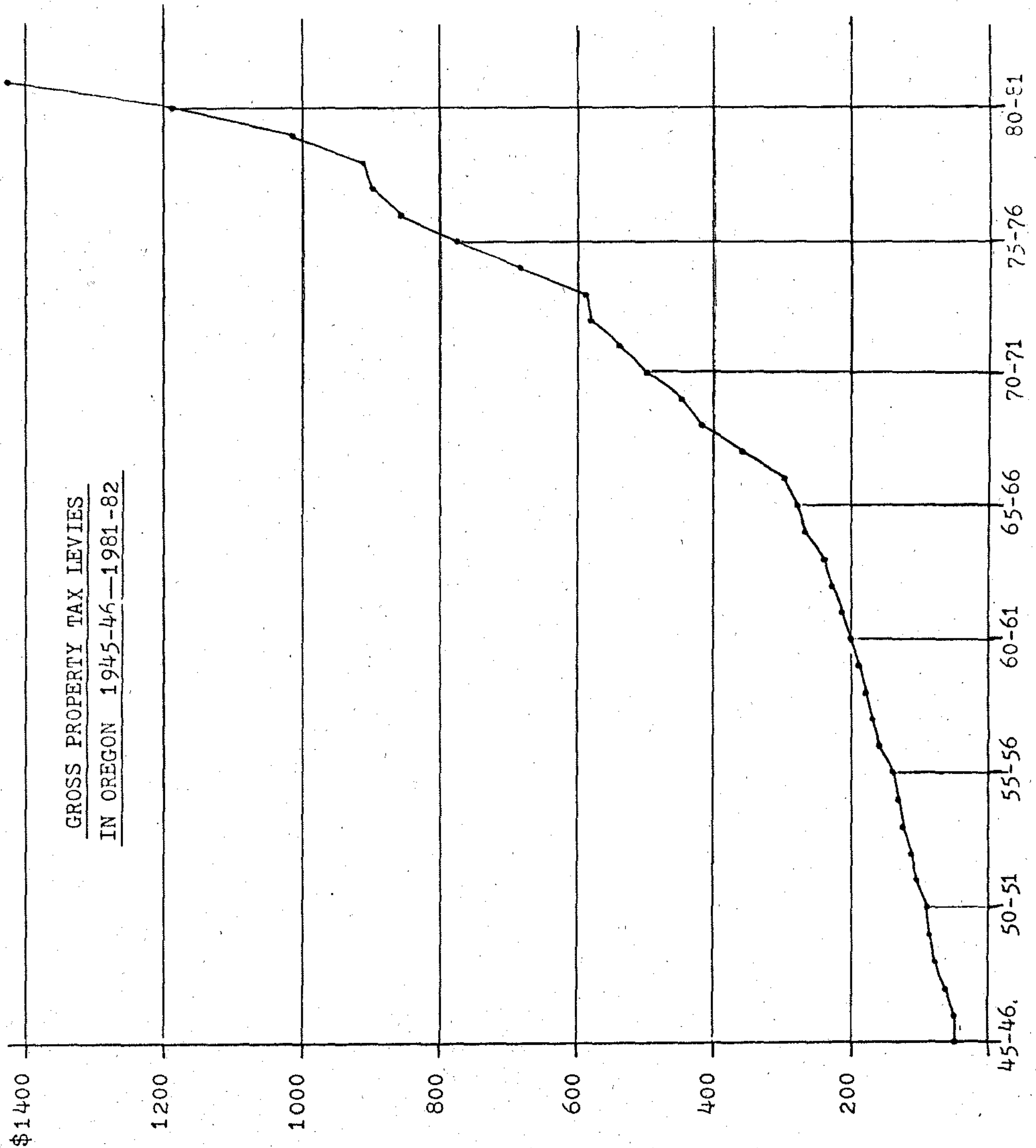
AGI GROUP (thousands)	AVERAGE AGI	AVERAGE TAX DUE	TAX/ AGI
$ 0- 2	$ 1,105	$ 4	0.4%
2- 4	2,972	37	1.3
4- 6	4,974	106	2.1
6- 8	6,979	194	2.8
8- 10	8,981	297	3.4
10- 12	10,980	388	3.6
12- 14	12,980	487	3.8
14- 16	14,995	593	4.0
16- 18	16,988	694	4.1
18- 20	18,988	792	4.2
20- 22	20,979	899	4.4
22- 24	22,981	1,017	4.5
24- 26	24,971	1,139	4.6
26- 28	26,968	2,268	4.8
28- 30	28,968	1,389	4.9
30- 32	30,972	1,518	5.0
32- 34	32,967	1,647	5.1
34- 36	34,965	1,776	5.1
36- 38	36,963	1,904	5.2
38- 40	38,950	2,047	5.3
40- 45	42,256	2,307	5.5
45- 50	47,291	2,724	5.8
50- 55	52,299	3,159	6.0
55- 60	57,405	3,608	6.3
60- 70	64,523	4,242	6.5
70- 80	74,569	5,130	6.8
80- 90	84,552	6,087	7.1
90-100	94,625	6,982	7.2
100-125	110,954	8,496	7.5
125-150	136,265	10,829	7.8
150-200	171,175	14,101	7.9
200-300	239,160	20,468	8.1
300-500	375,757	34,832	8.4
500+	932,161	90,240	8.3

Note: AGI is Adjusted Gross Income Source: Oregon Department of Revenue

GROWTH IN OREGON PERSONAL INCOME
VS
GROWTH IN STATE PERSONAL INCOME TAXES
(1969-71=100)



Source: Oregon Taxpayers Association



GROSS LEVIES (millions)

Source: Oregon Taxpayers Association

Department of Environmental Quality

522 SOUTHWEST 5TH AVE. PORTLAND, OREGON

MAILING ADDRESS: P.O. BOX 1760, PORTLAND, OREGON 97207

August 18, 1982

Task Force on Managing
and Financing Growth
Suite 420 State Capitol
Salem, OR 97310

Gentlemen:

On behalf of Director Bill Young, who is on vacation, I have included a response to the questionnaire distributed on July 19, 1982 as well as additional studies which should be useful to the Task Force. Since each of our programs vary in their degree and method of involvement with growth and the local infra-structure, separate questionnaire responses from each program are included. In addition, we have prepared an overview of the Pollution Control Bond Fund. During the Task Force's July 14 meeting, considerable discussion focused upon the use of this fund.

To assist the Task Force we have prepared a brief chronology of the fund including major revisions since 1969. Exhibits include a summary of grants, loans, and bond purchases made from the fund, the fund's governing statutes, and the Environmental Quality Commission's recent policy on Sewerage Works Planning and Construction. Lastly, I have included a copy of a recent analysis of sewerage and solid waste facilities and alternative financing methods prepared for the Department by Pacific Economica, Inc. Additional copies can be made available to the Task Force if necessary.

The Department will be present at the Task Force's August 26 meeting to elaborate on this information and respond to questions.

Sincerely,

/S/

Stan Biles
Assistant to the Director

SB:k
MK1191
Enclosures
- Response to questionnaire
- Pollution Control Bond Fund Background
- Sewage Treatment and Solid Waste Disposal Facility Financing Study

cc: Joe Richards, Chairman - Environmental Quality Commission
Bill Young, Director - Department of Environmental Quality

QUESTIONNAIRE RESPONSE

OREGON STATE DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION
AUGUST 1982

1. Describe your agency's regulatory and financial programs that significantly affect the location, planning, or nature of population growth and development in the state. (Programs should include those involving permits, plans, administrative rule requirements, loans, grants, and bonding.)

The only financial incentive/assistance programs administered by the Air Quality Division are 1) tax credits for installation of air and noise pollution control facilities and 2) State and Federal Air Program grant assistance to Lane Regional Air Pollution Authority (LRAPA) to help defray costs of administering the local air program in Lane County.

The Noise Program currently provides technical assistance and loan and maintenance of noise measuring equipment to encourage development and operation of local noise control ordinances. This service is currently provided by Federal funds until October, 1982. It will then terminate unless picked up by General Funds in the 1983-85 budget.

On the regulatory side, the Division issues air permits for construction and operation of all significant sources of air pollution. The Division administers air and noise standards which must be met by new or expanded growth.

Certain areas of the State (Portland, Eugene-Springfield, Medford) exceed air standards and new major sources may need to provide "offsets" (equivalent reductions in emissions from existing sources) to locate in these areas. New Major (100 tons/yr. or more) Particulate Sources currently could not locate within the nonattainment areas of Medford, until a particulate attainment strategy is approved by EPA (scheduled for November - December, 1982).

Federal/State PSD (Prevention of Significant Deterioration) rules could prohibit location of very large industries in clustered concentrations or very close to the twelve Class I PSD areas in the State (Crater Lake National Park and eleven National wilderness areas).

Noise rules for airports require evaluation of noise impacts for new or expanded airports.

2. Distinguish aid programs which are dependent on federal funds from those over which the state has policy control.

   The State Tax Credit Program is administered by DEQ/EQC. The Air Program grants to LRAPA are part State and part Federal.

3. Describe how programs are coordinated in your agency and how they are coordinated with related programs of (a) other state agencies and (b) local governments:

   Air plan review and permitting processes are coordinated with water and solid waste processes within the DEQ. A multi-media intra-agency task force is developed to fast-track major applications if needed.

   The Department has a specific written agreement with the State Department of Energy on coordinated processing of energy facilities.

   The Department works closely and cooperatively with the State Economic Development staff.

   Oregon and Washington air programs have essentially the same standards and processes. There is especially close coordination on projects and problems along the interstate border.

   DEQ has recently obtained EPA approval for the State to issue essentially all air permits directly without involvement by EPA, thus saving permit applicants substantial time and money.

   DEQ and LRAPA have the same rules and processes and there is close coordination of all pertinent issues.

   Local lead agencies (MSD, Portland, Jackson County) have taken the lead in developing State Implementation Plan (SIP) revisions to attain transportation related standards (CO and Ozone). Locally appointed Citizen Advisory Committees have had major roles in Portland, Eugene-Springfield, and Medford.

   The Division comments on and assists local governments in the preparation of Local Comprehensive Plans and requires permit applicants to obtain statements of compatibility prior to issuing permits.

4. Are state and federal funds complimentary with and are they coordinated with your agency's programs? Are there barriers to your agency mingling state and federal funds for priority programs?

   Federal highway funds and to some extent Sewage Works Construction Grant Funds must be coordinated with EPA-approved State

Implementation Plans (SIP's) designed to attain/maintain National Ambient Air Quality Standards. This has not been nor is it expected to be a significant retardant to growth.

5. Describe your agency's method, if any, for establishing priorities for infrastructure assistance. In what ways does your agency attempt to coordinate priorities with those of other agencies or programs?

   This question is not particularly pertinent to the Air Program. The Division has and will continue to make an extra effort to assist and coordinate with other agencies and local governments.

6. Discuss immediate and long-range prospects for your agency continuing or expanding its role in aiding local governments to meet infrastructure needs.

   Little or no short-range prospects for increased aid to local governments. With additional resources, the Division could give local governments more direct assistance in locating and designing industrial parks to be most compatible with air quality considerations.

7. Describe legislation or policy direction that could aid your agency in working with local governments to meet these needs. (Include new programs and modifications in existing programs.)

   The Department intends to continue to work towards development of "growth cushions" in the existing air standards nonattainment areas so proposed new or expanding industries will not have to shop for "offsets" before they can locate or expand.

   Since area sources, i.e. woodstoves, backyard burning, road dusts, etc., compete with industry for limited airshed capacity, the Department is tending to direct its program activities to better control pollutants from area sources.

   Woodstoves are a large and growing source of particulate and carbon monoxide pollutants and DEQ/EQC is considering asking for legislative authority to implement some form of regulation of woodstoves at the manufacturer/sales level. This could make more airshed capacity available for industrial/commercial growth and development.

8. Discuss ways in which coordination of your programs with related programs of other state agencies and local governments could be improved.

   DEQ currently assembles an intra-agency task force to expedite/process air/water/solid waste permits for large, new projects; this could be done on a larger, inter-agency basis to make it easier/faster/less costly for a large, desirable job-source to obtain permits and facilitate construction.

9. Describe methods by which existing or proposed programs might be financed.

   The only apparent sources are either General Funds or fees for service. Unfortunately, both sources seem to dry-up at the same time. The activity in item 8 above, probably could be done effectively with existing resources.

   For testing and certifying "clean" woodstoves as referred to in item 7, if legislatively authorized, the testing would be paid for by the stove manufacturers and the administration of the program would be done with existing DEQ staff.

Questionnaire Response

Oregon State Department of Environmental Quality

Water Quality Division

August, 1982

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1. Describe your agency's regulatory and financial programs that significantly affect the location, planning, or nature of population growth and development in the state. (Programs should include those involving permits, plans, administrative rule requirements, loans, grants, and bonding).

   DEQ issues permits for construction and operation of facilities to treat and dispose of sewage and industrial wastes. This includes sewage treatment plants for large and small cities. It also includes permits to install individual septic tanks.

   If an acceptable method of waste disposal cannot be identified, development can be limited. In general, acceptable waste disposal does not create health hazards, nuisance conditions, or alter the quality of surface of groundwaters to the point where beneficial uses are threatened or impaired.

   The Department establishes priorities for allocation of Federal Sewerage Works Construction Grant Funds to cities within Oregon. These funds are available to correct existing water quality problems. In the future these funds cannot be used to provide capacity of facilities to accomodate growth or development. Limited growth capacity has been funded in the past, but recent amendments to the federal law precludes such uses in the future.

   Discussion of the Pollution Control Bond Fund is included as an attachment.

2. Distinguish aid programs which are dependent on federal funds from those over which the state has policy control.

   As noted above, the Department has full control of the Pollution Control Bond Fund - subject to legislative approvals.

   Federal requirements control federal grants. The states's priority setting must be within federal guidelines.

3. Describe how programs are coordinated in your agency and how they are coordinated with related programs of (a) other state agencies and (b) local governments.

   Source Control Section staff within the Water Quality Division provide assistance to cities, develop the federal grant priority list, which is adopted by the EQC, and coordinate Pollution Control Bond Fund uses. The adopted Comprehensive Land Use Plans of the local jurisdictions are relied upon heavily in the process of coordination and conflict resolution.

4. Are state and federal funds complimentary with and are they coordinated with your agency's programs? Are there barriers to your agency mingling state and federal funds for priority programs.

   Federal Grant Funds and State Pollution Control Bond Funds management is coordinated so as to eliminate conflict and gain maximum benefits of both. As available federal funds diminish, state funds will increasingly be directed to projects that do not receive federal assistance.

5. Describe your agency's method, if any, for establishing priorities for infrastructure assistance. In what ways does your agency attempt to coordinate priorities with those of other agencies or programs?

   The priority system currently used by the Department addresses water pollution impacts as a basis for ranking of needs. This is the requirement of the federal grant statutes.

   Pursuant to Environmental Protection Agency rules, future growth needs and financial needs are not presently considered in priorities.

   The Department is exploring a separate priority system for Pollution Control Bond funds that will use financial need as a factor in establishing priority for assistance.

6. Discuss immediate and long-range prospects for your agency continuing or expanding its role in aiding local governments to meet infrastructure needs.

   The EQC recognized the need for new approaches to assist in local financing of sewerage facilities to replace the diminishing federal funds. As a result, they adopted a Statement of Policy in October 1981 to guide what will be a different transition to greater local funding. (See Attachment)

   The policy offers understanding and a willingness to accept interim standards during longer term construction schedules.

7. Describe legislation or policy direction that could aid your agency in working with local governments to meet these needs. (Include new programs and modifications in existing programs).

   It may be desirable to consider legislation which would simplify revenue bond issuance for water and sewage utilities so that voter approval for bonds for each capital construction project would not be needed.

8. Discuss ways in which coordination of our programs with related programs of other state agencies and local governments could be improved.

   Currently coordination efforts are adequate.

9. Describe methods by which existing or proposed programs might be financed.

   Higher, equitable user fees will obviously be needed to finance proper operation, maintenance, replacement and new construction.

WG1481

QUESTIONNAIRE RESPONSE

Oregon State Department of Environmental Quality
Solid Waste Division
August 1982

1. Describe your agency's regulatory and financial programs that significantly affect the location, planning, or nature of population growth and development in the state. (Programs should include those involving permits, plans, administrative rule requirements, loans, grants, and bonding.)

Solid waste programs and facility needs usually follow rather than precede population growth. Thus, planning and construction occur "after the fact." All solid waste disposal facilities (landfills, transfer stations, refuse processing, sludge disposal, incineration) are regulated by a state permit as required in OAR 340-61. Low-interest loans for planning are available from the Pollution Control Bond Fund (loans under $50,000).

Construction projects (over $50,000) must be secured by general obligation bonds unless the EQC specifically acts to allow revenue bonds or other forms of security. Grants previously available for planning and construction assistance were virtually eliminated by the 1981 Legislature. Hardship grants may still be available but would require specific legislative (or E-Board) approval.

Local government may request landfill siting assistance from the Department. A solid waste management plan including a waste reduction (e.g., recycling, processing) program is required to make local government eligible for funding and/or landfill siting assistance. The Department also provides technical assistance in developing waste reduction plans.

The hazardous waste regulatory program affects generators, transporters, and owners/operators of storage, treatment or disposal facilities. Registration is required of generators and transporters. Licenses are required of owners/operators of storage, treatment and disposal facilities.

2. Distinguish aid programs which are dependent on federal funds from those over which the state has policy control.

There are no federal aid programs to assist in solid waste or hazardous waste management.

A state tax credit program is available for facilities that recover materials or energy from what would otherwise be solid or hazardous wastes or waste oil.

3. Describe how programs are coordinated in your agency and how they are coordinated with related programs of (a) other state agencies and (b) local governments.

Programs crossing agency program lines are coordinated by a task force including a member or members from each division and a representative from the regional office involved. One member is appointed as lead and communicates with the affected agency. Direct contacts are made with LCDC, Water Resources, Dept. of Energy, etc. The Metro tri-county area plus the other respective counties were designated by the state as solid waste planning and implementing agencies. Contacts are made with these agencies directly. As required, other local governments are involved; however, we encourage participation through the designated agency.

Hazardous waste license applications for storage, treatment or disposal must contain statement of compatibility with local land use requirements. Public notice given on proposed issuance of storage, treatment or disposal facility licenses. Written notice given to Health, PUC, Fish and Wildlife, and Water Resources upon receipt of disposal facility license application. On any major new facility, a task force representing the Air, Water and Solid Waste divisions is formed to expedite and coordinate the Department's review.

4. Are state and federal funds complimentary with and are they coordinated with your agency's programs? Are there barriers to your agency mingling state and federal funds for priority programs?

No federal funds are currently utilized in the state's solid waste program.

Hazardous waste program federal and state funds are compatible; however, EPA provides guidance that must be followed on what <u>they</u> consider are priority activities in any given year.

5. Describe your agency's method, if any, for establishing priorities for infrastructure assistance. In what ways does your agency attempt to coordinate priorities with those of other agencies or programs?

For solid waste, we have been able to deal with <u>any</u> government unit requesting assistance so a priority system has not been necessary.

This question is not particularly pertinent to the hazardous waste program. The hazardous waste program will continue to provide technical assistance to local government, other state agencies and industry on matters involving proper hazardous waste management.

6. Discuss immediate and long-range prospects for your agency continuing or expanding its role in aiding local governments to meet infrastructure needs.

Unless some replacement for general fund is identified, it seems certain that solid waste programs will shrink. This will require cutting back technical assistance and limiting efforts to statutory-mandated areas of disposal site regulation.

We need to maintain or expand the number of licensed storage, treatment or disposal facilities for hazardous wastes to ensure companies have reasonable alternatives for the proper management of their wastes.

7. Describe legislation or policy direction that could aid your agency in working with local governments to meet these needs. (Include new programs and modifications in existing programs.)

Renewing the grant program for solid waste construction projects and planning grants for eligible projects (see 1 above) would help local government meet the need for construction of planned facilities and would allow updating of many local and regional solid waste management plans which are no longer useful.

An expanded hazardous waste tax credit program may serve as an incentive to have constructed state-of-the-art treatment facilities that otherwise may be 5 or 10 years down the road. Additional staff to provide more technical assistance and education to local government and industry on this new, complex program (including the minimum national standards adopted by EPA).

8. Discuss ways in which coordination of your programs with related programs in other state agencies and local governments could be improved.

Initiate quarterly meetings with select staff from each affected state agency (1/2 - 1 day). Our regional personnel now make routine contacts with local government and coordinate with affected HQ staff.

For hazardous waste management, additional staff to provide more technical assistance and education on this relatively new, complex environmental program (including the minimum national standards adopted by EPA).

9. Describe methods by which existing or proposed programs might be financed.

Solid waste permit fee legislation was proposed in 1981. The Department intends to submit similar legislation in 1983 (with industry concurrence). Without some fee structure, solid waste will remain almost entirely dependent upon shrinking general fund appropriations.

Reduce hazardous waste program dependence on federal funding by (a) increasing the state general fund allocation and (b) establishing a user fee on generators of hazardous waste.

Pollution Control Bond Fund Background

Oregon State Department of Environmental Quality
Water Quality Division
August 1982

The 1969 Legislature referred a proposed Constitutional Amendment to authorize the sale of state bonds for financing public pollution control facilities to the voters at the May 1970 primary election (see Exhibit I). Legislation establishing administrative procedures and assigning responsibility for fund management to the Department of Environmental Quality (DEQ) was also enacted--to be effective upon voter approval of the amendment (see Exhibit II). Following voter approval by a margin of 292,234 to 213,835, the DEQ employed the consulting assistance of Bartle Wells, to establish management procedures and administrative rules. The 1971 Legislative Ways and Means committee reviewed the proposed administrative program prior to the first sale of Bonds in about February 1971.

The creation of the Pollution Control Board Fund was an outgrowth of the Federal Sewerage Works construction Grants Program. A brief chronological review identifies major changes which help understand why the Statutes appear as they do.

1956 - Federal grants to cities for sewerage works construction were first authorized. Limits were for a 30% Grant, $250,000 Maximum. This program provided significant benefitssto small communities where per capita costs were high, less benefit to large projects.

Intervening Years - Appropriations were increased, and grant limits were raised to $600,000; then removed altogether.

1966 The Federal Matching Grant Program was enacted. The federal grant would increase from 30 to 50% if the state would provide a 25% grant to match the federal grant. Without a state grant program, the federal share remained at 30%.

1965-1972 Oregon was requiring major construction of pollution control facilities to clean up the Willamette River.

1967 The Oregon Legislature appropriated about $2.7 million General Funds for participation in the matching grant program during the 67-69 biennium.

1969 The Oregon Legislature appropriated $1.5 million for grants during the 69-71 biennium and pursued establishment of the Pollution Control Bond fund. Both the appropriation and the fund were geared to two alternative programs:

a. If sufficient federal funds were appropriated to fund 50% of all needed projects, the general fund appropriation and bond fund would be used to provide 25% matching grant. The bond fund could be used to purchase the local bonds for the remaining 25% local share.

b. If federal funds were not sufficient to meet all needs, a project would receive either a 30% federal grant or a 30% state grant--with the local bonds for the 70% local share purchased by the PCB Fund.

The constitutional amendment establishing the bond fund was broad enough to benefit other pollution control facility construction.

1971-72 $90 million in state bonds were sold to assist sewerage and solid waste projects.

1972-73 The federal grant program was substantially modified to (1) eliminate the matching grant and provide a straight 75% federal grant and (2) authorize substantial levels of appropriation. With these significantly increased federal commitments, Oregon dropped its grant program (except for fiscal hardship grants individually approved by the E Board), and has since assisted local governments by purchasing the 25% local share bond issues upon request of the assisted cities.

1977-1981 Federal funding levels were reduced - while runaway inflation drove project costs up--resulting in increasing funding delays in projects ready to proceed.

1981 Department sought legislative changes (approved) to increase maximum loan on a project from 70% to 100% so that projects not receiving grants could be assisted by PCB fund purchase of local bonds for 100% of construction cost.

Movement of funds has been slow since most local governments have not planned on locally financing 100% of the cost--their plans were developed a few years ago and relied on the 75% federal grant.

From this chronology, it is apparent that we are in an agonizing transition period. The "Federal Fund Junkies" so carefully hooked since 1956, are having difficulty facing "withdrawal" and reestablishing responsible, self-sufficient financing programs.

Sewerage service is a basic utility service where user charges, properly established, should be able to fully fund system construction, operation, maintenance, and replacement. Unfortunately, the true costs of this service have been increasingly hidden from the public over the past 25 years by such illusions as:

- Federal funds come from someone else--not us, thus they are a gift, free, etc.

- Expenditures to properly maintain facilities have been neglected, thus facilities have been worn out, used up,--in part based on the assumption

that federal grants will largely fund the replacement. It is not uncommon to transfer any funds surplus to daily operation needs to other uses, rather than accumulate equipment replacement reserves.

As a result, increases in user rates to adequately finance the sewerage utility will be significant.

Transition from Grants to Local Finance

The EQC has recognized that transition from dependence on federal funds and deferred maintenance to local self sufficiency would take time and require substantial flexibility. Therefore, in October 1981, they adopted a statement of policy on Sewerage Works Planning and Construction to provide guidance in this process. The policy is attached as Exhibit III. Pursuant to this policy, transition programs have been approved for Seaside and Cottage Grove. Others are being formulated.

Bond Fund Management Philosophy

From the beginning, the Pollution Control Bond fund has generally been managed based on the following assumptions:

1. "Loans"
   a. The state interest rate would be passed on to local governments--thus giving them the lowest cost money.

b. "Loan" funds would be advanced from the bond fund by purchasing local bonds issued via a bid process at public sale. GO bonds were preferred and have constituted the majority of bonds purchased. Revenue bonds could be purchased if security was sufficient. Bancroft bonds could also be purchased for qualifying projects.

c. "Loan" recipients would repay principal and interest 30 days ahead of the date state bond payments were due so that funds would be available and no demand would be placed on the State General Fund.

2. Grants

a. The Legislature would biennially appropriate such general funds as are necessary to repay Pollution Control Bonds used for grants. Interest earned on invested Sinking Fund and Bond Fund proceeds would reduce the needed General Fund appropriation.

b. Grants have for many years required E Board approval prior to award.

3. General

a. The state General Fund via the Department's budget, would absorb administrative costs. This was changed in 1981 when the Legislature authorized administrative expenses to be paid from the Sinking Fund and directed the Department to recover administrative costs through an increment added to interest costs.

b. Management was to be "conservative so that the state's favorable credit rating would be maintained."

Bond Fund Achievement

Since 1971, $160,000,000 in bonds have been sold. Dispersement has been as follows:

	Sewerage	Solid Waste
Grants	$32,816.291.98	$5,912,769.00
Bond Purchases	81,360,000.00	4,607,800.00
Miscellaneous Loans for Planning	3,024,525.45	6,927,270.00

A list of public agencies receiving funds is attached as Exhibit IV.

Design Capacity for New Facilities

The capacity of new facilities aided by grant or loan funds has always been a debated issue--and one that frequently generates hard feelings between local officials and state regulatory agencies.

Where a federal grant is involved, the facility must be sized with sufficient "reserve" capacity to accommodate the growth that is expected to occur during the design useful life of the facility. For sewage treatment plant, this is normally 20 years. For sewers, this is normally 50 years. The greatest problem has come where local governments want to build a facility to accommodate more growth than EPA or the state believe reasonable.

Facilities must now be sized consistent with Acknowledged Comprehensive Land Use Plan population forecasts. Thus, the same figures are to be used for planning and financing all capital improvements and services.

ARTICLE XI-H

POLLUTION CONTROL

Sec. 1. State empowered to lend credit for financing pollution control facilities
2. Only facilities seventy percent self-supporting and self-liquidating authorized
3. Authority of public bodies to receive funds
4. Source of revenue
5. Bonds
6. Legislation to effectuate Article

Section 1. State empowered to lend credit for financing pollution control facilities. In the manner provided by law and notwithstanding the limitations contained in sections 7 and 8, Article XI, of this Constitution, the credit of the State of Oregon may be loaned and indebtedness incurred in an amount not to exceed, at any one time, one percent of the true cash value of all taxable property in the state:

(1) To provide funds to be advanced, by contract, grant, loan or otherwise, to any municipal corporation, city, county or agency of the State of Oregon, or combinations thereof, for the purpose of planning, acquisition, construction, alteration or improvement of facilities for the collection, treatment, dilution and disposal of all forms of waste in or upon the air, water and lands of this state; and

(2) To provide funds for the acquisition, by purchase, loan or otherwise, of bonds, notes or other obligations of any municipal corporation, city, county or agency of the State of Oregon, or combinations thereof, issued or made for the purposes of subsection (1) of this section.

[Created through H.J.R. No. 14, 1969, and adopted by people May 26, 1970]

Section 2. Only facilities seventy percent self-supporting and self-liquidating authorized. The facilities for which funds are advanced and for which bonds, notes or other obligations are issued or made and acquired pursuant to this Article shall be only such facilities as conservatively appear to the agency designated by law to make the determination to be not less than 70 percent self-supporting and self-liquidating from revenues, gifts, grants from the Federal Government, user charges, assessments and other fees.

[Created through H.J.R. No. 14, 1969, and adopted by people May 26, 1970]

Section 3. Authority of public bodies to receive funds. Notwithstanding the limitations contained in section 10, Article XI of this Constitution, municipal corporations, cities, counties, and agencies of the State of Oregon, or combinations thereof, may receive funds referred to in section 1 of this Article, by contract, grant, loan or otherwise and may also receive such funds through disposition to the state, by sale, loan or otherwise, of bonds, notes or other obligations issued or made for the purposes set forth in section 1 of this Article.

[Created through H.J.R. No. 14, 1969, and adopted by people May 26, 1970]

Section 4. Sources of revenue. Ad valorem taxes shall be levied annually upon all taxable property within the State of Oregon in sufficient amount to provide, together with the revenues, gifts, grants from the Federal Government, user charges, assessments and other fees referred to in section 2 of this Article for the payment of indebtedness incurred by the state and the interest thereon. The Legislative Assembly may provide other revenues to supplement or replace such tax levies.

[Created through H.J.R. No. 14, 1969, and adopted by people May 26, 1970]

Section 5. Bonds. Bonds issued pursuant to section 1 of this Article shall be the direct obligations of the state and shall be in such form, run for such periods of time, and bear such rates of interest, as shall be provided by law. Such bonds may be refunded with bonds of like obligation.

[Created through H.J.R. No. 14, 1969, and adopted by people May 26, 1970]

Section 6. Legislation to effectuate Article. The Legislative Assembly shall enact legislation to carry out the provisions of this Article. This Article shall supersede all conflicting constitutional provisions and shall supersede any conflicting provision of a county or city charter or act of incorporation.

[Created through H.J.R. No. 14, 1969, and adopted by people May 26, 1970]

(3) If the certification of a pollution control or solid waste, hazardous wastes or used oil facility is ordered revoked pursuant to paragraph (a) of subsection (1) of this section, all prior tax relief provided to the holder of such certificate by virtue of such certificate shall be forfeited and the Department of Revenue or the proper county officers shall proceed to collect those taxes not paid by the certificate holder as a result of the tax relief provided to the holder under any provision of ORS 307.405, 316.097 and 317.072.

(4) If the certification of a pollution control or solid waste, hazardous wastes or used oil facility is ordered revoked pursuant to paragraph (b) of subsection (1) of this section, the certificate holder shall be denied any further relief provided under ORS 307.405, 316.097 or 317.072 in connection with such facility, as the case may be, from and after the date that the order of revocation becomes final. [Formerly 449.645; 1975 c.496 §7; 1977 c.795 §7; 1979 c.802 §7]

468.187 Tax credit computation for affiliated corporation when credit exceeds tax liability. If an affiliated corporation that is subject to taxation under ORS chapter 317 or 318, or both, is a part of a unitary group of affiliated corporations engaged in mineral extraction and integrated through smelting and sales that are permitted or required to file a combined report with respect to those operations under ORS 314.363, and the corporation is entitled to a pollution control facility tax credit in connection with the operations under ORS 317.072 pursuant to a certificate issued prior to January 1, 1981, but is not able to take all or a portion of the credit solely because the credit exceeds its tax liability for the taxable year and those taxable years for which a carry forward is allowed, then notwithstanding any requirement of ORS 317.072 or 468.155 to 468.190 to the contrary, any member of the affiliated group may take the amount of tax credit otherwise lost in the taxable year in which the credit or portion would otherwise be lost. [1981 c.710 §2]

Note: Section 3, chapter 710, Oregon Laws 1981, provides:

Sec. 3. (1) Section 2 of this Act applies to tax credits allowable for tax years beginning on or after January 1, 1983.

(2) If, upon the allowance of the tax credit to an affiliated corporation under section 2 of this Act, there is still tax credit lost, and in the case of credits lost in 1981 and 1982, the corporation to which the certificate was issued or any member of the affiliated group may take the amount of the lost tax credit in any taxable year beginning on or after January 1, 1983, and prior to a taxable year beginning six years after the last taxable year for which the facility is certified under ORS 468.170 (7). However, nothing in this section or section 2 of this Act allows a tax credit on account of the facility that is in total more than the credit that would have been allowed to the corporation to which the certificate was issued had the corporation had sufficient tax liability to claim the credit in full for each tax year for which the facility was certified and nothing in this section or section 2 of this Act allows a credit to the unitary group in any one taxable year that equals more than five percent of the cost of the facility.

468.190 Allocation of costs to pollution control. (1) In establishing the portion of costs properly allocable to the prevention, control or reduction of air, water or noise pollution for facilities qualifying under ORS 468.165 (1)(a) or (b), the commission shall consider the following factors:

(a) If applicable, the extent to which the facility is used to recover and convert waste products into a salable or usable commodity.

(b) The estimated annual percent return on the investment in the facility.

(c) If applicable, the alternative methods, equipment and costs for achieving the same pollution control objective.

(d) Any related savings or increase in costs which occur or may occur as a result of the installation of the facility.

(e) Any other factors which are relevant in establishing the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air, water or noise pollution.

(2) The portion of actual costs properly allocable shall be:

(a) Eighty percent or more.

(b) Sixty percent or more but less than 80 percent.

(c) Forty percent or more but less than 60 percent.

(d) Twenty percent or more but less than 40 percent.

(e) Less than 20 percent. [Formerly 449.655; [illegible]]

STATE POLLUTION CONTROL BONDS

468.195 Issuance of bonds authorized; principal amount. In order to provide funds for the purposes specified in Article XI-H of the Oregon Constitution bonds may be

issued in accordance with the provisions of ORS 286.031 to 286.061. The principal amount of the bonds outstanding at any one time, issued under authority of this section, shall not exceed $260 million par value. [Formerly 449.672; 1981 c.312 §1; 1981 c.660 §42]

468.200 [Formerly 449.675; repealed by 1981 c.660 §18]

468.205 [Formerly 449.677; repealed by 1981 c.660 §18]

468.210 [Formerly 449.680; 1975 c.462 §14; repealed by 1981 c.660 §18]

468.215 Pollution Control Fund. The money realized from the sale of each issue of bonds shall be credited to a special fund in the State Treasury, separate and distinct from the General Fund, to be designated the Pollution Control Fund; which fund is hereby appropriated for the purpose of carrying out the provisions of ORS 468.195 to 468.260. It shall not be used for any other purpose, except that this money, with the approval of the State Treasurer, may be invested as provided by ORS 293.701 to 293.776, 293.810 and 293.820, and the earnings from such investments inure to the Pollution Control Sinking Fund. [Formerly 449.682]

468.220 Department to administer funds; uses; legislative approval of grants; administrative assessment. (1) The department shall be the agency for the State of Oregon for the administration of the Pollution Control Fund. The department is hereby authorized to use the Pollution Control Fund for one or more of the following purposes:

(a) To grant funds not to exceed 30 percent of total project costs for eligible projects as defined in ORS 454.505 or sewerage systems as defined in ORS 468.700.

(b) To acquire, by purchase, or otherwise, general obligation bonds or other obligations of any municipal corporation, city, county, or agency of the State of Oregon, or combinations thereof, issued or made for the purpose of paragraph (a) of this subsection in an amount not to exceed 100 percent of the total project costs for eligible projects.

(c) To acquire, by purchase, or otherwise, other obligations of any city that are authorized by its charter in an amount not to exceed 100 percent of the total project costs for eligible projects.

(d) To grant funds not to exceed 30 percent of the total project costs for facilities for the disposal of solid waste, including without being limited to, transfer and resource recovery facilities.

(e) To make loans or grants to any municipal corporation, city, county, or agency of the State of Oregon, or combinations thereof, for planning of eligible projects as defined in ORS 454.505, sewerage systems as defined by ORS 468.700 or facilities for the disposal of solid waste, including without being limited to, transfer and resource recovery facilities. Grants made under this paragraph shall be considered a part of any grant authorized by paragraph (a) or (d) of this subsection if the project is approved.

(f) To acquire, by purchase, or otherwise, general obligation bonds or other obligations of any municipal corporation, city, county, or agency of the State of Oregon, or combinations thereof, issued or made for the purpose of paragraph (d) of this subsection in an amount not to exceed 100 percent of the total project costs.

(g) To advance funds by contract, loan or otherwise, to any municipal corporation, city, county or agency of the State of Oregon, or combination thereof, for the purpose of paragraphs (a) and (d) of this subsection in an amount not to exceed 100 percent of the total project costs.

(h) To pay compensation required by law to be paid by the state for the acquisition of real property for the disposal by storage of environmentally hazardous wastes.

(i) To dispose of environmentally hazardous wastes by the Department of Environmental Quality whenever the department finds that an emergency exists requiring such disposal.

(j) To acquire for the state real property and facilities for the disposal by landfill, storage or otherwise of solid waste, including but not limited to, transfer and resource recovery facilities.

(2) The facilities referred to in paragraphs (a) to (c) of subsection (1) of this section shall be only such as conservatively appear to the department to be not less than 70 percent self-supporting and self-liquidating from revenues, gifts, grants from the Federal Government, user charges, assessments and other fees.

(3) The facilities referred to in paragraphs (d), (f) and (g) of subsection (1) of this section shall be only such as conservatively appear to

the department to be not less than 70 percent self-supporting and self-liquidating from revenues, gifts, grants from the Federal Government, user charges, assessments and other fees.

(4) The real property and facilities referred to in paragraph (j) of subsection (1) of this section shall be only such as conservatively appear to the department to be not less than 70 percent self-supporting and self-liquidating from revenues, gifts, grants from the Federal Government, user charges, assessments and other fees.

(5) The department may sell or pledge any bonds, notes or other obligations acquired under paragraph (b) of subsection (1) of this section.

(6) Before making a loan or grant to or acquiring general obligation bonds or other obligations of a municipal corporation, city, county or agency for facilities for the disposal of solid waste or planning for such facilities, the department shall require the applicant to demonstrate that it has adopted a solid waste management plan that has been approved by the department. The plan must include a waste reduction program.

(7) Any grant authorized by this section shall be made only with the prior approval of the Joint Committee on Ways and Means during the legislative sessions or the Emergency Board during the interim period between sessions.

(8) The department may assess those entities to whom grants and loans are made under this section to recover expenses incurred in administering this section. [Formerly 449.685; 1977 c.95 §8; 1977 c.704 §9; 1979 c.773 §9; 1981 c.312 §2]

468.225 Investment yield on undistributed bond funds and revenues. All undistributed bond funds and revenues received as payment upon agency bonds or other obligations, if invested, shall be invested to produce an adjusted yield not exceeding the limitations imposed by section 103, subsection (d) of the Internal Revenue Code of 1954, and amendments thereto in effect on March 1, 1971. [Formerly 449.687]

468.230 Pollution Control Sinking Fund; use; limitation. (1) The commission shall maintain, with the State Treasurer, a Pollution Control Sinking Fund, separate and distinct from the General Fund. The Pollution Control Sinking Fund shall provide for the payment of the principal and interest upon bonds issued under authority of Article XI-H of the Constitution of Oregon and ORS 468.195 to 468.260 and administrative expenses incurred in issuing the bonds. Moneys of the sinking fund are hereby appropriated for such purpose. With the approval of the commission, the moneys in the Pollution Control Sinking Fund may be invested as provided by ORS 293.701 to 293.776, 293.810 and 293.820, and earnings from such investment shall be credited to the Pollution Control Sinking Fund.

(2) The Pollution Control Sinking Fund shall consist of all moneys received from ad valorem taxes levied pursuant to ORS 468.195 to 468.260 and assessments collected under ORS 468.220 (8), all moneys that the Legislative Assembly may provide in lieu of such taxes, all earnings on the Pollution Control Fund, Pollution Control Sinking Fund, and all other revenues derived from contracts, bonds, notes or other obligations, acquired, by the commission by purchase, loan or otherwise, as provided by Article XI-H of the Constitution of Oregon and by ORS 468.195 to 468.260.

(3) The Pollution Control Sinking Fund shall not be used for any purpose other than that for which the fund was created. Should a balance remain therein after the purposes for which the fund was created have been fulfilled or after a reserve sufficient to meet all existing obligations and liabilities of the fund has been set aside, the surplus remaining may be transferred to the Pollution Control Fund at the direction of the commission. [Formerly 449.690; 1981 c.312 §3]

468.235 Levy of taxes to meet bond obligation authorized. Each year the Department of Revenue shall determine the amount of revenues and other funds that are available and the amount of taxes, if any, that should be levied in addition thereto to meet the requirements of ORS 468.195 to 468.260 for the ensuing fiscal year. Such additional amount of tax is hereby levied and shall be apportioned, certified to, and collected by the several counties of the state in the manner required by law for the apportionment, certification and collection of other ad valorem property taxes for state purposes. This tax shall be collected by the several county treasurers and remitted in full to the State Treasurer in the manner and the times prescribed by law, and shall be credited by the State Treasurer to the Pollution Control Sinking Fund. [Formerly 449.692]

468.240 Remedy where default occurs on payment to state. If any municipal corporation, city or county defaults on payments due to the state under ORS 468.195 to 468.260, the state may withhold any amounts otherwise due to the corporation, city or county to apply to the indebtedness. [Formerly 449.694]

468.245 Acceptance of federal funds. The commission may accept assistance, grants and gifts, in the form of money, land, services or any other thing of value from the United States or any of its agencies, or from other persons subject to the terms and conditions thereof, regardless of any laws of this state in conflict with regulations of the Federal Government or restrictions and conditions of such other persons with respect thereto, for any of the purposes contemplated by Article XI-H of the Constitution of Oregon and by ORS 468.195 to 468.260. Unless enjoined by the terms and conditions of any such gift or grant, the commission may convert the same or any of them into money through sale or other disposal thereof. [Formerly 449.695]

468.250 Participation in matching fund programs with Federal Government. (1) The commission may participate on behalf of the State of Oregon in any grant program funded in part by an agency of the Federal Government if the implementation of the program requires matching funds of the state or its participation in administering the program. However, any grant advanced by the commission to an otherwise eligible applicant shall not exceed 30 percent of the total eligible costs of the project applied for, and further provided that the project shall not be less than 70 percent self-supporting and self-liquidating from those sources prescribed by Article XI-H of the Constitution of Oregon.

(2) Subject to conditions imposed on federally granted funds, a municipal corporation, city, county or agency of the State of Oregon, or combination thereof, who is eligible for federal funds for a project during its construction or becomes eligible for reimbursement for funds expended, if the project has been constructed and placed into operation, shall apply for and pay to the commission such funds so received, or otherwise made available to it, in such amounts as determined by the commission as just and necessary, from an agency of the Federal Government. These funds shall first be used to reimburse the State of Oregon for the portion of any grant that was advanced to the municipal corporation, city, county or agency of the State of Oregon, or combination thereof, for construction of the project that exceeded the federal requirements for state matching funds and any remainder thereof shall be used to apply upon the retirement of any principal and interest indebtedness due and owing to the State of Oregon arising out of funds loaned for the project prior to federal funds becoming available.

(3) The refusal of a municipal corporation, city, county or agency of the State of Oregon, or combinations thereof, to apply for federal funds in such amounts as determined by the commission as just and necessary for which it would otherwise be eligible, shall be sufficient grounds to terminate any further participation in construction of a facility by the commission.

(4) The municipal corporation, city, county or agency of the State of Oregon, or combinations thereof, shall consent to and request that funds made available to it by an agency of the Federal Government shall be paid directly to the commission if required to do so under subsection (2) of this section. [Formerly 449.697]

468.255 Limit on grants and loans. Any funds advanced by the commission by grant shall not exceed 30 percent of the total project costs for eligible projects or for facilities related to disposal of solid wastes, and any obligation acquired by the commission by purchase, contract, loan, or otherwise, shall not exceed 100 percent of the total project costs for eligible projects or for facilities related to disposal of solid wastes. Combinations of funds granted and loaned by whatever means shall not total more than 100 percent of the eligible project costs. [Formerly 449.699; 1981 c.312 §4]

468.260 Return of unexpended funds to state required; use of returned funds. Any proceeds unexpended after a project is constructed and inspected, and after records relating thereto are audited by the commission, shall be returned to the commission on behalf of the State of Oregon to apply upon the retirement of principal and interest indebtedness on obligations acquired by it from a municipal corporation, city, county or agency of the State of Oregon, or any combinations thereof. [Formerly 449.701]

POLICY ON SEWERAGE WORKS PLANNING AND CONSTRUCTION

340-41-034

(1) Oregon's publicly owned sewerage utilities have since 1956 developed an increasing reliance on federal sewerage works construction grant funds to meet a major portion of the cost of their sewerage works construction needs. This reliance did not appear unreasonable based on federal legislation passed up through 1978. Indeed, the Environmental Quality Commission (EQC) has routinely approved compliance schedules with deadlines contingent on federal funding. This reliance no longer appears reasonable based on recent and proposed legislative actions and appropriations and the general state of the nation's economy.

(2) The federal funds expected for future years will address a small percentage of Oregon's sewerage works construction needs. Thus, continued reliance by DEQ and public agencies on federal funding for sewerage works construction will not assure that sewage from a growing Oregon population will be adequately treated and disposed of so that health hazards and nuisance conditions are prevented and beneficial uses of public waters are not threatened or impaired by quality degradation.

(3) Therefore, the following statements of policy are established to guide future sewerage works planning and construction:

(a) The EQC remains strongly committeed to its historic program of preventing water quality problems by requiring control facilities to be provided prior to the connection of new or increased waste loads.

(b) The EQC urges each sewerage utility in Oregon to develop, as soon as practicable, a financing plan which will assure that future sewerage works construction, operation, maintenance and replacement needs can be met in a timely manner. Such financing plans will be a prerequisite to Department issuance of permits for new or significantly modified sewerage facilities, or for access to funding assistance from the state pollution control bond fund. The Department may accept assurance of development of such financing plan if necessary to prevent delay in projects already planned in the process of implementation. The Department will work with the League of Oregon Cities and others as necessary to aid in the development of financing plans.

(c) No sewerage utility should assume that it will receive grant assistance to aid in addressing its planning and construction needs.

(d) Existing sewerage facility plans which are awaiting design and construction should be updated where necessary to include:

(A) Evaluation of additional alternatives where appropriate, and re-evaluation of costs of existing alternatives;

(B) Identification and delineation of phased construction alternatives; and

(C) A financing plan which will assure ability to construct facilities over an appropriate time span with locally derived funds.

(e) New sewerage works facility planning initiated after October 1, 1981 should not be approved without adequate consideration of alternatives and phased construction options, and without a financing plan which assures adequate funding for construction, operation, maintenance and replacement of sewerage facilities:

(f) The EQC recognizes that many cities in need of immediate sewerage works construction have completed planning and are awaiting design or construction funding. These cities have developed their program relying on 75% federal grants. They will have difficulty developing and implementing alternatives to fund immediate construction needs. Many are, or will be, under moratoriums on new connections because existing facilities are at, or near, capacity. The EQC will consider the following interim measures as a means of assisting these cities to get on a self-supporting basis provided that an approvable long-range program is presented:

(A) Temporary increases in waste discharge loading may be approved provided a minimum of secondary treatment, or equivalent control is maintained and beneficial uses of the receiving waterway are not impaired.

(B) Installation and operation of temporary treatment works may be approved providing:

(i) The area served is inside an approved urban growth boundary and the proposal is consistent with State Land Use Planning laws.

(ii) A master sewerage plan is adopted which shows how and when the temporary facilities will be phased out.

(iii) The public agency responsible for implementing the master plan is the owner and operator of the temporary facilities.

(iv) Sewerage service to the area served by the temporary facility is necessary as part of the financing program for master plan implementation and no other option for service is practicably available.

(v) An acceptable receiving stream or method of effluent disposal is available for the temporary facility.

(C) Compliance schedules and other permit requirements may be modified to incorporate an approved interim program. Compliance with a permit so modified will be required at all times.

(g) Sewerage Construction programs should be designed to eliminate raw sewage bypassing during the summer recreation season (except for a storm event greater than the 1 in 10 year 24 hour storm) as soon as practicable. A program and timetable should be developed through negotiation with each affected source. Bypasses which occur during the remainder of the year should be eliminated in accordance with an approved longer term maintenance based correction program. More stringent schedules may be imposed as necessary to protect drinking water supplies and shellfish growing areas.

(h) Any sewerage utility that is presently in compliance and foresees a need to plan for future expansion to accommodate growth but elects to wait for federal funds for planning and construction will make such election with full knowledge that if existing facilities reach capacity before new facilities are completed, a moratorium on new connections

will be imposed. Such moratorium will not quality them for any special consideration since its presence is deemed a matter of their choice.

(i) The Department will continue to assist cities to develop interim and long-range programs, and construction schedules and to secure financing for essential construction.

Stat. Auth.: ORS Ch. 183
Hist: DEQ 29-1981, f. & ef. 10-19-81

Exhibit IV

POLLUTION CONTROL BOND FUND
SOLID WASTE

		Committed		Last Payment		Total Amount Paid			Encumbered
Name	Proj #	Date	Amount	Vo #	Date	Grant	Loan	Bonds	(Reimbursed)
Baker Co.	550	11/73	21,490	2222	12/73	21,490			
Central Oregon	180	3/73	41,497.69	3363	9/75	41,497.69			
Clatsop-Tillamook Co.	160	2/73	48,125	3475	10/77	48,125			
Columbia County	000		12,150			X			12,150
Columbia County	000		56,350				X		56,350
Columbia County	660	9/74	12,000	9258	5/81	12,000			
Columbia County	661		48,500	2020	1/82		23,000		25,500
Coos-Curry	501	5/73	46,801.32	3316	6/76	46,801.32			
Deschutes Co.	000	4/78	12,000	7808	2/79	11,560			
Deschutes Co.	181	10/77	45,000	2535	2/78	45,000			
Douglas	150	2/73	26,300	819	10/74	26,300			
Douglas County	151	2/75	209,000		3/78	209,000			
EWEB	650	7/74	5,000	3097	7/74	5,000			
Gilliam	130		5,000	2261	6/74	5,000			
Gilliam County	131	2/75	2,700		5/75	2,700			
Gilliam County	131	5/75	4,050	6474	11/76	4,050			

POLLUTION CONTROL BOND FUND
SOLID WASTE

Name	Proj #	Committed Date	Committed Amount	Last Payment Vo #	Last Payment Date	Total Amount Paid Grant	Total Amount Paid Loan	Bonds	Encumbered (Reimbursed)
Grant	120		8,712	2234	1/74	8,712			
Harney	620	7/73	10,744.61	369	9/74	10,744.61			
Hood River Co. SWP	172	6/80	18,000			X			18,000
Jackson	510	3/73	21,300	3362	8/74	21,300			
Josephine	520	5/73	15,000	3376	9/75	15,000			
Klamath	590	4/73	13,534.60	3424	12/75	13,534.60			
Klamath Co.	592	4/78	45,000	7839	2/79	44,187			813
Klamath Co.	592A	4/78	15,000	7840		14,999			1
Klamath Co. SWC	593	2/80	56,700	10076	3/82	35,987			20,713
Klamath County	591	1/76	54,300	9526	7/77	45,079.55			
Lane COG	190	2/73	154,000	3464	3/76	154,000			
Lane County	191	7/76	1,500,000	9714	3/78	1,424,999.78			75,000
Lane County	191B	1/76	3,500,000	3883	10/76			3,500,000	
Lincoln Co.	602			4616	6/80	38,900			G 133,300
Lincoln Co.	000		600,000				X		L 420,000
Lincoln Co.	601	11/73	9,000	1058	12/74	9,000			
Lincoln Co.	603			3791	6/82	7,800			

POLLUTION CONTROL BOND FUND
SOLID WASTE

Name	Proj #	Committed Date	Committed Amount	Last Payment Vo #	Last Payment Date	Total Amount Paid Grant	Total Amount Paid Loan	Bonds	Encumbered (Reimbursed)
Malheur Co.	580	3/73	4,000		3/73	4,000			
Marion County Pub Wks	102	9/75	7,350	6467	12/76	7,350			
Marion County Pub Wks	103	3/76	20,659.41	3145	5/76	20,659.41			
Metro Svc Dist	116A		35,000	2098	1/78		35,000		
Metro Svc Dist	110		325,000	273	4/74	325,000			
Metro Svc Dist	111	1/74	SW 115A	3347	8/75	X			
Metro Svc Dist	112	3/75	2,000	3473	1/77	2,000			
Metro Svc Dist	113	8/75	SEE 115A	3558	6/76	X			
Metro Svc Dist	114	7/76	115A	8530	5/77		X		
Metro Svc Dist	115A		8,277,622.50 L	5462	8/80		3,510,870		
Metro Svc Dist	115A	4/77	3,113,377.50 G			403,589			
Metro Svc Dist	116	10/77	15,000	2097	1/78	13,500			
Metro Svc Dist	117	St. Johns		3462	5/82	573,522			G 9,708
Metro Svc Dist	Rossman (Part of 115A)		-0-						
Metro Svc Dist	118			2553	3/82		3,330,000		1,157,700
Metro Svc Dist	118			1605	11/81	1,213,790			709,510

POLLUTION CONTROL BOND FUND
SOLID WASTE

		Committed		Last Payment		Total Amount Paid			Encumbered
Name	Proj #	Date	Amount	Vo #	Date	Grant	Loan	Bonds	(Reimbursed)
Mid-Columbia EDD	170		15,894.07	2011	5/73	15,894.07			
Mid-Willamette COG	101-A	5/73	177,396.89	2992	6/75	177,396.89			
Mid-Willamette COG	101	2/73	49,544.50	1654	7/75	49,544.50			
Morrow Co.	140		16,270.62	2089	8/73	16,270.62			
Morrow County	141	4/76	14,835	7962	3/77	9,241.95			
Port of Umpqua	640	9/73	75,000	3253	7/75	75,000			
Port of Umpqua	641	1/76	135,600	6630	12/76	52,455.75			
Portland Pyrolysis	000		4,693		6/73	4,693			
Sherman Co.	000		7,500				X		
Sherman Co.	000		17,500					X	
Tillamook	000		150,000	5893	9/80	122,807			
Tillamook	163		350,000						
Tillamook Co.	161	6/78	SEE 163	9385	5/79	27,193			
Tillamook Co. SWC	163A	7/79	134,160	8931	5/81	119,134			15,026
U of O Bur Gov Rsh.	630	6/73	21,540.70	2281	4/76	21,540.70			
Umatilla	530	3/73	18,838.36	3095	6/75	18,838.36			

POLLUTION CONTROL BOND FUND
SOLID WASTE

Name	Proj #	Committed Date	Committed Amount	Last Payment Vo #	Last Payment Date	Total Amount Paid Grant	Total Amount Paid Loan	Total Amount Paid Bonds	Encumbered (Reimbursed)
Union Co.	560	4/73	23,800	3364	8/75	23,800			
Union County	561	2/77	271,200	9725	1/78	257,640			13,560
Union County	561	3/77	632,800	8204	4/77			632,800	
Wallowa	570		15,769.15	2274	4/75	15,769.15			
Wallowa	571	4/75	11,872.05	9880	6/79	11,872.05			
Wallowa	571	4/75	28,400	6667	12/76		28,400		
Wasco Co.	000								G 9,000
Wasco Co.	000		30,000			X	X		L 21,000
Wheeler	540		7,500	1310	12/74	7,500			
Yamhill		4/82	475,000	3139	4/82			475,000	
			TOTAL			$5,912,769	$6,927,270	$4,607,800	$2,697,331

BK437

POLLUTION CONTROL BOND FUND
WATER QUALITY

Name	Proj #	Committed Date	Committed Amount	Last Payment Vo #	Last Payment Date	Total Amount Paid Grant	Total Amount Paid Loan	Total Amount Paid Bonds	Encumbered (Reimbursed)
Adrian	017		21,000	2769	5/75		5,250 (paid back)		
Albany	319	4/73	405,462	1466	4/73	405,462			
Ashland	384	12/73	280,000	5383	2/74			280,000	
Astoria	291		2,182,575	2282	1/77	2,164,400			
Astoria	291	11/72	3,665,000					3,665,000	
Aumsville	278	12/72	42,457	1030	12/72	42,457			
Baker	027	12/74	20,000	3032	6/75		18,000		2,000.00
Bandon	223	12/72	117,501	1034	12/72	117,501			
Bay City	246		78,559.80	3423	10/75	78,559.80			(2,826.05)
Bay City	246	12/72	80,000					80,000	
Bay to Bay SD	020	8/74	19,800	3404	10/75		19,800 (paid back)		
Bear Creek Valley SD	279	6/73	1,639,427.79	1824	6/73	1,639,427.79			(2,047.79)
Bend	035	12/75	60,100	3886A	1/77		60,100 (paid back)		
Bend	486	5/80	1,792,148	5419	8/80		1,544,043 (paid back)		248,105.00
Bend	486	11/76	9,000,000	374	8/79			9,000,000	
Bend	486	11/76	7,500,000	9148	5/81	7,500,000			-0-
Bend - see WQ-3	R&D	8/74	35,000		5/78	35,000			

POLLUTION CONTROL BOND FUND
WATER QUALITY

Name	Proj #	Committed		Last Payment		Total Amount Paid			Encumbered
		Date	Amount	Vo #	Date	Grant	Loan	Bonds	(Reimbursed)
Bly SD	372	7/74	84,347	2724	5/75	84,347			
Bend see WQ-P	261	12/72	148,169	2723	5/75	148,169			
Benton County	000	7/73	23,800	1635	1/75		23,800 (paid back)		
Boardman	007	1/74	70,000	1574	4/74		64,815 (paid back)		
Boardman	424	4/78	420,000	4465	6/78			420,000	
Bonanza	453	12/77	96,000	1925	1/78			96,000	
Brookings	214	12/72	7,655	2283	3/77	7,655			
Brownsville	000	8/79	200,000	1763	11/79			220,000	
Brownsville	004		9,950	822	10/74		8,487 (paid back)		
Bunker Hill	335	2/75	62,000	2487	4/75			62,000	
Burns	303	6/72	4,114		6/72	4,114			
Butte Falls	412	9/74	36,200	2945	4/76		36,200 (paid back)		
Canby	322	8/71	48,392	351	11/71	48,392 (paid back)			
Cannon Beach	280	12/72	83,105	1029	12/72	83,105			
Canyonville	488	11/77	350,000		6/79			350,000	
Charleston SD	000		585,000	3594	7/76			585,000	

POLLUTION CONTROL BOND FUND
WATER QUALITY

Name	Proj #	Committed Date	Committed Amount	Last Payment Vo #	Last Payment Date	Total Amount Paid Grant	Total Amount Paid Loan	Total Amount Paid Bonds	Encumbered (Reimbursed)
Charleston SD	393	1/74	68,500	2287	3/75		68,499.70		
Chiloquin	032	2/76	118,000	2806	4/76			118,000	
Chiloquin	032	3/75	19,050	2648	4/75		19,050		
Clackamas Co SD	234	7/71	2,570,000		10/72			2,570,000	
Clackamas Co SD	234	12/72	2,339,818	3860	8/76	2,339,818			
Clackamas County	031	3/75	60,000	9743	3/78		60,000		
Clatsop-Plains	638	9/73	125,000	3474	9/77		125,000 (paid back)		
Cloverdale	416	6/76	30,000	6221	10/76	20,000			10,000.00
Coos Bay	345	4/74	905,000	2333	6/74			905,000	
Coquille	000	9/71	250,000					250,000 (paid back)	
Coquille	336-S	3/72	82,103	438	5/72	82,103 (paid back)			
Culver	013		21,000	2528	4/75		21,000 (paid back)		
Depoe Bay	026	11/72	48,480	2174	11/73		48,480 (paid back)		
Depoe Bay	365	12/73	190,000		7/74			190,000	
Dundee	202	7/76	64,908	1025	2/73	64,908			
Echo	318	12/72	109,500	3365	8/75	62,485			47,015.00

POLLUTION CONTROL BOND FUND
WATER QUALITY

Name	Proj #	Committed Date	Committed Amount	Last Payment Vo #	Last Payment Date	Total Amount Paid Grant	Total Amount Paid Loan	Total Amount Paid Bonds	Encumbered (Reimbursed)
Eugene	254	12/72	324,467.50	818	10/74	324,467.40			
Florence	302		125,000					125,000	(paid back)
Florence	302	9/71	46,505	1337		46,505 (paid back)			
Gardiner	304		235,000					235,000	(paid back)
Gardiner	304	11/71	98,439		8/72	98,439			
Garibaldi	330	9/72	160,000		9/72			160,000	(paid back)
Gervais	000	12/80	145,000	7032	12/80			145,000	
Glendale	000	10/77	250,000	9276	5/81	250,000			
Glendale	010	3/74	15,000	2310	3/76		15,000 (paid back)		
Glendale	434	10/77	320,000		3/78			320,000	
Gleneden	421	4/74	53,640	511	9/74		53,640 (paid back)		
Gleneden SD	421	9/73	92,000	1658	5/74		92,000 (paid back)		
Gold Beach	332	10/74	92,000	5383	10/74			92,000	
Government Camp SD	441	5/76	225,000		7/76			225,000	
Grants Pass	327		1,305,000	378	9/72			1,305,000	
Grants Pass	327	10/71	1,256,906	2991	6/75	1,210,014			

POLLUTION CONTROL BOND FUND
WATER QUALITY

Name	Proj #	Committed Date	Committed Amount	Last Payment Vo #	Last Payment Date	Total Amount Paid Grant	Total Amount Paid Loan	Total Amount Paid Bonds	Encumbered (Reimbursed)
Green SD	363	8/73	15,569	2125	9/73	15,569			
Gresham	268	12/72	192,276	7841	3/77	192,276			
Gresham	300	1/72	1,530,000		3/72			1,530,000	
Halsey	256	12/72	26,153	1033	12/72	26,153			
Harbor SD	418		90,000	2087	2/75		90,000 (paid back)		
Harbor SD	418	5/75	232,000	650	11/75			232,000	
Hillsboro	292	12/72	249,461	1143	2/73	243,250			
Hood River	297	12/72	80,135	1330	3/73	80,135			(624.25)
Hood River	357	1/72	792,289	3018	1/78	792,289			
Hood River	357	10/73	610,000		10/73			610,000	
Independence City	029	6/73	25,000	9553	8/77		21,886 (paid back)		
Klamath Falls	267	12/72	439,118	1923	2/76	439,118			
La Grande	011	4/74	30,000	2118	2/75		7,500 (paid back)		
La Grande (006fnd)	000		8,700	791		8,700			
La Grande old fund	351	10/71	56,432	2264	6/74	66,506			(10,074.00)
Lake Oswego	221	12/72	42,681	1085	2/73	42,681			

POLLUTION CONTROL BOND FUND
WATER QUALITY

Name	Proj #	Committed Date	Committed Amount	Last Payment Vo #	Last Payment Date	Total Amount Paid Grant	Total Amount Paid Loan	Total Amount Paid Bonds	Encumbered (Reimbursed)
Lakeside	000	4/78	175,000	3386	4/78		175,000 (paid back)		
Lakeside	530	7/76	365,000					X	
Lane Co. (MWMC)	624	3/79	3,000,000	8207	3/79			3,000,000	
Lane Co. MSWD	000	12/80	9,000,000	5073	12/80*			9,000,000	
Lane Co. MWSD	624	6/80		5646	8/80*				
Lebanon	220	12/72	52,035	2140	9/73	52,035			
Lincoln City	000	1/74	90,000	3593	6/76		90,000 (paid back)		
Mapleton (Lane Co.)	006	4/75	50,600		11/76		49,750		
Maupin	374		130,000					X	
McMinnville	286	12/72	340,236	2058	8/73	340,236			
Medford	275	12/72	800,507	1142	2/73	800,507			(11,044.25)
Merrill	262	12/72	28,183	1347	3/73	28,183			
Moro	263	1/73	17,835	200	8/74	17,835			
Myrtle Point	309	6/72	200,000					200,000	
Myrtle Point	309	9/71	60,095		6/72	60,095 (paid back)			

POLLUTION CONTROL BOND FUND
WATER QUALITY

Name	Proj #	Committed Date	Committed Amount	Last Payment Vo #	Last Payment Date	Total Amount Paid Grant	Total Amount Paid Loan	Total Amount Paid Bonds	Encumbered (Reimbursed)
Netarts-Oceanside SD	000	8/77	325,000	9023	4/79	325,000			
Netarts-Oceanside SD	323	8/77	600,000	612	9/77			600,000	
Newberg	251	2/72	195,237			195,237			(6,939.25)
North Bend	307-S	7/71	207,032	88	8/71	207,032			(81,362.00)
North Powder	265	12/72	25,005	1576	1/75	25,005			
North Roseburg SD	283	12/72	16,544	7731	8/77	16,544			
Nyssa	290	12/72	48,924		1/73	48,924			
Oak Lodge	271	12/72	8,728	1348	3/73	8,728			
Oak Lodge SD	317	12/72	90,866	1305	3/73	90,866			
Oakland	216	2/73	45,113	1170	2/73	45,113			
Odell SD	219	12/72	31,601	2141	9/73	31,601			
Ontario	019	6/74	26,200	2311			23,580		
Ontario	258	12/72	158,629	1037	11/74	158,629			
Oregon City/Tri City	023	9/72	101,000	3471	10/76		96,060.75		4,939.00
Paisley	287	12/72	17,691	1032	2/73	17,691			
Parkdale SD	288	12/72	39,492	2253	3/74	39,492			

POLLUTION CONTROL BOND FUND
WATER QUALITY

Name	Proj #	Committed Date	Committed Amount	Last Payment Vo #	Last Payment Date	Total Amount Paid Grant	Total Amount Paid Loan	Total Amount Paid Bonds	Encumbered (Reimbursed)
Pendleton	238	12/72	380,587	1031	2/73	380,587			
Philomath	224	8/71	145,000		8/71			145,000	(paid back)
Philomath	224	12/72	52,587	1196	3/73	52,587			
Portland	272	1/72	15,140,000		4/72			15,140,000	(paid back)
Portland	244	12/72	147,337	1627	4/73	147,337			(2.00)
Portland	249	12/72	95,644		5/73	95,644			
Portland	272	5/71	4,934,522	3478	6/78	4,934,522			
Portland	557			1929	1/82			5,000,000	
Prairie City	018		16,500	2313	3/76		14,819 (paid back)		
Prairie City		3/81	415,000	8399	4/81			415,000	
Prineville	222	12/73	140,000	970	2/74			140,000	
Rainier	316	11/72	165,000		11/72			165,000	
Redmond	028	1/75	57,000	2314	3/76		57,000 (paid back)		
Redmond	347	2/77	3,000,000	10050		3,000,000			
Redwood Sew Svc Dist	411	8/76	550,000	10123	7/79	550,000			
Reedsport (reduction)	000		55,038.75	790	10/77	55,038.75			
Richland	301	12/72	18,878	1023	12/72	18,768			110.00

POLLUTION CONTROL BOND FUND
WATER QUALITY

Name	Proj #	Committed Date	Committed Amount	Last Payment Vo #	Last Payment Date	Total Amount Paid Grant	Total Amount Paid Loan	Total Amount Paid Bonds	Encumbered (Reimbursed)
Road's End San Dist	538	9/77	300,000					220,000	
SO Gleneden SD	421	3/75	197,000	2283	3/75			197,000	
SW Lincoln Co SD	014		24,600	3452	12/75		24,600		
Salem	232	12/72	182,276	1035	2/73	182,276			
Sandy	331	12/72	131,225	1027	12/72	116,447			
Scappoose	289	12/72	202,421	2124	8/73	156,537			
Sheridan	218	3/72	165,000		6/72			165,000 (paid back)	
Sheridan	218	4/72	70,721.70	2227	12/73	70,721.70			(11,840.20)
Siletz	299	12/72	40,276	2257	3/74	40,276			(82.75)
St. Helens	294	12/72	745,092	2530	4/75	745,092			(7,298.50)
Sutherlin	005	12/72	18,000	2726	5/75		14,708		
Sutherlin	436	9/77	990,000	3109	4/78			990,000	
The Dalles	270-S	10/71	575,000		11/71			575,000 (paid back)	
Tillamook	250	1/73	22,771	1028	1/73	22,771			
Tillamook City	033		34,000	1556	12/75		30,600 (paid back)		
Tillamook (Twin Rocks)	034	3/75	41,857	8946	6/77		41,857		

POLLUTION CONTROL BOND FUND
WATER QUALITY

Name	Proj #	Committed Date	Committed Amount	Last Payment Vo #	Last Payment Date	Total Amount Paid Grant	Total Amount Paid Loan	Total Amount Paid Bonds	Encumbered (Reimbursed)
Waldport	354	9/72	150,000	377	9/72			150,000	
Wallowa	259	12/72	61,414	2174	3/75	61,413.54			
Warrenton	241	2/72	58,689		2/74	58,689			
West Linn	255	12/72	81,060		2/73	81,060			(56.00)
White City SD	252	12/72	4,653	2284	3/77	4,653			
Willamina	000	9/78	45,000	1082	10/79			45,000	
Wilsonville	000	9/71	600,000					600,000	
Wilsonville	329	10/71	196,436	1030	3/72	196,436 (paid back)			
Winchester Bay	359	10/74	138,000		10/74			138,000	
Woodburn	340	1/72	171,778	1576	5/73	171,778			(22,873.50)
Woodburn	340	9/71	240,000					240,000 (paid back)	
Yamhill	404	1/78	45,000	2711	3/78			45,000	
			TOTAL			$32,816,291.98	$3,024,525.45	$81,360,000	$312,169.00

*Paid $1,182 as loan 8/80 - reduced payment for bonds by that amount plus interest.

Department of Environmental Quality

522 SOUTHWEST 5TH AVE. PORTLAND, OREGON

MAILING ADDRESS: P.O. BOX 1760, PORTLAND, OREGON 97207

August 10, 1982

The Honorable Fred W. Heard, Co-Chairman
The Honorable Hardy Myers, Co-Chairman
State Emergency Board
115 State Capitol
Salem, OR 97310

Gentlemen:

The Department of Environmental Quality (DEQ) respectfully requests Emergency Board authorization to loan up to $3,000,000 in Pollution Control Bond Funds for construction of sewer lines along the East Burnside Light Rail Corridor by the City of Gresham and the Multnomah County Central Service District.

NATURE OF THE EMERGENCY

The Portland-Gresham Light Rail project has been in various stages of planning for several years. Land use plans call for construction of sewers to eliminate discharge of wastes to the ground water aquifer via cesspools and to accomodate the greatly increased densities of development that are projected along the light rail corridor.

Tri-Met is now preparing to obtain bids for initial construction on the East Burnside section between 102nd and 197th avenues. Failure to install sewers as part of the initial construction will lead to significantly increased costs later and potential disruption of light rail service. The regional sewerage plan assigns responsibility to the Multnomah County Central County Service District for sewer construction between 102nd and about 148th. Gresham is assigned responsibility for providing sewer service in the section between 148th and 197th. Unfortunately, detailed planning for financing and constructing sewers has lagged far behind the planning for the Light Rail project, with the result that the responsible agencies are unable to secure financing through regular process in the time now available.

Gresham and Multnomah County have therefore asked the Metropolitan Service District (METRO) to apply on their behalf to the Department for a loan of funds from the Pollution Control Bond Fund to permit sewers to be constructed as part of the initial Light Rail project construction. Gresham and the Multnomah County Central County Service District would be

responsible for repayment of the loan. Several possible alternatives for repayment were identified, but none are formally in place. A commitment to sewer construction must be made before repayment arrangements can be formally put in place.

AGENCY ACTION

The Department has reviewed the information submitted by METRO. The Department is authorized to advance monies from the Pollution Control Bond Fund provided the state is assured timely repayment of principal and interest to retire state bonds. This objective has historically been met by purchasing legally authorized General Obligation or Revenue Bonds issued by local governments to finance qualifying pollution control facilities. As a matter of prudent and fiscally secure management of the Bond Fund, unusual loan requests have been submitted to the Legislative Ways and Means Committee or Emergency Board for review. Pursuant to law, specific legislative approval (and appropriation of General Funds for related debt service) is required for any grants from the bond fund.

The Department is prepared to recommend that the Emergency Board concur with a proposal to advance Pollution Control Bond Funds for this project subject to the following:

> A contract or contracts will have to be executed between the Department and the appropriate responsible local governments wherein they accept full responsibility for the loan and commit to a repayment plan. As ultimate security, the responsible local governments will have to acknowledge that in the event adopted repayment plans do not generate sufficient funds to assure timely loan repayment, state shared revenues may be withheld pursuant to ORS 468.240. The contracts must therefore bear the appropriate signatures of local governments that are eligible to receive state shared revenues.
>
> Acceptable contracts will have to be executed before any funds are advanced.
>
> Ordinances establishing special sewer connection charges or other proposed primary methods for repayment of loaned funds will have to be in place before funds are advanced.
>
> Legal counsel, preferably bond counsel, for each local government entering into loan contracts with the Department will have to render a favorable opinion regarding the authority of the local governments to enter into the contract.

Interest may be deferred until principal payments would begin in 1987 if the Emergency Board concurs in the use of accumulated sinking fund monies to cover debt service during the deferral period. Full repayment of interest and principal would have to be accomplished by 1997.

The Emergency Board will have to be made aware that in the event future voter or legislative action reduces state shared revenues below the level necessary to secure the loaned funds, and the primary method of repayment does not provide adequate or timely funds, the state may have to temporarily cover debt service pending local development of alternative repayment methods.

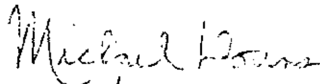
STATUTORY REFERENCE

Financial assistance for construction of sewerage facilities is authorized through provisions of ORS 468.220(1)(g).

ACTION REQUIRED

The Department requests concurrence of the Emergency Board in the proposal to advance funds for construciton of sewers on East Burnside street between 102nd and 197th subject to the above conditions.

Sincerely,



William H. Young
Director

FWO:k
BK1176

Department of Environmental Quality

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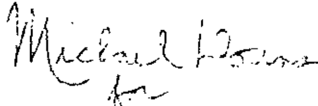


William H. Young
Director

FWO:k
BK1176

DAVE FROHNMAYER
ATTORNEY GENERAL

STANTON F. LONG
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
PORTLAND OFFICE
500 Pacific Building
520 S.W. Yamhill
Portland, Oregon 97204
Telephone: (503) 229-5725

September 10, 1982

Michael J. Downs, Administrator
Management Services Division
Department of Environmental Quality
522 S.W. Fifth Avenue
Portland, Oregon 97204

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
SEP 14 1982
OFFICE OF THE DIRECTOR

Re: Tax Credit Questions

Dear Mike:

By memorandum to me dated July 28, 1982 you asked two questions regarding the tax credit program. By memorandum dated August 2, 1982 I asked our law clerk, Conrad Hutterli, to research those questions. I provided you with a copy of my memorandum. By memorandum to me dated August 23, 1982 Conrad responded to your questions. Enclosed is a copy of his memorandum.

The majority of the legislative history which Conrad discusses in his memorandum supports the approach which the Environmental Quality Commission took in resolving the Time Oil applications, i.e. to deal with the "substantial effect" issue and the allocation of costs issue separately, applying the return on investment criteria only regarding the latter issue.

In spite of that, however, Conrad drew the conclusion that the Commission could calculate the actual cost properly applicable to pollution control to be less than zero and therefore provide no tax relief. I disagree with that conclusion. I conclude that if you have determined that you have a pollution control facility then "the Commission shall include certification of the actual cost of the facility and . . . the portion of the actual cost properly applicable to the prevention, control or reduction of air, water or noise pollution as set forth in ORS 468.190(2)." ORS 468.170(1). Turning to ORS 468.190(2) the Commission is directed to allocate the applicable portion of costs into one of five categories, the last of which is "[l]ess than 20%." That category clearly includes zero percent, and less than zero percent, if such is possible.

The allocation itself does not provide any tax benefit. However, by other statutes, for example ORS 316.097(1)(b)(E),

the legislature has provided that the less than 20% category is entitled to a 10% tax credit amortized over the useful life of the facility. The legislature could just as well have provided that the less than 20% category would be given no tax credit. However, they did not.

That makes the determination of "substantial effect" crucial. For the reasons that I have already stated orally and in writing, I still am of the opinion that a particular purpose and effect of operating a facility (for example a great return on investment) can be so substantial as to preclude the existence of any other "substantial" purpose and effect. I have not come up with any additional arguments or authorities in favor of that position.

Regarding your second set of questions pertaining to the effect of preliminary certification, I agree with Conrad's conclusion that "there is no commitment from the Department to the preliminary certificate holder that he will actually receive a credit, because that is dependent upon information that is not available until after the project is completed." (Page 5) I do not agree entirely with his basis for reaching that conclusion but I do agree with his conclusion. In other words, preliminary certification does not entitle anyone to any tax credit.

In order to be valid a preliminary certificate must be obtained before construction. There presently is no limit on how long after obtaining a preliminary certificate construction may be delayed. In issuing a preliminary certificate the Department can and does certify that "the proposed erection, construction or installation is in accordance with the provisions of ORS . . . [Chapter 468] . . . and applicable rules or standards adopted pursuant thereto." ORS 468.175(3) (emphasis added). Because the preliminary certificate is issued before construction it has to be predictive, that is that the proposed facility, if constructed, would be consistent with existing standards. However, in determining whether or not a final tax credit certificate can be issued the Commission first is directed by the legislature to look backward. ORS 468.170(4). The Commission thereby is directed to look backward to see whether the facility which "was erected, constructed or installed . . . is necessary to satisfy the intents and purposes of ORS . . . [Chapter 468] . . . and rules thereunder." In other words, the measuring point is the necessity of the constructed project to satisfy then existing statutes and rules. After construction those statutes and rules may be different than those which were in existence at the time of preliminary certification before construction. In other words the measuring points for preliminary and final certification can be different.

In summary, in answer to question two, a preliminary certification must be conditioned such that eligibility for a final tax certificate is determined after construction is completed.

The Commission's legislative proposals to substitute the substantial purpose test with a primary purpose test and to greatly diminish the size of the minimum tax credit would greatly alleviate the problem of highly profitable "pollution control projects" obtaining significant tax credits.

Please call me if you have any questions.

Sincerely,

Robert L. Haskins
Assistant Attorney General
Natural Resources Section

RLH/bc
enclosure
cc: William H. Young

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE MEMO

To: Robb Haskins, Dept. of Justice

Date: 7/28/82

From: Mike Downs

Subject: Request for Informal Letter Opinion on Questions Regarding Pollution Control Tax Credit Program

Question 1. Can a return on investment calculation for a "pollution control" facility ever be used as the basis for denying tax credit certification on a facility if that facility would otherwise qualify for tax credit certification if it generated little or no return on investment?

At the July 16, 1982 EQC meeting, the Commission considered two tax credit applications from Time Oil Company where the issue raised in question 1 originated. Copies of the staff reports recommending denial are attached.

The basis for denial was that the estimated return on investment on each facility was at a sufficient level that these facilities would have been installed purely for economic reasons without the need for a tax credit incentive.

We would argue that it doesn't make sense to provide a tax credit incentive where one isn't needed, and that the tax credit statutes weren't intended to produce such a result. Further, it is possible to have a purpose for constructing a facility be so overriding that no other purpose could be considered substantial. Thus, while it is possible to have two or more substantial purposes for constructing a facility (e.g., pollution control and economic return) there is a point at which the economic purpose can be so important that no reasonable man would argue that a substantial purpose was pollution control (an incidental purpose maybe). In such cases the facility would not meet the "substantial purpose test" and therefore would not be eligible for tax credit certification.

Question 2. (a) Does approval of preliminary certification entitle the applicant to tax credit certification at a minimum 20% allocable if the applicant follows the appropriate procedures for filing for tax credit and constructs the facility according to the plans and specifications, and other conditions approved in the preliminary certification?

(b) If so, may the preliminary certification approval be conditioned such that final eligibility is determined at the tax credit application stage?

Traditionally, the Department has operated as if preliminary certification approval was only a preliminary indication of potential eligibility for tax credit based upon information available prior to construction of the facility. It has been assumed that preliminary certification did not "guarantee" tax credit but rather was designed to accomplish the following objectives:

1. Inform the applicant prior to investment in construction of a facility whether it would likely qualify for tax credit certification.

2. Allow the agency to review plans and specifications and require necessary modifications before a facility is constructed to reasonably ensure it will meet Commission environmental regulations and standards.

Since it has been considered only a preliminary determination, the Department has not assigned the staff resources necessary to do in depth analysis of preliminary certification applications that would be necessary to conclusively determine tax credit eligibility at that stage in the process. The detailed review and analysis is reserved for the tax credit application stage where specific information is available on operating efficiency, construction and operating costs, return on investment and other factors that is not available at the preliminary certification stage.

To ensure the applicant is not mislead to believe that preliminary certification entitles one to tax credit certification, the Department includes the following phrase in all preliminary certification approval notices:

> "This preliminary certification makes the proposed facility eligible for consideration for tax credit but does not insure that any specific part or all of the pollution control facility will be issued a tax credit certificate." (See attached form DEQ/TC-3-6/82 from Tax Credit Guidance Handbook).

Your response to these questions in advance of the August 27, 1982 Commission meeting would be appreciated.

Attachments

why

Conrad Hutterli, Law Clerk
Natural Resources Section

August 2, 1982

Robert L. Haskins
Assistant Attorney General

DEQ Pollution Control Tax Credit Program

Conrad, I have received an inquiry from Mike Downs, Administrator of the Management Services Division of the Department of Environmental Quality regarding the DEQ pollution control tax credit program. Enclosed is a copy of Mike's July 28, 1982, memorandum to me, with enclosures.

I would appreciate it greatly if you would prepare a legal memorandum to me answering Mike's inquiries. In order to research the issues it will be necessary for you to research the legislative history of the tax credit statutes by listening to the tapes at the archives. I would appreciate it if you would discuss all the relevant legislative history, pro and con. It would also be helpful for you to obtain a copy of the DEQ Pollution Control Facilities Tax Program Guidance Handbook. By a copy of this memorandum I am requesting that Mike Downs send you a copy of that handbook as soon as possible.

The attached Time Oil Company applications came before the Environmental Quality Commission at its last meeting on the recommendation of the Department of Environmental Quality to deny the applications. Time Oil's corporate counsel, Terrill L. Henderson, made the arguments contained in its written submission.

On behalf of the Department I made the argument that the economic return on investments was so great that it negated there being any other substantial purpose such as for pollution control. That is, I argued that the economic purpose was an overriding purpose. In one of those cases the return on investment was greater than 50% a year. That means, in addition to recovering the full cost of the facility amortized over the useful life of the facility, the facility also generated income in an amount greater than 50% of the initial investment as profit each year of operation. Additionally, if gasoline prices continue to escalate, the return will similarly escalate.

I argued that the decision that was made was purely an economic production decision, not a pollution control decision. Just as the state could not reasonably be asked to help fund (through pollution control credits) a gasoline storage tank

on the theory that it prevented the gasoline from running off the oil company's property and into and polluting the river, neither should the state fund a system which prevents that valuable product from escaping into the atmosphere. If the returns were not so substantial, then pollution control could constitute a substantial purpose. However, when the return on investment exceeds 50% per year no prudent businessman could consider doing anything other than containing its product for sale. In other words, the economic purpose was overriding and negated any environmental control purpose.

Note the timing in Application T-1142. Their request for preliminary certification was made on April 30, 1976. However, it was not until the price of gasoline has more than doubled three years later that the facility was constructed, presumably for economic reasons.

Unfortunately the Commission granted Time Oil's application. However, after taking that action the Commission at its lunch meeting discussed the legal and policy issues further with the staff. The Commission requested the DEQ staff to prepare further analysis of the matter, hence Mike's memo.

It will be necessary for you to understand the entire system and some of the history in order to prepare your memorandum. The guidance handbook should be helpful in that respect. Additionally, once you have reviewed those materials and basically understand the system, perhaps we should sit down and discuss the general and specific issues before you commence writing the memorandum. Please call me when you are prepared.

As Mike indicated, the Commission would like to discuss this matter further at its August 27, 1982, meeting. In order to present something to them in writing, preferably in advance of the meeting, I would appreciate greatly if you would deliver your memorandum to me on or before August 12. I plan to be on vacation the week of August 16. I am more interested in having the necessary research done than to meet the August 12 deadline. If the research should take longer than that then so be it. Please keep me advised of your progress.

Thank you.

RLH/bc
enclosure
cc: Mary Deits
Mike Downs

RECEIVED AUG 23 1982

STATE OF OREGON

INTEROFFICE MEMO

TO: ROBB HASKINS, AAG
Portland

DATE: August 23, 1982

FROM: CONRAD HUTTERLI, Law Clerk CBH
Salem

SUBJECT: DEQ Pollution Control Tax Credit Program

Facts

Time Oil Company (hereinafter "Time") has applied for pollution tax credits on a project involving the installation of internal floating tank covers for Time's gasoline storage tanks. The tank covers reduce the amount of gasoline escaping into the atmosphere. The Department of Environmental Quality (DEQ) estimates that the covers will keep 633 tons of emissions per year from escaping into the air.

In addition to reducing pollution, the tank covers will save Time a substantial sum of money. The 633 tons of emissions translates out to 131,417 gallons of gasoline. At 88.76 cents per gallon, the total value of the gasoline recovered is $116,646. This calculates out to a 50% return on investment over a ten-year period.

Questions

1. Can a return on investment calculation for a "pollution control" facility ever be used as the basis for denying tax credit certification on a facility if that facility would otherwise qualify for tax credit certification if it generated little or no return on investment?

2. (a) Does approval of preliminary certification entitle the applicant to tax credit certification at a minimum 20% allocable if the applicant follows the appropriate procedures for filing for tax credit and constructs the facility according to the plans and specifications and other conditions approved in the preliminary certification?

   (b) If so, may the preliminary certification approval be conditioned such that final eligibility is determined at the tax credit application stage?

Discussion

In 1967 the legislature passed the original pollution tax credit bill which was intended to encourage investment in anti-

pollution equipment. The legislature was willing to grant the credit only where the anti-pollution device was installed for the "principal" purpose of reducing pollution. Oregon Laws 1967, ch 592 § 4. The drafters of the legislation understood the word "principal" to mean "the bulk or over 50 percent." Hearings on SB 546, Senate Air and Water Quality Control Committee, May 2, 1967 (statement of Senator Hallock). The word "principal" was used because the legislature was concerned that businesses would use the tax credit to shield normal business related improvements. Hearing on SB 546, House Committee on Taxation, May 11, 1967 (statement of Rep. Redden).

Over the next two years the Sanitation Commission, which administered the program, became concerned that an all or nothing approach to awarding the tax credit was unfair. Hearing on SB 496, Senate Committee on Air and Water Quality Control, March 25, 1969. In response, the legislature developed a system which provides a tax credit of one to five percent of the cost of the facility, depending on the "actual cost of the facility property allocable to the prevention, control, or reduction of air or water pollution." Oregon Laws 1969, ch 340, § 2(1).

In order to be eligible for these credits, the facility had to be "reasonably" used for pollution control, and a "substantial purpose" of the facility had to be the control of water pollution. _Id_. § 4(1). The word "substantial" was intended to mean much less than 50%. In fact, the then chairman of the Senate Committee on Air and Water Quality Control, Vic Atiyeh, stated that "substantial" could mean as low as five or four percent. Hearings on SB 496, Senate Committee on Air and Water Quality Control, Aril 1, 1969. Thus, by substituting the word "substantial" for "principal" the legislature intended to lower the level of anti-pollution purpose which the applicant had to demonstrate.

There is evidence, however, which suggests that the legislature intended to grant the administrative agency a large amount of discretion. One legislator described the change as creating a two-step screening process. _Id_. The applicant must first show that the change will reduce air or water pollution. The second step would be an analysis by the administrative agency to determine if the applicant really deserved the tax break. For example, this legislator believed that a businessman who made a small change, the cost of which could be recovered in three years, did not deserve a tax break. If the agency found the proposal deserving, then the formula would determine the size of the tax break.

Unfortunately, it is not clear that this view was shared by the rest of the committee. Another legislator at the same

hearing stated that the purpose behind the tax credit was to provide an incentive to businesses to install anti-pollution equipment and to install it quickly. The changes in the statute, according to this view, are designed to encourage pollution control while at the same time recognizing that not all of the improvements should be rewarded the same.

Both of these legislators agreed that the applicant must demonstrate that the project will reduce pollution. In the present case, the tank covers will reduce emissions from the tank and will, therefore, assist Time in meeting local air quality standards. Given the minimal definition of "substantial" offered by then Senator Atiyeh, the addition of the tank covers would operate to a "substantial" extent to reduce pollution. It is not required that pollution control be the "primary" purpose.

The problem is whether return on investment should also be considered in defining "substantial." Another way to state the question is whether "substantial" refers to intent or actual effect. The original test was based on intent. If the principal purpose of the unit was pollution control, then the applicant was eligible for the credit. Oregon Laws 1967, ch 592, § 4. Under this test, an applicant could be rejected if the return on investment were high because that would demonstrate that the principal purpose was profit and not pollution control. The current test links the word "substantial" to the effect of the unit. If the unit is ". . . designed for, and is being operated or will operate to a substantial extent . . ." to control pollution, then the unit must be certified. ORS 468.170(4) (1981). In this case, the rate of return would not be as important as the fact that the unit is successfully or will successfully reduce pollution.

In the present legislative scheme, the rate of return is a required factor in determining the actual cost of the unit properly allocable to pollution control. ORS 468.190(b) (1981). If the rate of return is high, the actual cost allocated to pollution will be reduced. Consequently, even though a unit may be certified as eligible for the tax credit, the actual amount of tax credit received by a highly profitable unit will be less than that received by a taxpayer who has invested in a unit which also reduces pollution but is less profitable.

Logically, an applicant's rate of return on investment may be so high that the allocable cost should be zero. The problem is that ORS 468.190(2) did not provide an allocation class for units where the allocable cost is zero or less. Any eligible facility is guaranteed to receive the minimum tax rate under state law. <u>See</u> Pollution Control Facilities Tax Credit Program

Guidance Handbook, Oregon Dept. of Environmental Quality, VI-1 (1981).

The present case is a good illustration. Time is eligible for the credit. The Time unit does reduce air pollution and was designed for that purpose. There are no allocable costs, however, because the rate of return on the unit is very high. Thus, the unit, while eligible, has no economic basis for claiming the credit. It is much like a company which is eligible for a tax credit on certain losses, but cannot claim the credit because the company has not sustained any losses. Under the present interpretation of the statute, however, Time would be eligible for a minimum tax credit on the cost of the unit.

The implication of the requirement that the agency determine the actual cost of the unit allocable to pollution control is that there must be some allocable cost. The agency could determine the point where the pre-tax percent return on investment is so high that the percent of allocable cost is effectively zero. Where there is no allocable cost, there would be no economic basis for claiming the credit.

The problem is that there is no provision in the statutes which states that, in order to claim any credit at all, there must be allocable cost. The legislative history states that the intent of the legislature in creating the five categories was to provide quidelines for agency action. Hearing on SB 496, Senate Committee on Air and Water Quality Control, April 1, 1969. Also, as discussed earlier, a legislator did specifically state that an investment which is recoverable within a short period of time should not receive the credit. Id. Further, the statute does require that the rate of return be considered. ORS 468.190(b) (1981). Taken together, this suggests that the legislature intended that ORS 468.190(2)(e) should be "less than twenty percent" but greater than zero.

In conclusion, the series of questions which must be asked in determining whether and how much of a credit should be given are:

1. Was the unit developed to reduce air or water emissions, and does it in fact do so?

    a. If yes, then the applicant is eligible for for the credit.

    b. If the unit was not designed to limit emissions, but does so incidentally, then the unit is not eligible for the tax credit.

c. If the unit was designed to limit emissions, but fails to do so, then the unit is also not eligible for the tax credit.

2. What is the actual cost of the unit properly allocable to pollution control?

a. If the allocable cost is greater than zero, then it is classified under one of the categories in ORS 468.190(2).

b. If the allocable cost is less than zero, then there would be no tax relief because there would be nothing to give a credit for. The credit was designed to encourage private firms to invest in pollution control beyond what would be easily recouped due to reduced waste. Consequently, if there is no allocable cost, there is no economic basis for the credit.

?

As for the second question, ORS 468.175(1) provides that a person may apply for a preliminary certificate before beginning construction or installation of a facility. The Department, in making its decision, can require the plans and specifications and any other information necessary to determine if the construction is in compliance with ORS ch 454. ORS 468.175(2), (3). In deciding whether the plans qualify for certification, the Department must apply the ORS 468.170(4) standard. The proposed unit must be designed for, and be likely to, substantially reduce emissions.

The ORS 468.170(4) standard is the applicable test because it applies to future as well as present units. In contrast, ORS 468.170(1) specifically limits the requirement for a cost determination to applications filed under ORS 468.165. Consequently, in issuing a preliminary certificate the Department must determine whether the unit will substantially reduce emissions when operational, but it does not have to determine the actual cost of the unit and the proportion of that cost allocable to pollution control.

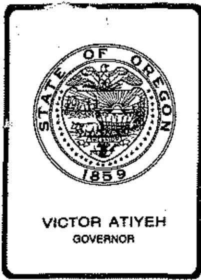
This procedure makes sense because a sound cost determination cannot be made until the facility is completed. See letter to Robb Haskins from Mike Downs, p. 2 (July 28, 1982). When the facility is completed, the Department must then advise the applicant of the allocable cost, if any, for pollution control.

If a cost determination does not have to be made until the project is completed, this would suggest that the unit is not eligible for the tax credit until the unit is completed and a regular certificate can be secured. This is logical because the amount of the tax credit cannot be calculated without the cost data.

The statute, however, implies that a preliminary certificate holder may claim the credit. ORS 468.185(3) provides that, upon revocation of a preliminary certificate, all prior tax relief provided to the certificate holder is forfeit and the holder is liable for the taxes due. While there is no requirement that the Department advise the taxing authorities when a preliminary permit is issued or prepare a tentative cost determination, ORS 468.185(3) implies that the Department may chose to do so when appropriate.

In conclusion, the issuance of a preliminary certificate signifies that the Department has reviewed the proposed unit and determined that it is likely to substantially reduce emissions. Unless a preliminary cost determination is made, the preliminary certificate holder is not eligible for the tax credit until the necessary cost data is available and a ruling is made. Further, since the Department is not required to make a preliminary cost determination, the only real commitment the Department would be making is that the project has met the ORS 468.170(4) eligibility requirements. Even in this case, the statute permits the Department to revoke a ~~preliminary license~~ if the applicant does not operate the unit for the purpose of controlling pollution, or does not control pollution to the extent specified by the applicant. ORS 468.185(1)(b) (1981). Thus, there is no commitment from the Department to the preliminary certificate holder that he will actually receive a credit, because that is dependent upon information that is not available until after the project is completed.

CH:mb
8-23-82 #10



VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

Mailing Address: BOX 1760, PORTLAND, OR 97207
522 SOUTHWEST 5th AVENUE, PORTLAND, OR 97204 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. B, August 27, 1982, EQC Meeting

June, 1982 Program Activity Report

Discussion

Attached is the June, 1982 Program Activity Report.

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

Water Quality and Solid Waste facility plans and specifications approvals or disapprovals and issuance, denials, modifications and revocations of air, water and solid waste 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 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 contaminant source plans and specifications; and

3) to provide logs of civil penalties assessed and status of DEQ/EQC 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.

Michael Downs for
William H. Young
Director

M. Downs:k
229-6485
August 5, 1982
Attachments
MK616 (2)

DEPARTMENT OF ENVIRONMENTAL QUALITY

Monthly Activity Report

June, 1982

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MK367 (2)

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

AQ, WQ, SW Divisions
(Reporting Unit)

June 1982
(Month and Year)

SUMMARY OF PLAN ACTIONS

	Plans Received		Plans Approved		Plans Disapproved		Plans Pending
	Month	FY	Month	FY	Month	FY	
Air							
Direct Sources	9	79	12	90	0	0	21
Small Gasoline Storage Tanks Vapor Controls	0	0	0	0	0	0	0
TOTAL	9	79	12	90	0	0	21
Water							
Municipal	17	258	31	235	0	0	15
Industrial	8	59	4	54	0	0	20
TOTAL	25	317	35	289	0	0	35
Solid Waste							
Gen. Refuse	3	40	1	33	0	1	15
Demolition	0	7	1	8	0	0	2
Industrial	2	8	1	13	0	1	5
Sludge	1	4	0	3	0	0	1
TOTAL	6	59	3	57	0	2	23
Hazardous Wastes	-	-	-	-	-	-	-
GRAND TOTAL	40	455	50	436	0	2	79

MK1154 MAR.2 (1/82)

DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

MONTHLY ACTIVITY REPORT
DIRECT SOURCES
PLAN ACTIONS COMPLETED

COUNTY	NUMBER	SOURCE	PROCESS DESCRIPTION	DATE OF ACTION	ACTION
CLACKAMAS	655	CLACKAMAS COUNTY GENG SUP	BULK PLNT & SERVICE STATION	06/29/82	APPROVED
JACKSON	776	KOGAP MANUFACTURING	BURLEY SCRUBBER	06/08/82	APPROVED
CLACKAMAS	805	OREGON PORTLAND CEMENT	CLINKER UNLOAD FACILITY	06/02/82	APPROVED
MULTNOMAH	816	CONTINENTAL CAN CO USA	WASTE SOLVENT FLASH VAPORIZE	06/02/82	APPROVED
LINN	822	TELEDYNE WAH CHANG	ELECTROSTATIC PRECIPITATOR	06/23/82	APPROVED
LANE	825	WESTRIDGE PLYWOOD CO	WET SCRUBBER FOR VENEER DRY	06/01/82	APPROVED
LANE	827	KINGSFORD CORPORATION	ROTARY DRYER	06/29/82	APPROVED
CLATSOP	828	CROWN ZELLERBACH COMPANY	BAGHOUSE INSTAL	06/02/82	APPROVED
UMATILLA	829	BOISE CASCADE	BULK LOADOUT W/BAGHOUSE	05/26/82	APPROVED
MULTNOMAH	830	WESTERN PACIFIC CNST MTLS	REPLACE CONE & ROLL CRUSHERS	06/16/82	APPROVED
MULTNOMAH	831	ESCO CORPORATION PLANT 3	SAND RECL DUST COLL UPGRADE	06/07/82	APPROVED
KLAMATH	832	MODOC LUMBER CO	PELLET CONVEY MOD	06/01/82	APPROVED

TOTAL NUMBER QUICK LOOK REPORT LINES 12

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division	June, 1982
(Reporting Unit)	(Month and Year)

SUMMARY OF AIR PERMIT ACTIONS

	Permit Actions Received		Permit Actions Completed		Permit Actions	Sources Under	Sources Reqr'g
	Month	FY	Month	FY	Pending	Permits	Permits
Direct Sources							
New	2	33	2	25	17		
Existing	2	17	0	14	18		
Renewals	8	116	13	98	66		
Modifications	6	26	4	39	14		
Total	18	192	19	176	115	1879	1913
Indirect Sources							
New	0	12	1	12	3		
Existing	0	0	0	0	0		
Renewals	0	0	0	0	0		
Modifications	0	3	0	3	0		
Total	0	15	1	15	3	202	205
GRAND TOTALS	18	207	20	191	118	2081	2118

Number of Pending Permits	Comments
12	To be drafted by Northwest Region
3	To be drafted by Willamette Valley Region
4	To be drafted by Southwest Region
2	To be drafted by Central Region
1	To be drafted by Eastern Region
24	To be drafted by Program Planning Division
39	To be drafted by Program Operations
23	Awaiting Public Notice
7	Awaiting the end of the 30-day period
115	TOTAL

MAR.5 (8/79) AA2318 (1)

DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

MONTHLY ACTIVITY REPORT
DIRECT SOURCES
PERMITS ISSUED

COUNTY	SOURCE	PERMIT NUMBER	APPL. RECEIVED	STATUS	DATE ACHIEVED	TYPE APPL.	PSEL
LINN	WILLAMETTE INDUSTRIES	22 5208	12/03/81	PERMIT ISSUED	06/01/82	RNW	
MARION	SALEM HOSPITAL GENERAL UN	24 2331	12/22/81	PERMIT ISSUED	06/01/82	RNW	
MULTNOMAH	CARGILL CO INC	26 2009	07/08/81	PERMIT ISSUED	06/01/82	RNW	
POLK	MT FIR LUMBER CO	27 4080	02/23/82	PERMIT ISSUED	06/01/82	RNW	Y
POLK	AGRIPAC INC	27 3009	12/07/81	PERMIT ISSUED	06/01/82	RNW	
MARION	STAYTON CANNING	24 7067	10/22/81	PERMIT ISSUED	06/03/82	RNW	
COOS	WEYERHAEUSER COMPANY	06 0007	06/11/82	PERMIT ISSUED	06/11/82	MOD	
MARION	NATIONAL WOOD INDUSTRIES	24 0023	01/29/82	PERMIT ISSUED	06/15/82	RNW	Y
MARION	STAYTON CANNING COOP	24 1011	10/22/81	PERMIT ISSUED	06/15/82	RNW	
MARION	SALEM MEMORIAL HOSPITAL	24 5404	12/22/81	PERMIT ISSUED	06/15/82	RNW	
MARION	OREGON STATE DEAF SCHOOL	24 5505	06/30/81	PERMIT ISSUED	06/15/82	RNW	
MULTNOMAH	KAISER CEMENT CORP	26 1995	02/19/82	PERMIT ISSUED	06/15/82	NEW	
WASCO	JH BAXTER & CO	33 0003	01/18/82	PERMIT ISSUED	06/15/82	RNW	
MULTNOMAH	BEALL PIPE & TANK CORP	26 2492	06/21/82	PERMIT ISSUED	06/23/82	MOD	
PORT.SOURCE	PETER KIEWIT SON'S CO	37 0395	10/19/81	PERMIT ISSUED	06/23/82	RNW	Y
PORT.SOURCE	BABLER BROS INC	37 0168	06/18/82	PERMIT ISSUED	06/23/82	MOD	Y
PORT.SOURCE	WILDISH MEDFORD S & G CO.	37 0250	10/22/81	PERMIT ISSUED	06/23/82	RNW	
MARION	AGRIPAC	24 4424	06/21/82	PERMIT ISSUED	06/24/82	MOD	
MULTNOMAH	MARTIN MARIETTA ALUMINUM	26 3069	00/00/00	PERMIT ISSUED	06/24/82	NEW	

TOTAL NUMBER QUICK LOOK REPORT LINES 19

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — June, 1982 (Month and Year)

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Multnomah	Sunset Highway - Vista Ridge Tunnel to Sylvan Intch.	6/29/82	Final Permit Issued

MAR.6 (5/79) AA2319 (1)

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality (Reporting Unit) — June, 1982 (Month and Year)

PLAN ACTIONS COMPLETED 35

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
MUNICIPAL WASTE SOURCES - 31			
Jackson	Hidden River Valley Shady Cove	6-7-82	Approval
Clackamas	City of Molalla Temporary bypass pump station	6-17-82	Approval
Clackamas	Sunburst II Subdivision Sanitary Sewer West Linn	6-17-82	Approval
Clackamas	Sage Hills I Sewers Clackamas County Service District #1	6-17-82	Approval
Clackamas	Sage Hills II Sewers Clackamas Coounty Service District #1	6-17-82	Approval
Clackamas	Debbie Lane Sewers Clackamas County Service District #1	6-17-82	Approval
Douglas	Cliff Bryden Sewer Ext. Green Sanitary District Roseburg	6-17-82	Approval
Coos	Sewer District No. K Myrtle Point	6-17-82	Approval

MAR.3 (5/79) WG1352

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality (Reporting Unit) — June, 1982 (Month and Year)

PLAN ACTIONS COMPLETED 35

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Municipal Waste Sources - (cont'd.)			
Polk	Terrie Estates Mobile Home Subdivision Dallas	6-17-82	Approval
Wasco	Morton Street The Dalles	6-17-82	Approval
Josephine	Grants Pass Christian Fellowship Grants Pass	6-17-82	Approval
Douglas	Parkside Village San Sewer Roseburg	6-17-82	Approval
Klamath	Kern's Tracts South Suburban S. D.	6-17-82	Approval
Josephine	Morris Lane (revised) Harbeck-Fruitdale	6-17-82	Approval
Jackson	West Glenwood Road BCVSA	6-17-82	Approval
Jackson	Freeland & New Ray Roads Sanitary Sewer BCVSA	6-17-82	Approval
Lincoln	Sunset Terrace Subdivision Yachats	6-18-82	Approval

MAR.3 (5/79) WG1352

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality (Reporting Unit) — June, 1982 (Month and Year)

PLAN ACTIONS COMPLETED 35

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Municipal Waste Sources - (cont'd.)			
Lane	Schwarz Park Dorena Lake	6-22-82	Approval
Lane	Dexter Collection, Treatment and Disposal	6-24-82	Approval
Marion	Forest Glen R.V. Park Turner	6-24-82	Pump Station Comments
Josephine	North Valley Mobile Home Estates Michael S. Larson	6-25-82	Comments on low pressure distribution system
Douglas	Winston-Green Roseburg	6-28-82	Approval
Wasco	Foley Lakes LID The Dalles	6-29-82	Approval
Lincoln	East Agate Beach Sewer Newport	6-30-82	Approval
Yamhill	Villa Road Lateral (Off Hess Creek San. Sew.) Newberg	6-30-82	Approval

MAR.3 (5/79) WG1352

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality
(Reporting Unit)

June, 1982
(Month and Year)

PLAN ACTIONS COMPLETED 35

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Municipal Waste Sources - (cont'd.)			
Coos	Tiara Street Ext. Lakeside	6-30-82	Approval
Josephine	Aberdeen Subdivision Grants Pass	6-30-82	Approval
Deschutes	Phase I - The Heights of Bend Bend	6-30-82	Approval
Deschutes	Phase V - Quelah Condominiums Sunriver	6-30-82	Approval
Deschutes	1982 Construction Sunriver	6-30-82	Approval
Clatsop	Broadway Improvement Proj. Seaside	6-30-82	Approval

MAR.3 (5/79) WG1352

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality Division	June, 1982
(Reporting Unit)	(Month and Year)

PLAN ACTIONS COMPLETED 35

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
INDUSTRIAL WASTE SOURCES 4			
Benton	Hewlett-Packard, Corvallis Underground concrete vault for solvents and acids	6-8-82	Approved
Yamhill	Publishers Paper, Newberg Additional 75 Hp aerator	6-9-82	Approved
Lane	Gordon Kronberger Animal manure tank	6-23-82	Approved
Clackamas	Electronic Controls Design Printed circuit board metals treatment system	6-25-82	Approved

MAR.3 (7/82) WG1255

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality Division (Reporting Unit) — June 1982 (Month and Year)

SUMMARY OF WATER PERMIT ACTIONS

	Permit Actions Received		Permit Actions Completed		Permit Actions Pending	Sources Under Permits	Sources Reqr'g Permits
	Month	Fis.Yr.	Month	Fis.Yr.			
	* /**	* /**	* /**	* /**	* /**	* /**	* /**
Municipal							
New	1 /3	3 /20	0 /1	4 /14	2 /14		
Existing	0 /0	0 /0	0 /0	0 /0	0 /0		
Renewals	7 /0	66 /23	6 /4	50 /23	35 /2		
Modifications	2 /0	5 /1	1 /0	8 /2	2 /0		
Total	10 /3	74 /44	7 /5	62 /39	39 /16	238/108	240/122
Industrial							
New	0 /0	6 /7	0 /2	5 /18	3 /12		
Existing	0 /0	0 /0	0 /0	0 /0	0 /1		
Renewals	0 /2	59 /28	2 /2	33 /25	38 /18		
Modifications	1 /0	16 /0	1 /0	17 /2	2 /0		
Total	1 /2	81 /35	3 /4	55 /45	43 /31	369/179	372/192
Agricultural (Hatcheries, Dairies, etc.)							
New	0 /0	1 /0	0 /0	0 /0	1 /0		
Existing	0 /0	0 /0	0 /0	0 /0	0 /0		
Renewals	0 /0	1 /0	0 /0	2 /0	0 /0		
Modifications	0 /0	0 /0	0 /0	0 /0	0 /0		
Total	0 /0	2 /0	0 /0	2 /0	1 /0	53 /19	54 /19
GRAND TOTALS	11 /5	157/79	10 /9	119/84	83 /47	660/306	666/333

* NPDES Permits
** State Permits
249 General Permits Issued in Fiscal Year.

MAR.5W (7/82) WG1357

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality Division (Reporting Unit) — June, 1982 (Month and Year)

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
MUNICIPAL AND INDUSTRIAL SOURCES - NPDES PERMITS (8)			
Marion	Hubbard STP	6-4-82	Permit Renewed
Yamhill	Amity STP	6-18-82	Permit Renewed
Multnomah	Ash Grove Cement Portland	6-18-82	Permit Renewed
Coos	Bandon STP	6-18-82	Permit Renewed
Wallowa	Enterprise STP	6-18-82	Permit Renewed
Marion	Stayton Canning Brooks Plant	6-18-82	Permit Renewed
Douglas	Oakland STP	6-18-82	Permit Renewed
Lincoln	Toledo STP	6-18-82	Permit Renewed

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality Division (Reporting Unit) — June, 1982 (Month and Year)

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
MUNICIPAL AND INDUSTRIAL SOURCES - STATE PERMITS (9)			
Columbian	Boise Cascade Paper Group - St. Helens	6-4-82	Permit Renewed
Union	Cove STP	6-23-82	Permit Renewed
Douglas	Milo Adventist Academy STP	6-23-82	Permit Renewed
Union	Royal Western Mining Camp Carson Claims	6-23-82	Permit Issued
Jackson	Sams Valley School Central Pt. School District #6 STP	6-23-82	Permit Renewed
Umatilla	Smith Frozen Foods Weston	6-23-82	Permit Issued
Deschutes	Sunriver Utilities Co. STP	6-23-82	Permit Renewed
Lane	Woahink Mobile Homes Resort Dunes City, STP	6-23-82	Permit Issued
Benton	OSU Animal Disease Research & Isolation facility Corvallis	6-29-82	Permit Renewed
MUNICIPAL AND INDUSTRIAL SOURCES - MODIFICATIONS (2)			
Lane	L. D. McFarland Co. Ltd. Eugene	6-4-82	Addendum #1
Douglas	Sutherlin STP	6-4-82	Addendum #1

MAR.6 (7/82) WG1209

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality Division	June, 1982
(Reporting Unit)	(Month and Year)

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
MUNICIPAL AND INDUSTRIAL SOURCES -GENERAL PERMITS (7)			
Cooling Water Permit 0100-J, File 32539 (2)			
Clackamas	Stan Crawford Lake Oswego	6-11-82	Issued General Permit
Benton	Alvin Smith Corvallis	6-14-82	Issued General Permit
Water Filtration Plants Permit No. 0200-J, File No. 32540 (1)			
Jackson	City of Ashland WTP	6-30-82	Transferred to General Permit
Aquatic Animal Production, Permit 0300-J, File No. 32560 (1)			
Curry	Burnt Hill Salmon Ranch Pistol River	6-15-82	Transferred to General Permit
Log Pond Permit 0400-J, File 32544 (1)			
Hood River	Unites States Fir, Inc.	6-11-82	Transferred to
Seafood Processing Permit 0900-J, File 32585 (1)			
Curry	Kincheloe Sea Foods, Inc. Brookings	6-5-822	Transferred to General Permit
Gravel Mining Permit 1000, File 32565 (1)			
Polk	Valley Concrete & Gravel Co. Independence	6-30-82	Transferred to General Permit

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Solid Waste Division (Reporting Unit) — June, 1982 (Month and Year)

SUMMARY OF SOLID AND HAZARDOUS WASTE PERMIT ACTIONS

	Permit Actions Received		Permit Actions Completed		Permit Actions	Sites Under	Sites Reqr'g
	Month	FY	Month	FY	Pending	Permits	Permits
General Refuse							
New	-	21	-	13	3		
Existing	-	3	-	5	-		
Renewals	2	86	3	80	15		
Modifications	-	12	7	32	-		
Total	2	122	10	130	18	167	167
Demolition							
New	1	5	-	9	1		
Existing	-	2	-	-	-		
Renewals	-	5	1	8	-		
Modifications	-	2	-	4	-		
Total	1	14	1	21	1	22	22
Industrial							
New	-	19	-	20	2		
Existing	-	7	-	-	1		
Renewals	1	42	2	54	6		
Modifications	1	5	1	6	-		
Total	2	73	3	80	9	104	104
Sludge Disposal							
New	1	6	-	6	1		
Existing	-	-	-	1	-		
Renewals	-	6	-	5	1		
Modifications	-	1	-	2	-		
Total	1	13	-	14	2	15	15
Hazardous Waste							
New	63	873	63	873	-		
Authorizations	-	-	-	-	-		
Renewals	-	-	-	-	-		
Modifications	-	-	-	-	-		
Total	63	873	63	873	-	1	1
GRAND TOTALS	69	1095	77	1118	30	309	309

MAR.5S (4/79)

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Solid Waste Division	June, 1982
(Reporting Unit)	(Month and Year)

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Douglas	Reedsport Existing site	6/28/82	Permit Renewed
Wasco	North Wasco County Existing site	6/28/82	Permit Amended
Clackamas	Crown-Zellerbach Existing site	6/28-82	Permit Renewed
Coos	Bandon Existing site	6/28/82	Permit Renewed
Hood River	U.S. Fir Existing site	6/29-82	Permit Amended
Columbia	Santosh Existing site	6/29/82	Permit Amended
Lake	Christmas Valley Existing site	6/29/82	Permit Amended
Lake	Fort Rock Existing site	6/29/82	Permit Amended
Lake	Silver Lake Existing site	6/29/82	Permit Amended
Lake	Summer Lake Existing site	6/29/82	Permit Amended
Lake	Paisley Existing site	6/29/82	Permit Amended
Sherman	Sherman Co. Existing site	6/29/82	Permit Amended
Lincoln	North Lincoln Existing site	6/30/82	Permit Issued
Hood River	Champion International-Dee Existing site	6/30/82	Permit Issued

SB1143.D
MAR.6 (5/79)

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Solid Waste Division (Reporting Unit) — June 1982 (Month and Year)

HAZARDOUS WASTE DISPOSAL REQUESTS

CHEM-SECURITY SYSTEMS, INC., GILLIAM CO.

WASTE DESCRIPTION

Date	Type	Source	Quantity Present	Quantity Future
DISPOSAL REQUESTS GRANTED (63)				
OREGON (13)				
6/16	Nitric acid solution	Electronic Co.	0	1,000 gal.
6/16	Various household pest.	Chemical Co.	0	3,700 lb.
6/16	Fruit & berry insect spray	Chemical Co..	0	10,000 lb.
6/16	Tomato vegetable insect killer	Chemical Co.	0	12,600 lb.
6/16	Insecticide tank/ machine rinse out solvent	Chemical Co.	1,300 gal.	1,300 gal.
6/16	Hydrafluoric acid sol.	Electronic Co.	9,000 gal.	350,000 gal.
6/16	Nickel sulfamate/ chloride sol.	Electroplating	0	2 drums
6/16	Copper sulfate/ sulfuric acid sol.	Electroplating	0	12 drums
6/16	PCB contaminated soil, rags, etc.	Paper co.	0	40 drums
6/16	PCB contaminated liq.	Paper Co.	0	1,600 gal.
6/16	Trichloroethylene/ water/ethylene glycol	Spill cleanup	1,300 gal.	0
6/28	PCB transformer/oil	Paper Co.	0	1,200 gal.

SB1143.E
MAR.15 (1/82)

Date	Type	Source	Quantity Present	Quantity Future
6/30	Ignitable mastic paste	Railroad car manufacturer	1,600 gal.	500 gal.
WASHINGTON (36)				
6/8	Emission control dust containing lead and chrome	Paint manuf.	0	3 drums
6/8	Methylene chloride/ trichloroethane sludge	Paint manuf.	0	40 drums
6/8	Water based paint sludge	Paint manuf.	0	200 drums
6/8	Asbestos	Paint manuf.	0	20 drums
6/8	Solvent based paint sludge	Paint manuf.	0	400 drums
6/80	Chlorinated solvents contaminated soil/ contaminated acrylamide polymer product	Chemical Co.	0	25 drums
6/10	Aircraft cleaning compound with cresol, methylene chloride, etc.	Federal agncy.	18 drums	0
6/10	Methylene chloride paint epoxy remover	Federal agncy.	7 drums	100 gal.
6/10	Ignitable paint sludge	Federal agncy.	8 drums	400 gal.
6/10	Battery acid	Federal agncy.	15 drums	100 gal.
6/21	Ignitable dry cleaning solvents	Federal agncy.	0	21 drums
6/22	Orthodichlorobenzene/ methylene/chloride/ ethylene glycol/butyl ether solvent	Paper company	4 drums	1200 gal.
6/22	Ethyl alcohol, propyl alcohol/propyl acetate solvent	Paper co.	15 drums	22,000 gal.

Date	Type	Source	Quantity Present	Quantity Future
6/23	Barium chloride	Federal agncy.	5 drums	5 drums
6/23	Heat treatment salt	Federal agncy.	10 drums	10 drums
6/23	Diphenyl methane diisocyanate	Federal agncy.	5 drums	5 drums
6/23	Polypropylene glycol hydraulic fluid	Federal agncy.	100 drums	100 drums
6/23	Lead oxide	Federal agncy.	5 drums	5 drums
6/23	Phosphate ester hydraulic fluid	Federal agncy.	100 drums	100 drums
6/23	Metallic beryllium	Federal agncy.	5 drums	5 drums
6/23	Aluminum sulfate sol.	Federal agncy.	20,000 gal.	20,000 gal.
6/23	Thiourea	Federal agncy.	15 drums	15 drums
6/23	Potassium carbonate	Federal agncy.	5 drums	5 drums
6/23	Sodium carbonate	Federal agncy.	5 drums	5 drums
6/23	Resin/fly ash/carbon slurry	Federal agncy.	50 drums	50 drums
6/23	Zinc chloride sol.	Federal agncy.	10 drums	10 drums
6/23	Zinc chloride solid	Federal agncy.	10 drums	10 drums
6/24	Ignitable mastic paste	Abandoned wste.	7 drums	0
6/24	Vanadium catalyst with sulfuric acid	Chemical co.	330 ft^3	0
6/24	Spent sulfuric acid sol.	Electroplating	2,500 gal.	10,000 gal.
6/24	Trichloroethane/ ethylene	Oil co.	16 drums	12 drums
6/24	PCB capacitors	Food processor	22 units	0
6/24	Waste water treatment polymer	Chemical co.	12 drums	0
6/24	Orthocide plus insecticide	Pesticide supplier	5 drums	0

SB1143.E
MAR.15 (1/82)

Date	Type	Source	Quantity Present	Future
6/28	PCB transformers/oil	Insurance co.	19 units/ 200 gal.	0
6/28	PCB contaminated rags, wood, etc.	Insurance co.	25 ft^3	0
OTHER STATES (14)				
6/8	Scintillation fluid absorbed in vermiculite (Hawaii)	School	0	12 drums
6/8	Mixed halogenated solvent (Hawaii)	School	0	12 drums
6/8	Pesticides (Hawaii)	School	0	8 drums
6/10	Phenol (Idaho)	Electronic	7 drums	90 drums
6/10	Zinc plating solution	Electroplating	550 gal.	0
6/10	Matex strip aid sol. with cyanide (B.C.)	Transportation co.	0	6,000 gal.
6/16	Methylene chloride paint stripping solvent (B.C.)	Transportation co.	0	5,000 gal.
6/16	Oil/water sludge (Idaho)	Industrial cleaning ser.	0	60 drums
6/16	Mixed lab chemicals (Idaho)	Industrial cleaning ser.	0	10 drums
6/21	Mixed lab chemicals (Hawaii)	Waste Management	0	80 drums
6/21	Lead tank bottoms (Hawaii)	Waste Management	0	40 drums
6/21	Formaldehyde sol. (Hawaii)	Waste Management	0	40 drums
6/23	Contaminated freon in soil (B.C.)	Paper co.	24 drums	0
7/6	Leaded tank bottoms (Hawaii)	Oil co.	0	350 gal.

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Noise Control Program	June, 1982
(Reporting Unit)	(Month and Year)

SUMMARY OF NOISE CONTROL ACTIONS

Source Category	New Actions Initiated		Final Actions Completed		Actions Pending	
	Mo	FY	Mo	FY	Mo	Last Mo
Industrial/ Commercial	11	48	4	19	107	100
Airports	0	0	1	13	1	1
TOTAL	11	48	5	32	108	101

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Noise Control Program	June, 1982
(Reporting Unit)	(Month and Year)

FINAL NOISE CONTROL ACTIONS COMPLETED

County	Name of Source and Location	Date	Action
Multnomah	Denny's Automotive, Gresham	06/82	Compliance
Multnomah	Friday Olds/Isuzu, Portland	06/82	Compliance
Multnomah	Parkway Garden Apts., East County	06/82	Compliance
Marion	Boise Cascade, Salem	06/82	Plant Closure
Jackson	Ashland Airport Master Plan, Ashland	06/82	Approved

CIVIL PENALTY ASSESSMENTS

DEPARTMENT OF ENVIRONMENTAL QUALITY
1982

CIVIL PENALTIES ASSESSED DURING MONTH OF JUNE, 1982:

Name and Location of Violation	Case No. & Type of Violation	Date Issued	Amount	Status
Hayden Island, Inc. Portland, Oregon	AQOB-NWR-82-45 Open burned land clearing debris and trash.	6-3-82	$250	Paid on 6-21-82
Michael Lovato Portland, Oregon	AQOB-NWR-82-48 Open burned demolition waste on Lemon Island.	6-3-82	$250	Default Order and Judgment issued 7-29-82.
Judson Bressler Salem, Oregon	AQOB-WVR-82-53 Open burned household garbage.	6-15-82	$ 50	Default Order and Judgment issued on 7-16-82. Paid on 8-3-82.
Port of Coos Bay Coos Bay	AQOB-SWR-82-50 Open burned demolition waste.	6-15-82	$ 50	Paid on 6-28-82.
Gailen Adams Lincoln County	SS-NWR-82-51 Installed portions of an on-site sewage disposal system without first obtaining a permit.	6-15-82	$100	Contested case hearing set for 8-25-82.
Harold Fincher Sisters, Oregon	SS-NWR-82-52 Incorrectly installed an on-site sewage disposal system and installed such without being licensed as a sewage disposal services worker.	6-15-82	$250	Default Order and Judgment issued on 7-23-82. Paid on 8-5-82.

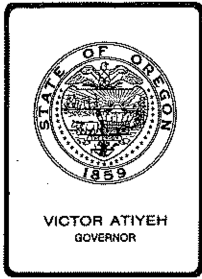
ACTIONS	LAST MONTH	PRESENT
Preliminary Issues	2	3
Discovery	0	0
Settlement Action	0	0
Hearing to be scheduled	4	4
Hearing scheduled	2	0
HO's Decision Due	2	2
Briefing	1	1
Inactive	2	4
SUBTOTAL of cases before hearings officer.	13	14
HO's Decision Out/Option for EQC Appeal	1	2
Appealed to EQC	1	1
EQC Appeal Complete/Option for Court Review	0	0
Court Review Option Pending or Taken	0	0
Case Closed	5	0
TOTAL Cases	20	17

15-AQ-NWR-76-178	15th Hearing Section case in 1976 involving Air Quality Division violation in Northwest Region jurisdiction in 1976; 178th enforcement action in Northwest Region in 1976.
ACDP	Air Contaminant Discharge Permit
AQ	Air Quality
DEC Date	Date of either a proposed decision of hearings officer or a decision by Commission
$	Civil Penalty Amount
ER	Eastern Region
Fld Brn	Field Burning incident
RLH	Robb Haskins, Assistant Attorney General
Hrngs	Hearings Section
Hrng Rfrl	Date when Enforcement Section requests Hearing Section schedule a hearing
VAK	Van Kollias, Enforcement Section
LMS	Larry Schurr, Enforcement Section
MWR	Midwest Region (now WVR)
NP	Noise Pollution
NPDES	National Pollutant Discharge Elimination System wastewater discharge permit.
NWR	Northwest Region
FWO	Frank Ostrander, Assistant Attorney General
OSS	On-Site Sewage
P	Litigation over permit or its conditions
Prtys	All parties involved
Rem Order	Remedial Action Order
Resp Code	Source of next expected activity in case
SW	Solid Waste Division
SWR	Southwest Region
T	Litigation over tax credit matter
Transcr	Transcript being made of case
Underlining	New status or new case since last month's contested case log
WVR	Willamette Valley Region
WQ	Water Quality Division

June 1982

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	DEQ Atty	Hrng Date	Resp Code	Case Type & No.	Case Status
POWELL, Ronald	11/77	11/77	RLH	01/23/80	Prtys	$10,000 Fld Brn 12-AQ-MWR-77-241	Stipulated settlement proposal to be drafted for presentation to EQC.
WAH CHANG	04/78	04/78	RLH		Prtys	16-P-WQ-WVR-78-2849-J NPDES Permit Modification	Current permit in force. Hearing deferred.
WAH CHANG	04/78	04/78	RLH		Prtys	08-P-WQ-WVR-78-2012-J NPDES Permit Modification	Current permit in force. Hearing deferred.
M/V TOYOTA MARU No. 10	12/10/79	12/12/79	RLH		Hrgs	17-WQ-NWR-79-127 Oil Spill Civil Penalty of $5,000	Ruling due on requests for partial summary judgment.
HAYWORTH, John W. dba/HAYWORTH FARMS INC.	12/02/80	12/08/80	LMS	04/28/81	Hrgs	33-AQ-WVR-80-187 Field burning civil penalty of $4,660	Decision due.
PULLEN, Arthur W. dba/Lakes Mobile Home Park	07/15/81	07/15/81	RLH		Prtys	16-WQ-CR-81-60	Dept. does not wish to actively pursue further enforcement action pending expected progress in establishing a community sewage facility.
FRANK, Victor	09/23/81	09/23/81	LMS	06/08/82	Hrgs	19-AQ-FB-81-05 FB civil penalty of $1,000	Post hearing argument conducted 6/29/82. Decision due.
GREEN, Douglas	09/28/81	10/07/81	LMS	04/13/82	Prtys	20-AQ-FB-81-03 FB Civil Penalty of $1,000	Decision issued 6/15/82.
GATES, Clifford	10/06/81		LMS		Hrgs	21-SS-SWR-81-90	To be scheduled.
SPERLING, Wendell dba/Sperling Farms	11/25/81	11/25/81	LMS		Hrgs	23-AQ-FB-81-15 FB Civil Penalty of $3,000	To be scheduled.
DeRAEVE, Marvin	12/11/81	12/10/81	LMS		Prtys	25-AQ-FB-81-17 FB Civil Penalty of $3,000.	To be scheduled.
NOFZIGER, Leo	12/15/81	01/06/82	LMS	06/29/82	Resp	26-AQ-FB-81-18 FB Civil Penalty of $1,500.	Respondent to provide economic and financial data by 8/15/82.
OLD MILL MARINA		03/04/82	LMS		Hrgs	27-AQOB-NWR-82-01 Open Burning Civil Penalty	To be scheduled.
PULLEN, Arthur	03/16/82		RLH		Prtys	28-WQ-CR-82-16	See companion case above.
ANDERSON, Douglas	04/03/82		VAK	06/24/82	Resp	29-AQOB-NWR-82-23	Decision issued 7/9/82.
BOWERS EXCAVATING & FENCING, INC.	05/20/82		LMS		Prtys	30-SW-CR-82-34	Preliminary Issues.
ADAMS, Gailen			VAK		Prtys	31-SS-NWR-82-51	Preliminary Issues.



VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

Mailing Address: BOX 1760, PORTLAND, OR 97207
522 SOUTHWEST 5th AVENUE, PORTLAND, OR 97204 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item C, August 27, 1982, EQC Meeting

TAX CREDIT APPLICATIONS

Director's Recommendation

It is recommended the Commission take the following actions:

1. Issue Pollution Control Facility Certificates to:

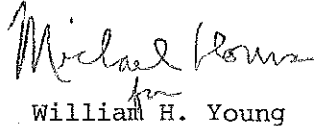
Appl. No.	Applicant	Facility
T-1458	Pugh Century Dairy Farm	Manure control system
T-1485	Gerald S. & Merrilee Stephens	Wind machine
T-1492	Carson Oil Co.	Vapor recovery system
T-1494	Medford Pear Co., Inc.	3 wind machines
T-1495	Susan F. Naumes	2 wind machines
T-1496	Joe Naumes	2 wind machines
T-1497	Rogue Russet Orchards, Inc.	6 wind machines
T-1500	Precision Castparts Corp.	Dust collection systems
T-1520	Reynolds Metals Company	Dry scrubbing system
T-1522	#1 Boardman Station	Coal dust collection system
T-1524	Weyerhaeuser Company	Bag filters
T-1531	Willamina Lumber Co.	Log yard paving
T-1533	Willamina Lumber Co.	Hammer hog system
T-1534	Willamina Lumber Co.	Mill yard paving
T-1548	Bergsoe Metal Corp.	Battery reclamation facility

2. Deny tax relief application no. T-1266, Cascade Orchards, Inc. as applicant did not file for preliminary certification before construction (see review report).

3. Deny tax relief application no. T-1542, ESCO Corporation, as applicant did not file for preliminary certification before construction (see review report).

Contains Recycled Materials

4. Revoke Pollution Control Facility Certificate 473 issued to American Forest Products Corporation of Oregon, as certified facilities have been sold (see review report).



William H. Young

CASplettstaszer
229-6484
8/6/82
Attachments

PROPOSED AUGUST 1982 TOTALS

Air Quality	$ 2,143,780
Water Quality	56,249
Solid/Hazardous Waste	24,771,898
Noise	-0-
	$26,865,719

CALENDAR YEAR TOTALS TO DATE

Air Quality	$ 8,569,605
Water Quality	42,878,293
Solid/Hazardous Waste	658,321
Noise	40,216
	$52,146,435

Application No. T-1458

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Pugh Century Dairy Farm
31366 Shedd Cemetery Dr.
Shedd, OR 97377

The applicant owns and operates a dairy farm at Shedd. Application was made for tax credit for a water pollution control facility.

2. Description of Claimed Facility

The facility described in this application is a manure control system consisting of:

a. A 3-acre earthen lagoon,
b. 20 Hp and 30 Hp electric pumps, and
c. A solids separator.

Request for Preliminary Certification for Tax Credit was made March 24, 1979, and approved May 11, 1979. Construction was initiated on the claimed facility August 1979, completed March 15, 1980, and the facility was placed into operation March 15, 1980.

Facility Cost: $56,249.62 (Accountant's Certification was provided).

3. Evaluation of Application

Prior to installation of the claimed facility, manure was pumped onto the fields on a daily basis. During wet months when the fields were saturated, runoff from the fields was contaminated with manure. The new system separates the liquids from the manure and allows for up to 7 months storage in the earthen lagoon. Irrigation of the liquids can now be limited to those periods when the fields are dry. The thickened solids are periodically spread onto the fields. The new system has significantly reduced the contamination of field runoff from this dairy farm.

4. Summation

   a. Facility was constructed in accordance with the requirements of ORS 468.175, regarding preliminary certification.

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

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

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

   e. The portion of the facility cost that is properly allocable to pollution control is 80 percent or more.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $56,249.62 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1458.

Charles K. Ashbaker:l
(503) 229-5325
July 9, 1982

WL1763

Application No. T-1485

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Gerald S. & Merrilee Stephens
1642 Camp Baker Rd.
Medford, OR 97501

The applicant owns and operates a pear orchard at 1642 Camp Baker Road, Medford, Oregon 97501.

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

2. Description of Claimed Facility

The facility described in this application is one "Orchard Rite" wind machine used for frost protection of the orchard. The tower serial number is 80273.

Request for Preliminary Certification for Tax Credit was made on 10-16-80, and approved on 3-23-81.

Construction was initiated on the claimed facility on 12-10-80, completed on 12-17-80, and the facility was placed into operation on 5-5-81.

Facility Cost: $17,500 (Paid receipts were provided).

3. Evaluation of Application

Wind machines reduce the number of oil fired orchard heaters needed to provide frost protection for fruit trees. Orchard heaters cause an air pollution problem in the surrounding communities due to incomplete combustion. Wind machines eliminate the use of heaters on light frost nights and reduce by approximately 90% the number of heaters needed on heavy frost nights. A substantial purpose for installing wind machines is to reduce air contaminant emissions and thus make the orchard a better neighbor. The emissions from farm operations are not regulated by the Department.

The factor used to establish the portion of cost allocable to pollution control is the estimated annual percent return on the investment on the wind machines. The applicant submitted cost data showing a fuel cost savings of $7,908 per machine for an average

season. The return on investment was determined using the method shown in the Department's tax credit program guidance handbook. The savings in fuel operation expenses only were considered. The other operating expenses are small compared to fuel cost and are considered to cancel each other. The guidance handbook method results in a return on investment of 43% and a percent of the cost allocable to pollution control of less than 20%.

The application was received on 12-15-81, was re-submitted on 6-24-82 with additional information and the application was considered complete on 6-28-82.

4. Summation

a. Facility was constructed in accordance with the requirements of ORS 468.175, regarding preliminary certification.

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. The portion of the facility cost that is properly allocable to pollution control is less than 20%.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $17,500 with less than 20% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1485.

F.A. Skirvin:a
(503) 229-6414
July 8, 1982
AA2311 (1)

Application No. T-1492

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Carson Oil Co.
2191 N.W. Savier St.
Portland, OR 97210

The applicant owns and operates a gasoline bulk plant at 2169 N.W. Thurman, Portland, OR 97210.

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 new bulk gasoline plant with gasoline vapor balance and delivery truck bottom loading facilities.

Request for Preliminary Certification for Tax Credit was made on 7-28-81, and approved on 9-11-81.

Construction was initiated on the claimed facility on 7-30-81, completed on 9-21-81, and the facility was placed into operation on 9-22-81.

Facility Cost: $54,878 (Accountant's Certification was provided).

3. Evaluation of Application

The applicant operated a bulk gasoline plant at 10431 S.E. Division, Portland, Oregon. The quoted cost to install the necessary gasoline vapor control equipment was $18,000. Rather than bring this location into compliance, the gasoline business was moved next to the applicant's bulk fuel oil plant located at 2191 N.W. Savier Street, Portland, Oregon. The new facility is in compliance with the rule. The costs of equipment which is necessary for the new facility to be in compliance and did not exist at the old facility are:

3	Liquid Control Meters	$ 5,997.00
3	Dry break adapters, vapor line couplers and fittings	2,395.00
3	Hoses w/couplings	427.50
Installation (labor, 100 hours)		2,340.00
	TOTAL	$11,160.00

The applicant claims 100% of the cost of the new facility for pollution control since the facility was built in order to comply with the rule. However, most of the cost of the new facility is not related to vapor control. The Department requested that the applicant supply an estimate of the added cost to install the pollution control equipment at the new facility. The estimate was the $11,160.00 equipment plus $8,118.00 for three pumps giving a total cost of $19,278.00. (The new pumps are located at the bottom of the tanks, submerged, and have special automatic controls; the old pumps are located above ground with a suction line to the tanks and are operated by manual controls.)

The Department considers the new facility pumps to essentially duplicate the pumps at the old facility; and therefore, the new pumps are not pollution control equipment. The proportion of the $11,160.00 equipment cost allocable to pollution control is 80% or more.

The application was received on 1-26-82, was re-submitted on 5-10-82, additional information was requested on 6-7-82 (copy attached), an answer was received on 6-29-82 (copy attached), and the application was considered complete on 7-13-82.

4. Summation

a. Facility was constructed in accordance with the requirements of ORS 468.175, regarding preliminary certification.

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. The portion of the facility cost of $11,160.00 that is properly allocable to pollution control is 80% or more.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $11,160.00 with 80% or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1492.

F.A. Skirvin:a
AA2104 (1)
(503) 229-6414
May 10, 1982

T-1492

June 7, 1982

Carson Oil Company
2191 N. W. Savier Street
Portland, OR 97210

Attention: Terry L. Mohr

Re: T-1492

Gentlemen:

The Department is processing your tax credit application for the bulk gasoline terminal and needs additional information. The additional information is:

> The estimated added cost to install the pollution control equipment at the 2169 N. W. Thurman Street (new) site. You may use a cost estimate made by the construction contractor that is broken down into three or more sub-items or another cost estimate method that is equally valid.

Thank you for your cooperation.

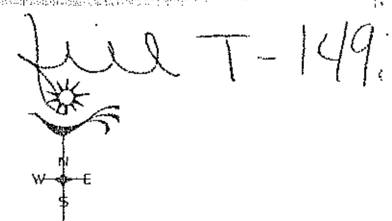
If you have any questions, please contact Ray Potts at 229-6093.

Sincerely,

F. A. Skirvin, Supervisor
Program Operations
Air Quality Division

RP:ahe

cc: Carol Splettstaszer, Management Services Division, DEQ



2191 N.W. SAVIER STREET PORTLAND, OREGON 97210 (503) 224-8500 CARSON OIL COMPANY

June 28, 1982

Management Services Div.
Dept. of Environmental Quality
RECEIVED
JUN 2? 1982

Department of Environmental Quality
522 S.W. 5th Avenue
Post Office Box 1760
Portland, Oregon 97207

Gentlemen:

In response to your request dated June 7, 1982, for additional information on our application T-1492 for a Pollution Tax Credit, I wish to submit the following explanation.

When Carson Oil Company learned of the new environmental regulations which were to take effect, the company solicited and received bids to convert their existing facility at 10431 S.E. Division Street to come into compliance. The cost at that time was $18,000.00 which can be substantiated by a Preliminary Certification for Tax Credit submitted July 24, 1980.

Due to the expense involved in conversion, the company elected to build an entirely new facility at a site closer to its principal place of business. The bulk plant was constructed as a bottom loading facility with all the required pollution control equipment installed.

Our original contention is that, but not for the new DEQ regulations, the new bulk plant would not have been constructed, therefore, making the entire cost of the facility eligible for the tax credit.

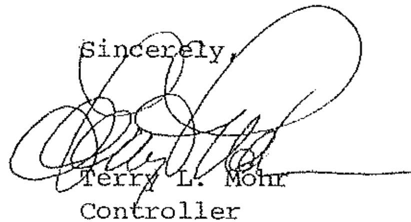
In response to your most recent request, I have attached a listing provided by Petroleum Equipment Maintenance Company, the contractor on the project, of the parts and labor that went into actual construction of the bottom loading rack. This list excludes costs previously claimed for the installation of the tanks. From the list the three E/W dry break adaptors, couplers, dust covers and fittings, the three uni-royal hoses with coupling plus a percentage of the labor represent the cost of installing the vapor recovery equipment on the facility.

It is our contention however, that by the nature of the regulations passed down, Carson Oil was forced to construct the facility to handle bottom loading so as to facilitate installation of the vapor recovery equipment, and should be eligible for a tax credit for all equipment and labor that went into construction of the bottom loading rack.

June 28, 1982
Department of Environmental Quality

On another matter of importance, it is our understanding that additional DEQ regulations potentially effecting Carson Oil's operations are to phased in July 1, 1983. Could you please provide us with information detailing the scope of the new regulations and their impact if any, on our operations.

Sincerely,



Terry L. Mohr
Controller

TLM/slp

BOTTOM LOADING EQUIPMENT & LABOR

Three:	Red Jacket P500-2K 5 H.P. Turbines	$8,118.00
Three:	Liquid Control #25L2 Meters (Complete)	5,997.00
Three:	E/W Dry break adapters, Couplers, Dust Covers & Fittings	2,395.50
Three:	Uni-Royal hoses w/Couplings	427.50
	Labor 100 Hrs. @ $23.40 per	2,340.00
	Sub Total	$19,278.00

Installation and purchase of one 5,000 gallon special Oil/Water seperator tank and all necessary connections to drain water off to existing sewer lines. Provision of engineers certificate showing N.E.P.A. accepted provisions have been fulfilled.

~~Sub Total~~ ~~$ 6,383.00~~

~~Grand Total~~ ~~$25,661.00~~

Application No. 1494

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Medford Pear Co., Inc.
P.O. Box 996
Medford, OR 97501

The applicant owns and operates a pear orchard at North Phoenix Road, Medford, 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 three "Orchard Rite" wind machines, tower serial numbers 80271, 80278, and 80284.

Request for Preliminary Certification for Tax Credit was made on 10-28-80, and approved on 12-23-80.

Construction was initiated on the claimed facility on 3-15-81, completed on 3-30-81, and the facility was placed into operation on 3-30-81.

Facility Cost: $54,000 (Accountant's Certification was provided).

3. Evaluation of Application

Wind machines reduce the number of oil fired orchard heaters needed to provide frost protection for fruit trees. Orchard heaters cause an air pollution problem in the surrounding communities due to incomplete combustion. Wind machines eliminate the use of heaters on light frost nights and reduce by approximately 90% the number of heaters needed on heavy frost nights. A substantial purpose for installing wind machines is to reduce air contaminant emissions and thus make the orchard a better neighbor. The emissions from farm operations are not regulated by the Department.

The factor used to establish the portion of cost allocable to pollution control is the estimated annual percent return on the investment on the wind machines. The applicant submitted cost data showing a fuel cost savings of $7,354 per machine for an average season. The return on investment was determined using the method

shown in the Department's tax credit program guidance handbook. The savings in fuel operation expenses only were considered. The other operating expenses are small compared to fuel cost and are considered to cancel each other. The guidance handbook method results in a return on investment of 36.6% and a percent of the cost allocable to pollution control of less than 20%.

The applicant claims a percent of actual cost allocable to pollution control of 60% or more but less than 80% based upon a 11% return on investment. The applicant used the method of calculating return on investment used on wind machines before the tax credit guidance handbook was written. The Department considers the old method to be superseded by the guidance handbook method. (The old method included an annual depreciation cost not included in the Internal Rate of Return Method in the guidance handbook). The applicant also used a five year write off period allowed in his 1981 Federal Income Tax. The Department's calculation of 36.6% return on investment is based on a seven year write off period which the applicant used on his Oregon State income tax. (A five year write off period would reduce the Department's calculated return on investment from 36.6% to 29.7%.)

The application was received on 1-26-82, was re-submitted on 6-25-82, and the application was considered complete on 6-25-82.

4. Summation

a. Facility was constructed in accordance with the requirements of ORS 468.175, regarding preliminary certification.

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. The portion of the facility cost that is properly allocable to pollution control is less than 20%.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $54,000 with less than 20% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1494.

F.A. Skirvin:a
(503) 229-6414
June 29, 1982
AA2286 (1)

Application No. T-1495

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Susan F. Naumes
P.O. Box 996
Medford, OR 97501

The applicant leases and operates a pear orchard at Medford, 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 two "Orchard Rite" wind machines, tower serial numbers 80270 and 80268. The applicant owns the claimed facility, only the land is leased.

Request for Preliminary Certification for Tax Credit was made on 10-28-80, and approved on 12-23-80.

Construction was initiated on the claimed facility on 3-15-81, completed on 3-30-81, and the facility was placed into operation on 3-30-81.

Facility Cost: $36,000 (Accountant's Certification was provided).

3. Evaluation of Application

Wind machines reduce the number of oil fired orchard heaters needed to provide frost protection for fruit trees. Orchard heaters cause an air pollution problem in the surrounding communities due to incomplete combustion. Wind machines eliminate the use of heaters on light frost nights and reduce by approximately 90% the number of heaters needed on heavy frost nights. A substantial purpose for installing wind machines is to reduce air contaminant emissions and thus make the orchard a better neighbor. The emissions from farm operations are not regulated by the Department.

The factor used to establish the portion of cost allocable to pollution control is the estimated annual percent return on the investment on the wind machines. The applicant submitted cost data showing a fuel cost savings of $7,354 per machine for an average

season. The return on investment was determined using the method shown in the Department's tax credit program guidance handbook. The savings in fuel operation expenses only were considered. The other operating expenses are small compared to fuel cost and are considered to cancel each other. The guidance handbook method results in a return on investment of 36.6% and a percent of the cost allocable to pollution control of less than 20%.

The applicant claims a percent of actual cost allocable to pollution control of 60% or more but less than 80% based upon a 11% return on investment. The applicant used the method of calculating return on investment used on wind machines before the tax credit guidance handbook was written. The Department considers the old method to be superseded by the guidance handbook method. (The old method included an annual depreciation cost not included in the Internal Rate of Return Method in the guidance handbook). The applicant also used a five year write off period allowed in his 1981 Federal Income Tax. The Department's calculation of 36.6% return on investment is based on a seven year write off period which the applicant used on his Oregon State income tax. (A five year write off period would reduce the Department's calculated return on investment from 36.6% to 29.7%.)

The application was received on 1-26-82, was re-submitted on 6-25-82, and the application was considered complete on 6-25-82.

4. Summation

a. Facility was constructed in accordance with the requirements of ORS 468.175, regarding preliminary certification.

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. The portion of the facility cost that is properly allocable to pollution control is less than 20%.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $36,000 with less than 20% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1495.

F.A. Skirvin:a
AA2306 (1)
(503) 229-6414
July 6, 1982

Application No. T-1496

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

   Joe Naumes
   P.O. Box 996
   Medford, OR 97501

   The applicant owns and operates a pear orchard at Medford, 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 two "Orchard Rite" wind machines; tower serial numbers 80282 and 80233.

   Request for Preliminary Certification for Tax Credit was made on 10-28-80, and approved on 1-6-81.

   Construction was initiated on the claimed facility on 3-15-81, completed on 3-30-81, and the facility was placed into operation on 3-30-81.

   Facility Cost: $36,000 (Accountant's Certification was provided).

3. Evaluation of Application

   Wind machines reduce the number of oil fired orchard heaters needed to provide frost protection for fruit trees. Orchard heaters cause an air pollution problem in the surrounding communities due to incomplete combustion. Wind machines eliminate the use of heaters on light frost nights and reduce by approximately 90% the number of heaters needed on heavy frost nights. A substantial purpose for installing wind machines is to reduce air contaminant emissions and thus make the orchard a better neighbor. The emissions from farm operations are not regulated by the Department.

   The factor used to establish the portion of cost allocable to pollution control is the estimated annual percent return on the investment on the wind machines. The applicant submitted cost data showing a fuel cost savings of $7,354 per machine for an average

season. The return on investment was determined using the method shown in the Department's tax credit program guidance handbook. The savings in fuel operation expenses only were considered. The other operating expenses are small compared to fuel cost and are considered to cancel each other. The guidance handbook method results in a return on investment of 36.6% and a percent of the cost allocable to pollution control of less than 20%.

The applicant claims a percent of actual cost allocable to pollution control of 60% or more but less than 80% based upon a 11% return on investment. The applicant used the method of calculating return on investment used on wind machines before the tax credit guidance handbook was written. The Department considers the old method to be superseded by the guidance handbook method. (The old method included an annual depreciation cost not included in the Internal Rate of Return Method in the guidance handbook). The applicant also used a five year write off period allowed in his 1981 Federal Income Tax. The Department's calculation of 36.6% return on investment is based on a seven year write off period which the applicant used on his Oregon State income tax. (A five year write off period would reduce the Department's calculated return on investment from 36.6% to 29.7%.)

The application was received on 1-26-82, was re-submitted on 6-25-82, and the application was considered complete on 6-25-82.

4. Summation

a. Facility was constructed in accordance with the requirements of ORS 468.175, regarding preliminary certification.

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. The portion of the facility cost that is properly allocable to pollution control is less than 20%.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $36,000 with less than 20% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1496.

F.A. Skirvin:a
AA2307 (1)
(503) 229-6414
July 6, 1982

Application No. T-1497

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Rogue Russet Orchards, Inc.
P.O. Box 996
Medford, OR 97501

The applicant owns and operates a pear orchard at Medford, 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 six "Orchard Rite" wind machines, tower serial numbears: 80269, 80213, 80290, 80285, 80288, and 80286.

Request for Preliminary Certification for Tax Credit was made on 10-28-80, and approved on 1-7-81.

Construction was initiated on the claimed facility on 3-15-81, completed on 3-30-81, and the facility was placed into operation on 3-30-81.

Facility Cost: $108,000 (Accountant's Certification was provided).

3. Evaluation of Application

Wind machines reduce the number of oil fired orchard heaters needed to provide frost protection for fruit trees. Orchard heaters cause an air pollution problem in the surrounding communities due to incomplete combustion. Wind machines eliminate the use of heaters on light frost nights and reduce by approximately 90% the number of heaters needed on heavy frost nights. A substantial purpose for installing wind machines is to reduce air contaminant emissions and thus make the orchard a better neighbor. The emissions from farm operations are not regulated by the Department.

The factor used to establish the portion of cost allocable to pollution control is the estimated annual percent return on the investment on the wind machines. The applicant submitted cost data showing a fuel cost savings of $7,354 per machine for an average

season. The return on investment was determined using the method shown in the Department's tax credit program guidance handbook. The savings in fuel operation expenses only were considered. The other operating expenses are small compared to fuel cost and are considered to cancel each other. The guidance handbook method results in a return on investment of 36.6% and a percent of the cost allocable to pollution control of less than 20%.

The applicant claims a percent of actual cost allocable to pollution control of 60% or more but less than 80% based upon a 11% return on investment. The applicant used the method of calculating return on investment used on wind machines before the tax credit guidance handbook was written. The Department considers the old method to be superseded by the guidance handbook method. (The old method included an annual depreciation cost not included in the Internal Rate of Return Method in the guidance handbook). The applicant also used a five year write off period allowed in his 1981 Federal Income Tax. The Department's calculation of 36.6% return on investment is based on a seven year write off period which the applicant used on his Oregon State income tax. (A five year write off period would reduce the Department's calculated return on investment from 36.6% to 29.7%.)

The application was received on 1-26-82, was re-submitted on 6-25-82, and the application was considered complete on 6-25-82.

4. Summation

a. Facility was constructed in accordance with the requirements of ORS 468.175, regarding preliminary certification.

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 Chapter 468, and the rules adopted under that chapter.

e. The portion of the facility cost that is properly allocable to pollution control is less than 20%.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that the a Pollution Control Facility Certificate bearing the cost of $108,000 with less than 20% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. 1497.

F.A. Skirvin:a
AA2305 (1)
(503) 229-6414
July 6, 1982

Application No. T-1500R

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Precision Castparts Corp.
4600 S.E. Harney Drive
Portland, OR 97206

The applicant owns and operates a foundry for the production of steel and stainless steel investment castings at 13340 S.E. 8th Street, Clackamas, 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 five (5) individual dust and/or fume collection systems.

Request for Preliminary Certification for Tax Credit was made on June 6, 1979, and approved on November 26, 1979.

Construction was initiated on the claimed facility in May 1980, completed in November 1980, and the facility was placed into operation from August 1980 through January 1981.

Facility Cost: $368,492.60 (Accountant's Certification was provided).

3. Evaluation of Application

The claimed facility consisting of five (5) individual bag filter dust collector systems is used to control emissions from the core sand sandblasting, grinding and machinery operations at the new small parts plant. A breakdown of the individual dust collection systems, their cost, and the areas served is noted below:

System 1	-	$61,507.82	-	Finishing Department
System 2	-	60,419.45	-	Grinding and Sandblast Departments
System 3	-	86,883.04	-	Cleaning Department
System 4	-	99,206.14	-	Investing Department
System 5	-	60,476.15	-	Salvage Department
Total		$368,492.60		

The facility has been inspected by Department personnel and has been found to be operating in compliance with Department regulations and permit conditions. The applicant estimates that approximately 678 tons of material per year is collected by the claimed facility.

The material collected consisting of heavy metals, dust and refactory material is disposed of by transporting to a local landfill. Since there is no income derived from the material collected, there is no return on the investment in the facility. Therefore, in accordance with the guideline on cost allocation, 80% or more of the facility cost is allocable to pollution control.

4. Summation

a. Facility was constructed in accordance with the requirements of ORS 468.175, regarding preliminary certification.

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. The portion of the facility cost that is properly allocable to pollution control is 80% or more.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $368,492.60 with 80% or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1500R.

F.A. Skirvin:a
(503) 229-6414
July 2, 1982
AA2296 (1)

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Reynolds Metals Company
Troutdale Reduction
6601 West Broad Street
Richmond, VA 23261

The applicant owns and operates a primary aluminum reduction plant on Sun Dial Road in Troutdale, 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 dry scrubbing system modifications and support equipment additions and modifications.

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 of the claimed facility was initiated on April 6, 1975, and the facility was completed on March 31, 1981. The facility was placed into operation on October 5, 1977.

Facility Cost: $176,473.51 (Accountant's Certification was provided).

3. Evaluation of Application

The claimed facility, consisting of specific dry scrubbing system modifications and support equipment additions and modifications, is noted in the attached Exhibit A. These items are required to insure continual compliance of the dry scrubbing system with the fluoride and particulate emission limits in the air contaminant discharge permit.

The facility has been inspected by Department personnel and has been found to be operating in compliance with Department regulations and permit conditions. Monitoring data submitted monthly verifies compliance with fluoride and particulate emissions.

The itemized costs for the claimed facility totaling $176,473.51 represents the remaining portion of the very extensive project undertaken by Reynolds in 1975. Previous portions of the project receiving tax credit were claimed in application numbers T-986 (Certificate No. 904), T-1081 (Certificate No. 781) and T-1218 (Certificate No. 1104). These previous portions of the project represent $25,566,210.00 for a total of $25,742,683.51.

The annual income derived from the recovered aluminum fluoride ($Al\ F_3$) for the entire dry scrubbing system represent $2,239,985.00.

The annual operating expenses for the entire dry scrubbing system are $2,699,880.00 consisting of the following:

Labor	$ 332,592
Utilities	1,163,016
Maintenance	96,204
Engineering, F_2 Lab	667,020
Operational Maintenance	7,680
Bags, shields, safety & sundry suplies	376,296
Insurance	60,072
	$2,699,880

Since the annual operating expenses for the entire project exceed the annual income for the entire project, there is no return on investment in the project. Therefore, in accordance with the guidelines on cost allocation, 80% or more of the facility cost is allocable to pollution control.

4. Summation

a. Facility was constructed under a certificate of 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 is necessary to satisfy the intents and purposes of ORS Chapter 468, and the rules adopted under that chapter.

e. The portion of the facility cost that is properly allocable to pollution control is 80% or more.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $176,473.51 with 80% or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1520.

F.S. Skirvin:a
(503) 229-6414
June 28, 1982
AA2279 (1)

T-1520

Exhibit A

Dry Scrubbing System Modifications and Support Equipment Modifications and Additions

The following is a list of the dry scrubbing system modifications and support equipment additions and modifications required to consistently meet the air contaminant discharge permit emission limits:

No.	Item		Amount
1.	Wind Tunnel, RMC Asset No. 253-0096 Used for calibrating emission testing equipment.	-	$ 8,584.89
2.	Electric Hoist, RMC Asset No. 253-0098 Used for handling emission testing equipment at top of the dry scrubber main exhaust stack.	-	796.24
3.	Anemometer, RMC Asset No. 253-0104 One of several necessary for potroom vent emission testing.	-	205.00
4.	Modifications to pot electrical bus Riser bus on each pot was reshaped to accomodate new pot fume shields.	-	62,264.04
5.	Modifications to dust support insulation Potroom header duct supports in potlines 1-4 including keeper plates to stop movement of electrical insulation on support saddles.	-	44,926.00
6.	Ore bridge dust collector RMC W.O. 8366751 and 8366752 - Used to control dust at belt transfer point.	-	25,600.34
7.	Installation of alumina storage tank level indicators - six Kodata Model 2235-E level indicators one on top of the reacted alumina storage tank and five on top of the fresh alumina storage tanks. (Cost of the indicators w/o installation has already been claimed).	-	2,599.00
8.	Contract adjustment for main exhaust fans not meeting specifiations.	-	<12,700.00>
9.	Modifications and Additions to the auxiliary ventilation system, RMC W.O. Nos. 8360002, 8360003, & 8360005 - Installation only of two flex-Kleen dust collectors used to reduce dust load on original ventilation system.	-	38,403.96
10.	Modifications to the baghouse crane	-	3,994.04
11.	Redesign of bag pulsing controller	-	1,800.00
			$176,473.51

AA2279.1 (1)

Application No. T-1522

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. <u>Applicant</u>

Number One Boardman Station
consisting of

Portland General Electric Co. 121 S.W. Salmon St. Portland, OR 97204	80%
Idaho Power Co. 1220 Idaho St. P.O. Box 70 Boise, Idaho 83707	10%
Pacific Northwest Generating Co. Suite 330 8383 N.E. Sandy Blvd. Portland, OR 97220	10%

The applicants own and operate a single 500,000 KW coal-burning steam electric generator at Boardman, Oregon.

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

2. <u>Description of Claimed Facility</u>

The facility described in this application is a coal dust collection system.

Request for Preliminary Certification for Tax Credit was made on October 1, 1975, and approved on March 14, 1978.

Construction was initiated on the claimed facility in March 1979, completed in June 1980, and the facility was placed into operation on August 3, 1980.

Facility Cost: $846,601 (Accountant's Certification was provided).

3. <u>Evaluation of Application</u>

The facility, which was required by the Department consists of two (2) baghouse installations and coal dust transport and storage systems. This facility was required to control emissions from the power block and from the coal silos, hoppers and conveyors during silo filling operations.

The facility has been inspected by Department personnel and has been found to be operating in compliance with Department regulations and permit conditions.

The annual cost savings realized by the applicant from the value of the coal dust collected is $26,850. The annual operating expenses before taxes, excluding depreciation, are $45,000. Since the annual operating expenses exceed the cost savings there is no return on the investment in the facility. Therefore, in accordance with the guideline on cost allocation, 80% or more of the facility cost is allocable to pollution control.

4. Summation

a. Facility was constructed in accordance with the requirements of ORS 468.175, regarding preliminary certification.

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. The portion of the facility cost that is properly allocable to pollution control is 80% or more.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $846,601 with 80% or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1522

F.A. Skirvin:a
(503) 229-6414
June 24, 1982
AA2267 (1)

Application No. T-1524

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Weyerhaeuser Company
Willamette Region
P.O. Box 275
Springfield, OR 97477

The applicant owns and operates a wood products manufacturing complex at Springfield.

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 four bag filters which control emissions from three sources: a new lumber sander (2 bag filter assemblies), the trim and hula saws, and a material storage bin. A truck loading hood was also claimed in this application.

Plans and specifications were reviewed and approved by Lane Regional Air Pollution Authority (LRAPA).

Request for Preliminary Certification for Tax Credit was made on September 11, 1980 and approved on October 13, 1980.

Construction was initiated on the claimed facility on October 22, 1980, completed on February 2, 1981, and the facility was placed into operation on February 2, 1981.

Facility Cost: $489,554.00 (Accountant's Certification was provided).

3. Evaluation of Application

The facilities claimed in this application consist of air emission control systems for four separate sources. Each facility is designed and operated for the primary purpose of controlling wood dust emissions. They are described with claimed costs as follows:

1. Two bag filter systems on a new lumber sander (abrasive planer) ($248,924).

2. A bag filter system on the matcher, hula saw and trimmer low pressure sawdust collector ($128,267).

3. A bag filter system on the particleboard plant relay storage bin ($81,100).

4. Truck loading hood ($31,263).

Each bag filter system incorporates a fire detection and suppression system. The costs claimed for pollution control facility tax credit include all items associated with installation and capital outlays for operation and maintenance of the bag filter systems. However, the Company did not claim any of the expenditures for the motor/fan which supplies air to the pneumatic material transport ducting which serves both the cyclone and bag filter. (This was confirmed in a telephone conversation with Dick Crabb and Steve Frank of Weyerhaeuser).

The installation of the bag filter system allowed the removal of one existing cyclone controlled system and the reduction of material thruput of two other systems. LRAPA estimated the project would result in a particulate matter emission reduction of about 8 tons per year.

The truck loading hood covers the top of the truck box to reduce fugitive emissions during loading of sanderdust. This facility is used only as an alternate (and apparently infrequent) to loading the particleboard plant relay storage bin.

The Company claims no income from operation of the facilities. They claim an annual operating maintenance expense of $8,000.

Lane Regional Air Pollution Authority (LRAPA) has inspected each of the facilities and determined visual compliance. LRAPA recommends each facility be given pollution control tax credit.

The primary purpose for each claimed facility is for air pollution control and since there is no net positive cash flow, a certificate should be issued for 80% or more of the claimed cost.

The application was received and considered complete on May 10, 1982.

4. <u>Summation</u>

a. Facility was constructed in accordance with the requirements of ORS 468.175, regarding preliminary certification.

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. The portion of the facility cost that is properly allocable to pollution control is 80% or more.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $489,554.00 with 80% or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1524

F.A. Skirvin:a
(503) 229-6414
July 29, 1982
AA2380 (1)

Application No. T-1531

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Willamina Lumber Company
9400 S.W. Barnes Road, Suite 400
Portland, OR 97225

The applicant owns and operates a lumber and veneer mill at Willamina, Oregon.

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

2. Description of Claimed Facility

The facility described in this application consists of six acres of log yard and scaling area pavement. No other facilities are claimed in this application.

Request for Preliminary Certification for Tax Credit was made on April 12, 1980, and approved on May 5, 1980.

Construction was initiated on the claimed facility on May 15, 1980, completed on September 1, 1980, and the facility was placed into operation on November 11, 1980.

Facility Cost: $721,714 (Accountant's Certification was provided).

3. Evaluation of Application

The substantial purpose of paving the log yard was to recover wood waste in a form usable for the company hog fuel boiler. At present the hog fuel boiler is not in operation, however, 30 units per day are being recovered and sold to Publishers Paper Company - Newberg. This material had previously been landfilled. The present recovery rate gives the company a 14.4% return on investment. Other benefits of the paving do accrue to the company. Savings in rock and equipment maintenance are estimated to be $25,000 for an additional return on investment of 3.5%.

The Department would not recommend approval under current policy (effective December 31, 1980). However, this facility was commenced before adoption of the present policy and is, therefore, eligible for consideration.

4. Summation

   a. Facility was constructed in accordance with the requirements of ORS 468.175, regarding preliminary certification.

   b. As required by ORS 468.165, the facility was under construction on or after January 1, 1973, and

      (1) The substantial purpose of the facility is to utilize material that would otherwise be solid waste, by burning;

      (2) The end product of the utilization is a usable source of power or other item of real economic value;

      (3) The Oregon law regulating solid waste imposes standards at least substantially equivalent to the federal law.

5. Director's Recommendation

   Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $721,714 with 100 percent allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1531.

R. L. Brown:b
(503) 229-5157
August 3, 1982
SB1194

Application No. T-1533

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

   Willamina Lumber Company
   9400 S.W. Barnes Road, Suite 400
   Portland, OR 97225

   The applicant owns and operates a lumber and veneer mill at Willamina, Oregon.

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

2. Description of Claimed Facility

   The facility described in this application consists of a cleanup conveyor, infeed hog conveyor, Jeffery 45-B-45" wide base wood and hammer hog, 250 HP motor, discharge conveyor and a 24 unit Peerless bin.

   Request for Preliminary Certification for Tax Credit was made on May 31, 1978, and approved on June 5, 1978.

   Construction was initiated on the claimed facility in June 1978, completed in October, 1978, and the facility was placed into operation in November 1978.

   Facility Cost: $75,027 (Accountant's Certification was provided).

3. Evaluation of Application

   The facility produces hog fuel from log deck clean up (bark) which had previously been landfilled. Approximately 5 units per day of useable hog fuel is being produced by the unit. Present return on investment is approximately 10%.

   The Department would not recommend approval of this application under current policy (effective December 31, 1980). However, this facility was commenced before adoption of the present policy and is, therefore, eligible for consideration.

4. Summation

   a. Facility was constructed in accordance with the requirements of ORS 468.175, regarding preliminary certification.

b. As required by ORS 468.165, the facility was under construction on or after January 1, 1973, and

(1) The substantial purpose of the facility is to utilize material that would otherwise be solid waste, by mechanical process; through the production, processing, or use of materials for their heat content or other forms of energy or materials which have useful chemical or physical properties;

(2) The end product of the utilization is a usable source of power or other item of real economic value;

(3) The Oregon law regulating solid waste imposes standards at least substantially equivalent to the federal law.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $75,027 with 100 percent allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1533.

R. L. Brown:b
(503) 229-5157
August 3, 1982
SB1195

Application No. T-1534

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Willamina Lumber Company
9400 S.W. Barnes Road, Suite 400
Portland, OR 97225

The applicant owns and operates a lumber and veneer mill at Willamina, Oregon.

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

2. Description of Claimed Facility

The facility described in this application consists of paving approximately 1.22 acres of mill yard around the mill barker and hammer hog (T-1533).

Request for Preliminary Certification for Tax Credit was made on June 21, 1978, and approved on October 25, 1978.

Construction was initiated on the claimed facility in October 1978, completed in October 1978, and the facility was placed into operation in November 1978.

Facility Cost: $97,051 (Accountant's Certification was provided).

3. Evaluation of Application

The substantial purpose of paving the 1.22 acres was to recover wood waste (bark) for hog fuel. This facility was installed in conjunction with applications T-1531 and T-1533. Two other facilities have received preliminary approval (hog fuel boiler and veneer dryers) but are not presently in operation. Construction of the above listed facilities has allowed the company to close a wood waste landfill which had environmental problems.

The Department would not recommend approval of this application under current policy (effective December 31, 1980). However, this facility was commenced before adoption of the present policy and is therefore eligible for consideration.

4. Summation

a. Facility was constructed in accordance with the requirements of ORS 468.175, regarding preliminary certification.

b. As required by ORS 468.165, the facility was under construction on or after January 1, 1973, and

(1) The substantial purpose of the facility is to utilize material that would otherwise be solid waste, by mechanical process; through the production, processing, or use of materials for their heat content or other forms of energy or materials which have useful chemical or physical properties;

(2) The end product of the utilization is a usable source of power or other item of real economic value;

(3) The Oregon law regulating solid waste imposes standards at least substantially equivalent to the federal law.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $97,051 with 100 percent allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1534.

R. L. Brown:b
(503) 229-5157
August 2, 1982
SB1192

Application No. T-1548

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Bergsoe Metal Corporation
444 Port Avenue
St. Helens, OR 97051

The applicant owns and operates a battery recycling plant at St. Helens, Oregon.

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

2. Description of Claimed Facility

The facility described in this application reclaims lead and sulfuric acid from old batteries. By use of a new process, the company reclaims the entire battery: to reclaim acid, lead, and heat from the polypropylene cases.

A summary of costs is attached. It is recommended that two items be deleted from the total cost. These are $74,973 for the portion of the employee facility building used as offices (10%) and $20,849 for vehicles and office equipment. This deletion has been discussed with company representatives.

Request for Preliminary Certification for Tax Credit was made on January 18, 1979, and approved on May 30, 1979.

Construction was initiated on the claimed facility in July 1980, completed in April 1982, and the facility was placed into operation in April 1982.

Facility Cost: $23,867,720 (Accountant's Certification was provided).

3. Evaluation of Application

The principal operation of this facility is to recycle used batteries for the lead content. However, this is the first facility in the United States that uses the entire battery. The process consists of: (1) draining the acid from the batteries, cleaning the acid and transporting to Boise Cascade, St. Helens for sale (3,000,000 gallons/year); (2) placing the entire battery case into the special furnace. In the process, the battery cases (polypropylene) produce approximately 14,000 Btu/lb. replacing natural gas consumption in the smelter (7.5 million lbs./year); (3) lead is drawn off and molded into shippable sizes (30,000 metric tons/year).

This facility contains considerable air and water quality pollution control equipment in addition to the recycling portion of the plant. The firm is presently the only lead battery recycler in the state. They have also contracted to recycle stored battery cases from the closed Gould Inc., Metals Division, Portland plant.

Even though construction was started before requirements changed, the facility would be eligible under current policy in that it is considered to be a new and different solution to a solid waste and hazardous waste problem and is the most environmentally sound method of recycling lead batteries.

4. Summation

a. Facility was constructed in accordance with the requirements of ORS 468.175, regarding preliminary certification.

b. As required by ORS 468.165, the facility was under construction on or after January 1, 1973, and

(1) The substantial purpose of the facility is to utilize material that would otherwise be solid waste and hazardous waste, by burning; through the production, processing, or use of materials for their heat content or other forms of energy or materials which have useful chemical or physical properties;

(2) The end product of the utilization is a usable source of power or other item of real economic value;

(3) The end product of the utilization, other than a usable source of power, is competitive with an end product produced in another state; and

(4) The Oregon law regulating solid waste imposes standards at least substantially equivalent to the federal law.

c. The portion of the facility cost that is properly allocable to pollution control is 100 percent.

d. $95,822 is recommended as not eligible (office & equipment).

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $23,771,898 with 100 percent allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1548.

R. L. Brown:b
(503) 229-5157
August 3, 1982
SB1197

Attachment T-1548

Bergsoe Metal Corp.

Summary of Costs

1 -	Design - Site Preparation	$ 7,192,807	
2 -	Buildings - foundations, etc. (recommend deletion of $74,973 - offices)	8,175,800	
3 -	Machinery and Equipment	7,817,574	(largely pollution control equipment)
4 -	Other (Recommend deletion of $20,849 - vehicles & office equipment)	681,539	
	Total:	23,867,720	
	Recommended Deletions	95,822	
		$23,771,898	

SB1197

Application No. T-1266R

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Cascade Orchards Inc.
2875 Fir Mt. Road
Hood River, OR 97031

The applicant owns and operates a fruit orchard at Hood River, 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 one Tropic Breeze wind machine used for frost control.

Request for Preliminary Certification was not made; applicant requests that Commission waive requirements for filing.

Construction was initiated on the claimed facility on March 24, 1980, completed on April 3, 1980, and the facility was placed into operation on April 3, 1980.

Facility Cost: $13,543.90 (Complete documentation by copies of invoices was provided).

3. Evaluation of Application

An electric powered wind machine was installed to protect approximately 10 acres of orchard from frost damage. This 10 acres was previously protected by propane gas fired heaters with a piped in gas distribution system. In the past propane gas systems received air pollution tax credit because of the reduction in emissions compared to using diesel oil fired heaters. (No tax credit application was submitted for the subject system.)

The Department does not consider the wind machine a pollution control facility when the facility replaces propane gas fired heaters.

The Department's view was explained to the applicant and he was asked if he would withdraw his application to save the cost of the Department writing a denial report. The applicant agreed to withdraw his application. Later upon inquiring about the letter of withdrawal, the applicant said he had changed his mind and wanted his application taken to the Commission.

The applicant's view is that the wind machine reduces emissions compared to propane gas heaters the same as propane gas heaters reduce emissions compared to diesel oil fired heaters, not withstanding the fact that the percent reduction in emissions is much smaller.

The Department recommends that the tax credit application be denied because the use of the wind machine in lieu of propane gas fired heaters results in an insignificant reduction in air contaminant emissions.

The applicant did not file for preliminary approval until after the start of construction because of a misunderstanding he had based upon his previous experience. The applicant's previous experience in 1977 was with homemade fans using used helicopter rotors and powered by tractor "power take off" or self-powered with an electric motor. He submitted a Request for Preliminary Certification for Tax Credit and received approval. Because of the low capital investment (two fans at a total cost of $4,000 were equivalent to one commercial fan at $10,000) a neighbor with the same type of helicopter rotor fan received a 20 percent or less allocation of cost to pollution control certification in December 1977 (T-922).

The low capital investment reason for the neighbor's 20 percent allocation of cost to pollution control was explained at the time to the applicant by phone. He says he misinterpreted this to mean that the increase in the price of oil was reducing the tax relief on orchard fans. He, therefore, did not file a Preliminary Certification Request for the purchase of a commercial fan until after installation when he learned that other orchard owners were still receiving 80 percent or more allocation of cost.

The Department considers the applicant's misconception that orchard fans were not receiving a worthwhile tax relief to not be a special circumstance rendering the filing unreasonable since a correct explanation had been given to the applicant.

This paragraph is a history of the processing of this application. The applicant visited the Department and inquired concerning obtaining preliminary certification for tax credit on an orchard fan already installed. He was given a copy of the 1979 Amendments to Pollution Control Facilities Tax Credit Law which includes a provision that the commission may waive the filing of the application for preliminary certification if it finds the filing inappropriate because special circumstances render the filing unreasonable. He submitted the Notice of Intent to Construct and Request for Preliminary Certification for Tax Credit and a letter requesting a waiver from the preconstruction notification requirement on May 13, 1980. The reason in the letter was "We were of the opinion that tax credit was no longer being allowed. This erroneous assumption was based upon previous conversations with the Department relative to the use of other

pollution control facilities." At this time the Department assumed the wind machine replaced diesel oil fired burners. This was based upon the applicant's response to a question on the form:

> "(9) List types and amounts of pollutants discharged or produced and/or wastes utilized before installation of facility. Fuel fired orchard heaters - smoke."

The applicant was asked to submit the Application for Certification of a Pollution Control Facility on or about June 4, 1980 and was told the waiver request would be included with the Tax Relief Application Review Report. The application was received on August 15, 1980. It was when processing the application that the Department learned that the wind machine replaced propane gas fired heaters. At this time the applicant agreed with the Department to withdraw his application. One other follow-up phone call was made by the Department to ask for the letter confirming the withdrawal. The application was resubmitted by letter on June 10, 1982.

4. Summation

   a. Facility was not constructed in accordance with the requirements of ORS 468.175, regarding preliminary certification.

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

   c. Facility is not designed for or operated to a substantial extent for the purpose of preventing, controlling, or reducing air pollution.

   d. The facility is not considered necessary to satisfy the intents and purposes of ORS Chapter 468, and the rules adopted under that chapter.

   e. No portion of the facility cost is properly allocable to pollution control.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that the Commission issue an order denying a Pollution Control Facility Certificate for the facility claimed in Tax Credit Application No. T-1266R.

F. A. Skirvin:b
(503) 229-6414
June 21, 1982
AB1073 (1)

Application No. T-1542

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

ESCO Corporation
Manufacturing Division
2141 N.W. 25th Avenue
Portland, OR 97210

The applicant owns and operates a steel foundry and metal fabrication plant at Portland, Oregon.

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

2. Description of Claimed Facility

The facility described in this application consists of a Feeco 4 1/2' disc pelletizer, 300 cubic foot surge bin, conveyors and miscellaneous other equipment.

Request for Preliminary Certification was not made; applicant requests that Commission waive requirements for filing.

Construction was initiated on the claimed facility in June 1978, completed in June 1979, and the facility was placed into operation in March 1979.

Facility Cost: $77,500 (Accountant's Certification was provided).

3. Evaluation of Application

Addition of the equipment allowed reclamation of 26,000 lbs/month of furnace dust which had previously been lost.

Had the applicant filed for preliminary certification, this tax credit would have been recommended for approval. However, the applicant did not comply with ORS 468.175(1). Facility was under construction prior to October 3, 1979 and is, therefore, not eligible for waiver by the Commission.

Applicant was informed of the above but chose to submit a completed application.

4. Summation

a. Facility was not constructed in accordance with the requirements of ORS 468.175, regarding preliminary certification.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that Application No. T-1542 be denied.

R. L. Brown:b
(503) 229-5157
August 3, 1982
SB1193

CAPABILITIES IN STEEL

ESCO CORPORATION 2141 N.W. 25TH AVENUE, PORTLAND, OREGON 97210 U.S.A. TELEPHONE (503) 228-2141 TELEX 36-0590

June 29, 1982

Mr. Charles R. Clinton
Regional Supervisor
Northest Region
Department of Environmental Quality
522 Southwest Fifth Avenue
Portland, OR 97207

Dear Mr. Clinton:

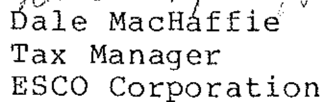
In your letter to me on March 24, 1982, you asked if ESCO could document the specific contacts with the Department of Environmental Quality on projects: 1) Plant 3 sand reclaimer emission reduction projects, 2) Noise silencers installed on eight fans, 3) a HAPCO oil/water separator and 4) a pelletizing facility for dust collector. As I had explained to you in my letter of February 9, 1982, (copy attached) ESCO has followed the procedure of pre-notification in many other projects both before and after the above projects. ESCO was most likely contacted first by the DEQ on the four projects. ESCO then would have had to contact DEQ on the correct engineering of these projects in order to meet the required DEQ standards. As you well know a company and the DEQ are partners in putting together a project that will reduce the pollution, emissions, or noise of a large industrial property. ESCO had to have made many contacts with the DEQ in order for these projects to accomplish their intended purpose; i.e, reduce pollution. Unfortunately the turnover at ESCO, do to poor economic conditions, has made it difficult to accurately document each and every contact made with DEQ on these specific projects. However, it surely was not the intent of the law to penalize a good corporate taxpayer who has a history of working co-operatively with the state agencies to reduce pollution merely because the formal written notice was not timely filed.

SUBJECT TO THE TERMS OF SALE SET FORTH ON BACK HEREOF

It is possible that the DEQ may have better records or even people who might remember these projects, and who could substantiate ESCO's claim of pre-contact/notification. Joe Smith, from ESCO, will meet with you next week in order to further explore what ESCO can do to illustrate that the pre-notification did occur via the pre-construction contacts ESCO had made to engineer the projects, mentioned supra.

I hope that you will be able to facilitate the tax credit approval on these projects. If I can assist you or Joe Smith in any way please advise me.

Regards,



Dale MacHaffie
Tax Manager
ESCO Corporation

JP
cc: Joe Smith - ESCO Corporation

ESCO CORP. Department of Environmental Quality

522 SOUTHWEST 5TH AVE. PORTLAND, OREGON

MAILING ADDRESS: P.O. BOX 1760, PORTLAND, OREGON 97207

March 24, 1982

Mr. Dale MacHaffie, Tax Manager
ESCO Corporation
2141 N.W. 25th Avenue
Portland, OR 97210

Re: AQ, WQ, NP, SW-ESCO Corporation
Multnomah County
AQ File Nos. 26-2067 & 26-2068
WQ NC No. W-459

Dear Mr. MacHaffie:

This is in response to your letter dated February 8, 1982, and confirmation of our telephone conversation on March 2, 1982, concerning four requests for preliminary certification for tax credit. The projects involved are: (1) the Plant 3 sand reclaimer emission reduction project, (2) noise silencers installed on 8 fans, (3) a Hapco oil/water separator, and (4) a pelletizing facility for dust collector.

As I mentioned, this issue can be resolved before the Environmental Quality Commission if you submit the final application for tax credit for each of the individual projects. It is my understanding that you plan to submit the final application as soon as you can.

The application for tax credit should include any documentation of contacts that were made with the Department concerning the specific project. Enclosed you will find the request for Preliminary Certification and the information that you submitted with your February 8, 1982 letter.

If you have any questions concerning this matter, please feel free to call me at 229-6955.

Sincerely,

Charles R. Clinton
Regional Supervisor
Northwest Region

CRC:o
R0848 (1)
Enclosure(s)
cc: Air Quality Division, DEQ
Water Quality Division, DEQ
Solid Waste Division, DEQ
Mike Downs, DEQ

Application No. T-520R

State of Oregon
Department of Environmental Quality

REVOCATION OF POLLUTION CONTROL FACILITY CERTIFICATE

---

1. Certificate Issued to:

   American Forest Products Corporation of Oregon
   Prineville Division
   2740 Hyde Street
   P. O. Box 3498
   San Francisco, California 94119

   The Certificate was issued for an air pollution control facility at the company's mill in Prineville, Oregon.

2. Summation

   By letter of July 30, 1982 (copy attached), the Department was informed that the facilities certified in Certificate No. 473 issued March 22, 1974, had been sold January 1, 1981.

   Pursuant to ORS 317.072(10), it is necessary that the Commission revoke Pollution Control Facility Certificate No. 473.

3. Director's Recommendation

   It is recommended that the Commission revoke Pollution Control Facility Certificate No. 473 as the facilities have been sold.

CASplettstaszer
229-6484
8/6/82
Attachments

Management Services Div.
Dept. of Environmental Quality
RECEIVED
AUG 3 1982

The Bendix Corporation
Executive Offices
Bendix Center
P O Box 5060
Southfield, Michigan 48037

Tel (313) 827-5000
Telex 23-0699 (BNDX CORP SOFD)

Ms. Carol Splettstaszer
State of Oregon
Department of Environmental Quality
522 SW Fifth
Portland, Oregon 97204

July 30, 1982

Re: Sale of Pollution Control Facility

Dear Ms. Splettstaszer:

The pollution control facility owned by American Forest Products Corporation of Oregon, Prineville Division, was sold on January 1, 1981.

Attached is a copy of the certificate issued by your department on June 30, 1978, which should provide you with all the information you need to terminate the certificate.

If you have any questions or need additional information, please call me at (313) 827-5067.

Sincerely,

M. J. Genzink

M. J. Genzink
Tax Accountant

MJG:jg
Enclosure - as stated

Certificate No. 473

Date of Issue 3/22/74

Application No. T-520R

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

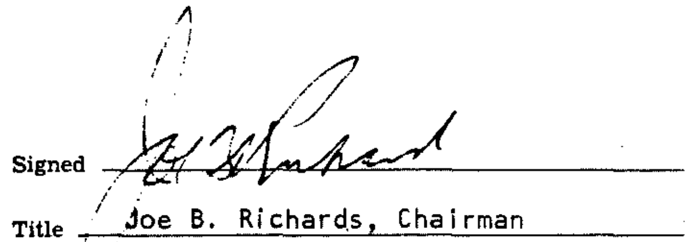
Issued To: American Forest Products Corporation of Oregon, Prineville Division, P. O. Box 3498, 2740 Hyde Street, San Francisco, California 94119 As: ☐ Lessee ☒ Owner	Location of Pollution Control Facility: McKay Road, Prineville, Oregon
Description of Pollution Control Facility: Complete woodwaste processing and handling system and modification of existing wigwam waste burner.	
Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste	
Date Pollution Control Facility was completed: October 1973	Placed into operation: December 1973
Actual Cost of Pollution Control Facility: $ 120,165.58	
Percent of actual cost properly allocable to pollution control: 80% or more	

In accordance with the provisions of ORS 468.155 et seq., it is hereby certified that the facility described herein and in the application referenced above is a "Pollution Control Facility" within the definition of ORS 468.155 and that the air or water facility was constructed on or after January 1, 1967, the solid waste facility was under construction on or after January 1, 1973, or the noise facility was constructed on or after January 1, 1977, and the facility is designed for, and is being operated or will operate to a substantial extent for the purpose of preventing, controlling or reducing air, water, noise or solid waste pollution, and that the facility is necessary to satisfy the intents and purposes of ORS Chapter 459, 467 or 468 and the regulations adopted thereunder.

Therefore, this Pollution Control Facility Certificate is issued this date subject to compliance with the statutes of the State of Oregon, the regulations of the Department of Environmental Quality and the following special conditions:

1. The facility shall be continuously operated at maximum efficiency for the designed purpose of preventing, controlling, and reducing the type of pollution as indicated above.
2. The Department of Environmental Quality shall be immediately notified of any proposed change in use or method of operation of the facility and if, for any reason, the facility ceases to operate for its intended pollution control purpose.
3. Any reports or monitoring data requested by the Department of Environmental Quality shall be promptly provided.

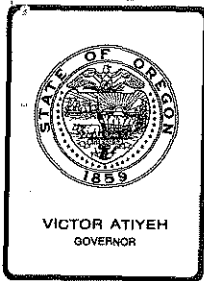
THIS IS A REISSUED CERTIFICATE ORIGINALLY ISSUED TO COIN MILLWORK COMPANY. THIS CERTIFICATE IS VALID ONLY FOR THE TIME REMAINING FROM THE DATE OF ORIGINAL ISSUANCE.



Signed

Title Joe B. Richards, Chairman

Approved by the Environmental Quality Commission on the 30th day of June, 1978.



Environmental Quality Commission

Mailing Address: BOX 1760, PORTLAND, OR 97207
522 SOUTHWEST 5th AVENUE, PORTLAND, OR 97204 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. D, August 27, 1982, EQC Meeting

Request for authorization to hold a public hearing on revisions to the Emission Standards for Hazardous Air Contaminants OAR 340-25-450 to 480 to make the Department's rules pertaining to control of asbestos and mercury consistent with the Federal rules;and to amend Standards of Performance for New Stationary Sources OAR 340-25-505 to 645 to include the Federal rule for new phosphate rock plants; and to amend the State Implementation Plan.

Background and Problem Statement

The U.S. Environmental Protection Agency (EPA) adopted National Emission Standards for Hazardous Air Pollutants (NESHAPS) beginning in June 1973. To acquire delegation to administer these standards, the Commission adopted OAR 340-25-450 to 480, in September 1975 and subsequently the Department received delegation to administer emission standards for asbestos, beryllium, beryllium rocket motor firing, and mercury in Oregon.

EPA adopted New Stationary Source Performance Standards (NSPS) beginning in 1971. To acquire delegation to administer these standards, the Commission adopted OAR 340-25-505 to 705 in September 1975, and amended them in 1981. EPA delegated NSPS to the Department in 1976 and in 1981. NSPS for lime plants was not adopted because the Federal Standard for this source was in litigation. NSPS for aluminum plants was not adopted as it was believed Oregon's aluminum plant rules were more stringent.

In a March 3, 1982 letter, John R. Spencer, EPA Region X Administrator, asked that the Department adopt the existing NSPS for lime plants and aluminum plants. In the same letter, Spencer asked that the Department adopt nine federal changes to the NESHAPS asbestos rules, and three changes to the NESHAPS mercury rules.

Problems

The Department believes that the OAR 340-25-255 to 285 for primary aluminum plants is more stringent than the federal NSPS (40 CFR 60.190 to .195, Subpart S). By separate letter to EPA, the Department is requesting delegation to administer the OAR, rather than the NSPS, as an equivalent regulatory option.

The NSPS for lime plants is still not considered ready for adoption into the OAR. EPA is reviewing revisions to the lime plant standard in the Office of Air, Noise, and Radiation. When those revisions are published in the federal register as a final rule, in settlement of the litigation, then it can be added to Oregon rules. This approach appears agreeable to EPA.

Other rule changes requested by EPA will necessitate new rule adoptions. Some additional changes in asbestos rules are considered desireable by the Department to better address potential problems caused by this air pollutant. Authority for the Commission to act is given in Oregon Revised Statutes 468.020 and 468.295(3) where the Commission is authorized to establish emission standards for sources of air contaminants.

A "Statement of Need for Rulemaking" is appended to Attachment 2 of this memorandum.

Alternatives and Evaluation

1. The Commission could take NO ACTION.

    a. A no-action consequence would be that both the Department and EPA staffs would have to review certain hazardous emission sources in Oregon because the DEQ's NESHAPS rules have not been kept up-to-date with EPA's. Region X of EPA is urging Commission action to avoid this duplication of review and dual jurisdiction.

    b. Taking NO ACTION on the NSPS rules would cause dual reviews by EPA and DEQ on certain new sources, such as phosphate rock plants.

2. The Commission could authorize the attached amendments for public hearing.

    a. This would help EPA-Department cooperation to achieve single state jurisdiction and review of certain new and modified sources.

    b. This would assist the Department in developing up-to-date hazardous source rules which are compatible with the Oregon Workman's Compensation Department, who also have an extensive set of OAR's to protect Oregon workers from hazardous air contaminants, such as asbestos.

3. The rules changes being considered should be considered changes in Oregon State Implementation Plan (SIP) in order to allow EPA to delegate administration of applicable Federal Rules.

Rule Development Process

The Department has assembled complete lists of amendments to NESHAPS and NSPS, and the Federal Registers describing those rule changes. The Department has determined up-to-date status on the lime plant NSPS, and has been researching the efforts of other regulatory agencies to abate the public health threat from friable asbestos in the environment.

PROPOSED RULE CHANGES AND ADDITIONS

Changes to Standards of Performance for New Stationary Sources (NSPS)

Gas Turbines, Subpart GG, was changed by 47 FR 3767, January 27, 1982. More exemptions were added, and units of less than 30 MW were given the less stringent NO_x standard of 150 ppm. Because of these added complexities, and because the federal form of the rule is an equation and not set in simple terms, it is better at this point to adopt the rule by reference, and not try to present it in a shortened or simplified manner (which could be misleading). Since the SO_x part of the rule is unchanged and simple, it will not be changed; see OAR 340-25-645 toward the end of Attachment 1.

Lead-Acid Battery Manufacturing, Subpart KK, was added by 47 FR 16573, April 16, 1982. This new standard for lead particulate emissions and opacity is proposed to be added as OAR 340-25-650.

Phosphate Rock, Subpart NN, was added by FR 16589, April 16, 1982. This new standard for particulate and opacity is proposed to be added as OAR 340-25-655.

NSPS Changes Which Cause No Change in the Oregon Rule

60.101 (Subpart J) was amended by 45 FR 79452, December 1, 1980. For new petroleum refineries, the definition of "Fuel Gas" was clarified; no change in OAR 340-25-580 is needed.

60.112 (Subpart Ka) was amended by 45 FR 83228, December 18, 1980. For new storage vessels with double seals, no gaps were allowed for those with a vapor-mounted primary seal; no change in OAR 340-25-585(3) is needed.

The above changes are incorporated by changing the date of the federal rules, adopted by reference, from October 8, 1980 to April 17, 1982, in OAR 340-25-510(2), 340-25-530, and twice in 340-25-535.

Negative Declaration For Rules Which Are Not Needed in Oregon

There are some standards which have been issued by EPA which it is believed will never apply in Oregon because such sources will not locate here. For these standards listed below, the Department will make a negative declaration to EPA, and will not include them in the Oregon Administrative Rules.

Source	Rule	Date of Federal Register
Vinyl Chloride Production Plants	40 CFR 61.63 Subpart F	October 21, 1976
Primary Copper Smelters	Subpart P (40 CFR 60)	January 15, 1976 March 3, 1978
Primary Zinc Smelters	Subpart Q	January 15, 1976 March 3, 1978
Primary Lead Smelters	Subpart R	January 15, 1976 March 3, 1978
Phosphate Fertilizer Industry	Subparts T,U,V,W,X	August 6, 1975 March 3, 1978
Painting in Auto and Light Duty Truck Assembly Plants	Subpart MM	December 24, 1980
Ammonium Sulphate Manufacture	Subpart PP	November 12, 1980

Changes to National Emission Standards for Hazardous Air Pollutants (NESHAPS)

The following list explains the changes to the federal rules, 40 CFR 61, as published in the Federal Registers for the NESHAPS rules. It also explains how these changes can be incorporated in rules, OAR 340-25-460. Desireable changes to the asbestos rule are also discussed.

Changes to Asbestos Rules

Federal Register Amendments October 14, 1975

1. "Commercial" added to "asbestos" in 340-25-465(3), first sentence, so that the rule does not apply to asbestos trace contaminants found in such raw materials as talc.

2. "Duct" added in demolition to other locations where friable asbestos is found in 340-25-465(4) after "boiler, pipe".

3. EPA added exemption cutoff points of 260 ft. of insulated pipe or 160 sq. ft. of insulation, but if this insulation is part of a demolition project, it must be "merely reported". The Department recommends against providing this exemption, as even small amounts of friable asbestos are dangerous; see Asbestos and Disease by Selikoff and Lee.

4. Temporary ventilation (exhausting through a baghouse) is listed as an alternative to wetting during demoliton or renovation. This alternative is added in 340-25-465(4)(b)(E).

5. To the title of 340-25-465(4) Demolition, "renovation" is added.

6. Labeling of asbestos waste bags is included in the OAR in 340-25-465(10)(d).

7. Use of asbestos waste in paving is forbidden in 340-25-465(2).

8. Tailings from asbestos mills and manufacturing plants come under the waste disposal rule added, 340-25-465(10).

9. The definitions of "Renovation" and "Asbestos-containing waste material" were added to 340-25-455. The definitions of planned renovation, emergency renovation, adequately wetted, removing, stripping, fabricating, inactive waste disposal site, active waste disposal site, and roadways are considered by the Department of too little value to be included in Oregon Adminstrative rules. The intent is not to change or deviate from the federal rule, only to simplify and shorten.

10. To the list of manufacturing in 340-25-465(3) is added (j) shotgun shells, (k) asphaltic concrete.

11. Added is 340-25-465(4)(a)(F), Name and address of the waste disposal site for the asbestos waste.

12. Paragraph 340-25-465(8), Fabricating is added.

13. Paragraph 340-25-465(9), Insulating is added.

14. Paragraph 340-25-465(10) Waste disposal is added. It simply requires no visible emissions, and covering by two feet of compacted cover at the end of the working day at a waste disposal site conforming to the Department's rules. The other options, when asbestos waste is not covered daily, as delineated in two pages of federal rules, requiring fencing, and signs warning of hazardous asbestos waste, are not included by the Department as they are considered unrealistic.

Federal Register Amendment March 2, 1977

1. A definition of "Structural member" was added to 340-25-455(28) to include asbestos insulation on walls and ceilings.

Federal Register Amendment June 19, 1978

1. Spraying asbestos with binders exempts the operations from the rules, by added paragraph 340-25-465(5)(c).

2. Because of the Adamo vs EPA case and EPA's insistence that a work practice requirement is an emission standard, the Department is re-titling the titles and subtitles to:

"Emission Standards and Procedural Requirements
for Hazardous Air Contaminants"

"Emission Standards and Procedural Requirements
for Asbestos"

Additional Changes in the Asbestos Rules Considered Desireable by the Department:

1. Added 340-25-465(4)(b)(D) to allow encapsulation methods to be substituted for wetting and removal methods. Especially in renovation, friable asbestos can be incapsulated and rendered safe in some cases, rather than removed.

2. Added 340-25-465(10)(e) to forbid open storage of asbestos or asbestos waste, in response to an appealed case (Consumers Central Heating Co. V. PSAPCA, December 3, 1980) lost by enforcement personnel of the Puget Sound Air Pollution Control Agency.

3. Added "owner or contractor", to the beginning of 340-25-465(4) so that both would be liable for proper handling of asbestos in demolition and renovation, as they both are in 340-25-465(10) and the corresponding federal rule on waste disposal, 40 CFR 61.22(j) pertaining to owners or contractors at waste disposal sites.

4. Simplified the prior notice requirements of the demolition and spraying rules by removing the 10 and 20 day notice period.

<u>Changes to Mercury Rules</u>

Federal Register October 14, 1975

1. The higher emission standard for sludge incineration plants is added to 340-25-480(2).

2. Definitions of "sludge" and "sludge dryer" added to the federal rule are not proposed for addition to the Oregon rule, as they are too detailed.

3. The section concerning stack sampling of sludge incineration and drying plants is too detailed and is not proposed as an addition to the Oregon rule. The same with sludge sampling. Instead, these portions of the federal rule are proposed to be added to the state rule by reference; see proposed 340-25-480(3)(d).

Federal Register June 8, 1982

1. New and Revised test methods for mercury at chlor-alkali plants and sludge incinerators are referenced in 340-25-460(6).

Summation

1. EPA adopted the first New Stationary Source Performance Standards (NSPS) in 1971. More have been added since then, the most recent two in April 1982.

2. EPA adopted the first National Emission Standards for Hazardous Air Pollutants (NESHAPS) in June 1973.

3. To acquire delegation to administer NSPS and NESHAPS in Oregon, the Commission adopted equivalent administrative rules in September 1975, and subsequently received delegation.

4. EPA amended its NESHAPS rules, and added one more NESHAP rule in October 1976, Vinyl Chloride.

5. The Commission amended the NSPS rules in April 1981, adding 8 new rules. But the Commission declined to pass ten others for the following reasons:

Negative Declaration as such sources were unlikely to locate in Oregon:

Primary Copper Smelters	Subpart P
Primary Zinc Smelters	Subpart Q
Primary Lead Smelters	Subpart R
Phosphate Fertilizer Industry, 5 Categories	Subparts T,U,V,W,X

Primary Aluminum Plant, Subpart S, was less stringent than OAR 340-25-265(1)

Lime Manufacturing, Subpart HH, had been remanded to EPA by the courts for amending.

6. In a March 3, 1982 letter, EPA requested the Department to bring its NESHAPS rules up-to-date with federal changes to asbestos and mercury NESHAPS rules, and to adopt the federal NSPS for lime and aluminum plants, so delegation of these standards could be made.

7. Because the only federal lime plant rule officially published in the Federal Register is still the one remanded back to EPA for changes by the court, the Commission still has grounds to decline to adopt a lime plant NSPS.

8. In a separate action, the Director is asking EPA to consider Oregon's own aluminum plant rule as an acceptable substitute for the federal rule, Subpart S, and to delegate NSPS jurisdiction for aluminum plants on that basis.

9. The Commission should go to hearing with rules that omit the following, as it is unlikely they will ever be built in Oregon. It is then the intent to give EPA a negative declaration for these categories when the rules are submitted for approval:

Source	Rule	Date of Federal Register
Vinyl Chloride Production	Subpart F 40 CFR 61.63	October 21, 1976
Painting in Auto and Light Duty Truck Assembly Plants	Subpart MM 40 CFR 60.392	December 24, 1980
Ammonium Sulphate Manufacturers	Subpart PP 40 CFR 60.422	November 12, 1980

10. Environmental Agencies have lost two appeals of important enforcement actions of EPA's asbestos NESHAPS rule. Therefore, the Department, after careful study, is proposing improvements to the asbestos rule, which depart from the federal rule. (These are listed on page 6).

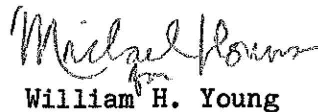
11. The proposed rule changes (Attachment 1) should bring the State rules up-to-date with the federal EPA NESHAPS and NSPS rules, where practical. The regulated sources affected are:

    a. Asbestos mills
    b. Road surfacing with asbestos containing waste materials
    c. Asphalt concrete manufacturing
    d. Demolition contractors, workers
    e. Fabrication using asbestos as a raw material
    f. Asbestos insulation
    g. Waste disposal sites which plan to accept asbestos waste

h. Sewage treatment plants burning sludge
i. Gas turbines
j. Lead-acid battery manufacturing plants
k. Phosphate rock plants

Director's Recommendation

It is recommended that the Commission authorize the Department to hold a hearing to consider the attached amendments to OAR 340-25-450 to 25-700, rules on Hazardous Air Contaminants and Standards of Performance for New Stationary Sources, and to consider those rule changes as amendments to the State Implementation Plan.



William H. Young

Attachments: 1. Proposed Rules 340-25-450 to 25-700
2. Notice of Public Hearing with attached Statement of Need for Rulemaking

J.F. Kowalczyk:a
(503) 229-6459
July 30, 1982
AA2395 (1)

Attachment 1

Emission Standards <u>and Procedural Requirements</u> For Hazardous Air Contaminants

Policy

340-25-450 The Commission finds and declares that certain air contaminants for which there is no ambient air standard may cause or contribute to an identifiable and significant increase in mortality or to an increase in serious irreversible or incapacitating reversible illness, and are therefore considered to be hazardous air contaminants. Air contaminants currently considered to be in this category are asbestos, beryllium, and mercury. Additional air contaminants may be added to this category provided that no ambient air standard exists for the contaminant, and evidence is presented which demonstrates that the particular contaminant may be considered as hazardous. It is hereby declared the policy of the Department that the standards contained herein and applicable to operators are to be minimum standards,and as technology advances, conditions warrant, and Department or regional authority rules require or permit, more stringent standards shall be applied.

Definitions

340-25-455 As used in this rule, and unless otherwise required by context:

(1) "Asbestos" means actinolite, amosite, anthophyllite, chrysotile, crocidolite, or tremolite.

(2) "Asbestos manufacturing operation" means the combining of commercial asbestos, or in the case of woven friction products, the combining of textiles containing commercial asbestos with any other material(s) including commercial asbestos, and the processing of this combination into a product as specified in rule 340-25-465.

(3) "Asbestos material" means asbestos or any material containing at least 1% asbestos by weight, including particulate asbestos material.

(4) "Asbestos mill" means any facility engaged in the conversion or any intermediate step in the conversion of asbestos ore into commercial asbestos.

(5) "Asbestos tailings" means any solid waste product of asbestos mining or milling operations which contains asbestos.

(6) "Beryllium" means the element beryllium. Where weight or concentrations are specific in these rules, such weights or concentrations apply to beryllium only, excluding any associated elements.

(7) "Beryllium alloy" means any metal to which beryllium has been added in order to increase its beryllium content, and which contains more than 0.1 percent beryllium by weight.

(8) "Beryllium containing waste" means any material contaminated with beryllium and/or beryllium compounds used or generated during any process or operation performed by a source subject to these rules.

(9) "Beryllium ore" means any naturally occurring material mined or gathered for its beryllium content.

(10) "Commercial asbestos" means any variety of asbestos which is produced by extracting asbestos from asbestos ore.

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

(12) "Demolition" means the wrecking or removal of any boiler, pipe, or load supporting structural member insulated or fireproofed with asbestos material.

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

(14) "Director" means the Director of the Department or regional authority and authorized deputies or officers.

(15) "Friable asbestos material" means any asbestos material easily crumbled or pulverized by hand, resulting in the release of particulate asbestos material. This definition shall include any friable asbestos debris.

(16) "Hazardous air contaminant" means any air contaminant considered by the Department or Commission to cause or contribute to an identifiable and significant increase in mortality or to an increase in serious irreversible or incapacitating reversible illness and for which no ambient air standard exists.

(17) "Mercury" means the element mercury, excluding any associated elements and includes mercury in particulates, vapors, aerosols, and compounds.

(18) "Mercury ore" means any mineral mined specifically for its mercury content.

(19) "Mercury ore processing facility" means a facility processing mercury ore to obtain mercury.

(20) "Mercury chlor-alkali cell" means a device which is basically composed of an electrolyzer section and a denuder (decomposer) section, and utilizes mercury to produce chlorine gas, hydrogen gas, and alkali metal hydroxide.

(21) "Particulate asbestos material" means any finely divided particles of asbestos material.

(22) "Person" means any individual(s), corporation(s), association(s), firm(s), partnership(s), joint stock company(ies), public and municipal corporation(s), political sub-division(s), the state and agency(ies) thereof, and the federal government and any agency(ies) thereof.

(23) "Propellant" means a fuel and oxidizer physically or chemically combined, containing beryllium or beryllium compounds, which undergoes combustion to provide rocket propulsion.

(24) "Propellant plant" means any facility engaged in the mixing, casting, or machining of propellant.

(25) "Regional authority" means any regional air quality control authority established under the provisions of **ORS** 468.505.

(26) "Renovation" means the removing or stripping of friable asbestos material used to insulate or fireproof any pipe, duct, boiler, tank, reactor, turbine, furnace, or structural member.

(27) [26] "Startup" means commencement of operation of a new or modified source resulting in release of contaminants to the ambient air.

(28) "Structural member" means any load-supporting member, such as beams and load-supporting walls; or any non-supporting-member, such as ceilings and non-load-supporting walls.

(29) "Asbestos-containing waste material" means any waste which contains commercial asbestos and is generated by a source subject to the provisions of this subpart, including asbestos mill tailings, control device asbestos waste, friable asbestos waste material, and bags or containers that previously contained commercial asbestos.

General Provisions

340-25-460 (1) Applicability. The provisions of these rules shall apply to any source which emits air contaminants for which

a hazardous air contaminant standard is prescribed. Compliance with the provisions of these rules shall not relieve the source from compliance with other applicable rules of the Oregon Administrative Rules, Chapter 340, or with applicable provisions of the Oregon Clean Air Act Implementation Plan.

(2) Prohibited activities:

(a) No person shall operate any source of emissions subject to these rules without first registering such source with the Department following procedures established by ORS 468.320 and OAR 340-20-005 through 340-20-015. Such registration shall be accomplished within ninety (90) days following the effective date of these rules.

(b) After the effective date of these rules, no person shall construct a new source or modify any existing source so as to cause or increase emissions of contaminants subject to these rules without first obtaining written approval from the Department.

(c) No person subject to the provisions of these emission standards shall fail to provide reports or report revisions as required in these rules.

(3) Application for approval of construction or modification. All applications for construction or modification shall comply with the requirements of rules 340-20-020 through 340-20-030 and the requirements of the standards set forth in these rules.

(4) Notification of startup. Notwithstanding the requirements of rules 340-20-020 through 340-20-030, any person owning or operating a new source of emissions subject to these emission standards shall furnish the Department written notification as follows:

(a) Notification of the anticipated date of startup of the source not more than sixty (60) days no less than thirty (30) days prior to the anticipated date.

(b) Notification of the actual startup date of the source within fifteen (15) days after the actual date.

(5) Source reporting and approval request. Any person operating any existing source, or any new source for which a standard is prescribed in these rules which had an initial startup which preceded the effective date of these rules shall provide the following information to the Department within ninety (90) days of the effective date of these rules:

(a) Name and address of the owner or operator.

(b) Location of the source.

(c) A brief description of the source, including nature, size, design, method of operations, design capacity, and identification of emission points of hazardous contaminants.

(d) The average weight per month of materials being processed by the source and percentage by weight of hazardous contaminants contained in the processed materials, including yearly information as available.

(e) A description of existing control equipment for each emission point, including primary and secondary control devices and estimated control efficiency of each control device.

(6) Source emission tests and ambient air monitoring:

(a) Emission tests and monitoring shall be conducted using methods set forth in 40 CFR, Part 61, Appendix B, as published in the [Federal Register, Volume 38, No. 66, Friday, April 6, 1973] <u>Code of Federal Regulations last amended by the Federal Register, June 8, 1982, pages 24703 to 24716.</u> The methods described in 40 CFR, Part 61, Appendix B, are adopted by reference and made a part of these rules. Copies of these methods are on file at the Department of Environmental Quality.

(b) At the request of the Department, any source subject to standards set forth in these rules may be required to provide emission testing facilities as follows:

(A) Sampling ports, safe sampling platforms, and access to sampling platforms adequate for test methods applicable to such source.

(B) Utilities for sampling and testing equipment.

(C) Emission tests may be deferred if the Department determines that the source is meeting the standard as proposed in these rules. If such a deferral of emission tests is requested, information supporting the request shall be submitted with the request for written approval of operation. Approval of a deferral of emission tests shall not in any way prohibit the Department from canceling the deferral if further information indicates that such testing may be necessary to insure compliance with these rules.

(7) Delegation of authority. The Commission may, when any regional authority requests and provides evidence demonstrating its capability to carry out the provisions of these rules relating to hazardous contaminants, authorize and confer jurisdiction within its boundary until such authority and

jurisdiction shall be withdrawn for cause by the Commission.

Stat. Auth. ORS Ch.
Hist: DEQ 96.f. 9-2-75, ef. 9-25-75

Emission Standards and Procedural Requirements For Asbestos

340-25-465 (1) Emission standard for asbestos mills. There shall be no visible emissions to the outside air from any asbestos milling operation except as provided under section (7) of this rule. For purposes of these rules, the presence of uncombined water in the emission plume shall not be cause for failure to meet the visible emission requirement. Outside storage of asbestos materials is not considered a part of an asbestos mill.

(2) Roadways. The surfacing of roadways with asbestos tailings or asbestos-containing waste materials is prohibited, except for temporary roadways on an area of asbestos ore depostis. For purposes of these rules, the deposition of asbestos tailings on roadways covered by snow or ice is considered surfacing.

(3) Manufacturing. There shall be no visible emissions to the outside air, except as provided in section (7) of this rule, from any building or structure in which manufacturing operations utilizing commercial asbestos are conducted, or directly from any such manufacturing operations if they are conducted outside buildings or structures. Visible emissions from boilers or other points not producing emissions directly from the manufacturing operation and having no possible asbestos material in the exhaust gases shall not be considered for purposes of this rule. The presence of uncombined water in the exhaust plume shall not be cause for failure to meet the visible emission requirements. Manufacturing operations considered for purposes of these rules are as follows:

(a) The manufacture of cloth, cord, wicks, tubing, tape, twine, rope, thread, yarn, roving, lap, or other textile materials.

(b) The manufacture of cement products.

(c) The manufacture of fireproofing and insulating materials.

(d) The manufacture of friction products.

(e) The manufacture of paper, millboard, and felt.

(f) The manufacture of floor tile.

(g) The manufacture of paints, coatings, caulks, adhesives, or sealants.

(h) The manufacture of plastics and rubber materials.

(i) The manufacture of chlorine.

(j) The manufacture of shotgun shells.

(k) The manufacture of asphalt concrete

l [(j)] Any other manufacturing operation which results or may result in the release of asbestos material to the ambient air.

(4) Demolition and renovation. All persons, both the contractor and the owner, intending to demolish any institutional, commercial, or industrial building, including apartment buildings having four or more dwelling units, structure, facility, installation, or any vehicle or vessel including, but not limited to, ships; or any portion thereof which contains any boiler, pipe, duct, tank, reactor, turbine, furnace, or [load supporting] structural member that is insulated or fireproofed with friable asbestos material shall comply with the requirements set forth in this rule:

(a) Notice of intention to demolish and/or renovate shall be provided to the Department [at least ten (10) days] prior to commencement of such demolition and/ or renovation [at any time prior to commencement of demoliton covered under subsection (4)(c) of this rule]. Such notice shall include the following information:

(A) Name and address of person intending to engage in demolition.

(B) Description of building, structure, facility, installation, vehicle, or vessel to be demolished, including address or location where the demolition is to be accomplished.

(C) Schedule starting and completion dates of demolition.

(D) Method of demolition to be employed.

(E) Procedures to be employed to insure compliance with provisions of this section.

(F) Name and address or location of the waste disposal site where the friable asbestos waste will be deposited.

(G) Name and address of owner of property to be demolished or renovated.

(b) The following procedures shall be employed to prevent emissions of particulate asbestos material into the ambient air:

(A) Friable asbestos materials used to insulate or fireproof any boiler, pipe, or load supporting structural member shall be wetted and removed from any building, structure, facility, installation, or vehicle or vessel before demolition of load supporting structural members is commenced. Boilers, pipe, or load supporting structural members that are insulated or fireproofed with friable asbestos materials may be removed as units or in sections without stripping or wetting, except that where the boiler, pipe, or structural member is cut or disjointed the exposed friable asbestos material shall be wetted. Friable asbestos debris shall be wetted adequately to insure that such debris remains wet during all stages of demolition and related handling operations.

(B) No pipe or load supporting structural member that is covered with asbestos material shall be dropped or thrown to the ground from any building structure, facility, installation, vehicle, or vessel subject to this section, but shall be carefully lowered or taken to ground level in such a manner as to insure that no particulate asbestos material is released to the ambient air.

(C) No friable asbestos debris shall be dropped or thrown to the ground from any building structure, facility, installation, vehicle, or vessel subject to this section, or from any floor to any floor below. Any debris generated as a result of demolition occurring fifty (50) feet (15.24 meters) or greater above ground level shall be transported to the ground via dust-tight chutes or containers.

(D) Equivalent methods of encapsulating asbestos may be submitted to the Department in writing, and upon written approval, may be substituted as approved for (A), (B), or (C) above.

(E) For renovation operations, local exhaust ventilation and collection systems may be used, instead of wetting; these systems shall comply with 340-25-465(7).

(c) Any person intending to demolish a building, structure, facility, or installation subject to the provisions of this section, but which has been declared by proper state or local authorities to be structurally unsound and which is in danger of imminent collapse is exempt from the requirements of this section, other than the reporting requirements specified in

subsection (4)(a) of this rule, and the wetting of friable asbestos debris as specified in paragraph (4)(b)(A) of this rule.

(d) Sources located in cities or other areas of local jurisdiction having demolition regulations or ordinances no less restrictive than those of this rule may be exempted from the provisions of this section. Such local ordinance or regulation must be filed with and approved by the Department before an exemption from these rules may be issued. Any authority having such local jurisdiction shall annually submit to the Department a list of all sources subject to this section operating within the local jurisdictional area and a list of those sources observed by the local authority during demolition operations.

(5) Spraying:

(a) There shall be no visible emissions to the ambient air from any spray-on application of materials containing more than one (1) percent asbestos on a dry weight basis used to insulate or fireproof equipment or machinery, except as provided in section (7) of this rule. Spray-on materials used to insulate or fireproof buildings, structures, pipes, and conduits shall contain less than one (1) percent asbestos on a dry weight basis. In the case of any city or area of local jurisdiction having ordinances or regulations for spray application materials more stringent than those in this section, the provisions of such ordinances or regulations shall apply.

(b) Any person intending to spray asbestos materials to insulate or fireproof buildings, structures, pipes, conduits, equipment, or machinery shall report such intention to the Department [at least twenty (20) days] prior to the commencement of the spraying operation. Such report shall contain the following information:

(A) Name and address of person intending to conduct the spraying operation.

(B) Address or location of the spraying operation.

<u>(C) The name and address of the owner of the facility being sprayed.</u>

<u>(c) The spray-on application of materials in which the asbestos fibers are encapsulated with a bituminous or resinous binder during spraying and which are not friable after drying is exempted from the requirements of paragraphs (5)(a) and (5)(b).</u>

(6) Options for air cleaning. Rather than meet the no visible emissions requirements of sections (1), (2), and (4) of this rule, owners and operators may elect to use methods specified in

section (7) of this rule.

(7) Air cleaning. All persons electing to use air cleaning methods rather than comply with the no visible emission requirements must meet all provisions of this section.

(a) Fabric filter collection devices must be used, except as provided in subsections (b) and (c) of this section. Such devices must be operated at a pressure drop of no more than four (4) inches (10.16 cm) water gauge as measured across the filter fabric. The air flow permeability, as determined by ASTM Method D737-69, must not exceed 30 $ft.^3/min./ft.^2$ (9.144 $m^3/min./m^2$) for woven fabrics or 35 $ft.^3/min./ft.^2$ (10.67 $m^3/min./m^2$) for felted fabrics with the exception that airflow permeability for 40 $ft.^3/min./m^2$ (12.19 $m^3/min./m^2$) for woven and 45 $ft.^3/min./ft.^2$ (13.72 $m^3/min./m^2$) for felted fabrics shall be allowed for filtering air emissions from asbestos ore dryers. Each square yard (square meter) of felted fabric must weigh at least 14 ounces (396.9 grams) and be at least one-sixteenth (1/16) inch (1.59 cm) thick throughout. Any synthetic fabrics used must not contain fill yarn other than that which is spun.

(b) If the use of fabric filters creates a fire or explosion hazard, the Department may authorize the use of wet collectors designed to operate with a unit contacting energy of at least forty (40) inches (101.6 cm) of water gauge pressure.

(c) The Department may authorize the use of filtering equipment other than that described in subsections (7)(a) and (b) of this rule if such filtering equipment is satisfactorily demonstrated to provide filtering of asbestos material equivalent to that of the described equipment.

(d) All air cleaning devices authorized by this section must be properly installed, operated, and maintained. Devices to bypass the air cleaning equipment may be used only during upset and emergency conditions, and then only for such time as is necessary to shut down the operation generating the particulate asbestos material.

(e) All persons operating any existing source using air cleaning devices shall, within ninety (90) days of the effective date of these rules, provide the following information to the Department:

(A) A description of the emission control equipment used for each process.

(B) If a fabric is utilized, the following information shall be reported:

(i) The pressure drop across the fabric filter in inches water gauge and the airflow permeability in $ft.^3/min./ft.^2$ ($m^3/min./m^2$).

(ii) For woven fabrics, indicate whether the fill yarn is spun or not spun.

(iii) For felted fabrics, the density in ounces/$yard^3$ (gms/m^3) and the minimum thickness in inches (centimeters).

(C) If a wet collector is used the unit contact energy shall be reported in inches of pressure, water gauge.

(D) All reported information shall accompany the information required in paragraph 340-25-460(5)(a)(E).

(8) Fabricating: There shall be no visible emissions to the outside air, except as provided in paragraph (7) of this section, from any of the following operations if they use commercial asbestos or from any building or structure in which such operations are conducted.

(a) The fabrication of cement building products.

(b) The fabrication of friction products, except those operations that primarily install asbestos friction materials on motor vehicles.

(c) The fabrication of cement or silicate board for ventilation hoods; ovens; electrical panels; laboratory furniture; bulkheads, partitions and ceilings for marine construction; and flow control devices for the molten metal industry.

(9) Insulating: Molded insulating materials which are friable and wet-applied insulating materials which are friable after drying, installed after the effective date of these regulations, shall contain no commercial asbestos. The provisions of this paragraph do not apply to insulating materials which are spray applied; such materials are regulated under (3).

(10) Waste disposal for manufacturing, fabricating, demolition, renovation and spraying operations: The owner or operator of any source covered under the provisions of paragraphs (3), (4), (5), or (8) of this section shall meet the following standards:

(a) There shall be no visible emissions to the outside air, except as provided in paragraph (10)(c) of this section, during the collection; processing, including incineration; packaging; transporting; or deposition of any asbestos-containing waste material which is generated by such source.

(b) All asbestos-containing waste material shall be disposed of at a disposal site authorized by the Department.

(A) Persons intending to dispose of waste-containing asbestos shall notify the landfill operator of the type and volume of the waste material and obtain the approval of the landfill operator prior to bringing the waste to the disposal site.

(B) All waste-containing asbestos shall be stored and transported to the authorized disposal site in leak-tight containers such as plastic bags with a minimum of thickness of 6 mil., or fiber or metal drums.

(C) The waste transporter shall immediately notify the landfill operator upon arrival of the waste at the disposal site. Off-loading of waste-containing asbestos shall be done under the direction and supervision of the landfill operator.

(D) Off-loading of waste-containing asbestos shall occur at the immediate location where the waste is to be buried. The waste burial site shall be selected in an area of minimal work activity that is not subject to future excavation.

(E) Off-loading of waste-containing asbestos shall be accomplished in a manner that prevents the leak-tight transfer containers from rupturing and prevents visible emissions to the air.

(F) Immediately after waste-containing asbestos is deposited at the disposal site, it shall be covered with at least 2 feet of soil or other waste before compacting equipment runs over it. If other waste is used to cover the asbestos-containing material prior to compaction, the disposal area shall be covered with 1 foot of soil before the end of the operating day.

(c) Rather than meet the requirements of this section, an owner or operator may elect to use an alternative disposal method which has received prior approval by the Department in writing.

(d) All asbestos-containing waste material shall be sealed into containers labeled with a warning label that states:

Caution

Contains Asbestos
Avoid Opening or Breaking Container
Breathing Asbestos is Hazardous
to Your Health

Alternatively, warning labels specified by Occupational Safety and Health Standards of the Department of Labor, Occupational

Safety and Health Administration (OSHA) under 29 CFR 1910-93a(g)(2)(ii) may be used, or its Oregon State equivalent OAR 437-115-040(2)(b).

(e) Open storage or accumulation of friable asbestos material or asbestos-containing waste material is prohibited. The owner, operator and/or contractor at any site subject to these rules shall dispose of friable asbestos material within one week of being notified of its uncovered state.

Stat. Auth. ORS Ch.
Hist: DEQ 96. f. 9-2-75. ef. 9-25-75.

Emission Standard For Beryllium

340-25-470 (1) Applicability. The provisions of this rule are applicable to the following emission sources of beryllium.

(a) Extraction plants, ceramic plants, foundries, incinerators, and propellant plants which process beryllium, beryllium ore, oxides, alloys, or berryllium containing waste.

(b) Machine shops which process beryllium, beryllium oxides, or any allow when such alloy contains more than five percent (5%) beryllium by weight.

(c) Other sources, the operation of which results or may result in the emission of beryllium to the outside air.

(2) Emission limit:

(a) Emissions to the ambient air from any source shall not exceed 10 grams of beryllium for any 24 hour period, except as provided in subsection (2)(b) of this rule.

(b) Rather than meet the requirements of subsection (a) of this section, persons operating sources of beryllium emissions may request approval from the Department to comply with an ambient air concentration limit for beryllium emissions in the vicinity of the source. The ambient concentration shall not exceed 0.0 micrograms per cubic meter as an average of all samples taken during any one month period. Approval of such requests may be granted by the Director provided that:

(A) At least three (3) years of ambient sampling data is available which demonstrates that the future ambient concentrations of beryllium will not exceed this standard concentration in the vicinity of the source. Such three (3) year period shall be the three years ending thirty (30) days before the effective date of these rules.

(B) The person requesting this approval makes such request in writing to the Department within forty-five (45) days after the effective date of these rules, including the following information:

(i) A description of the sampling procedures, including methods of sampling, method and frequency of calibration, and averaging technique for determining monthly concentrations.

(ii) Identification of sampling sites, including number of stations, distance, and heading from the source, ground elevations, and height above ground of sampling inlets.

(iii) Plots of source and surrounding area, including emission points, sampling sites, and topographic features significantly affecting dispersion of contaminants.

(iv) Information necessary for estimating dispersion, incluidng stack height and inside diameter, exit gas temperature and velocity or flow rate, and beryllium concentration in exit gases.

(v) Air sampling data as required in subsection (2)(b) of this rule, including data for individual samples and site locations used to develop the one month average concentrations; and a description of data and procedures (methods or models) used to design the air sampling network.

(c) Within sixty (60) days of receipt of such report, the Department will notify persons making the request of the decision to approve or deny the request. Prior to denying approval of provisions of subsection (2)(b) of this rule, the Department will consult with representatives of the source for which the report was submitted.

(d) The burning of beryllium and/or beryllium containing waste except propellants is prohibited except in incinerators, emissions from which must comply with the standard.

(e) Stack sampling:

(A) Unless a deferral of emission testing is obtained under the provisions of subsection 340-25-460(6)(c), each person operating a source subject to the provisions of this standard shall test emissions from his source subject to the following schedule:

(i) Within ninety (90) days of the effective date of these rules for existing sources or for new sources having startup dates prior to the effective date of this standard.

(ii) Within ninety (90) days of startup in the case of a new source having a startup date after the effective date of this standard.

(B) The Department shall be notified at least thirty (30) days prior to an emission test so that they may, at their option, observe the test.

(C) Samples shall be taken over such periods and frequencies as necessary to determine the maximum emissions occurring during any 24 hour period. Calculations of maximum 24 hour emissions shall be based on that combination of process operating hours and any variation in capacities or processes that will result in maximum emissions. No changes in operation which may be expected to increase total emissions over those determined by the most recent stack test shall be made until estimates of the increased emissions have been calculated, and have been reported to and approved in writing by the Department.

(D) All samples shall be analyzed and beryllium emissions shall be determined and reported to the Department within thirty (30) days following the stack test. Records of emission test results and other data needed to determine beryllium emissions shall be retained at the source and made available for inspection by the Department for a minimum of two (2) years following such determination.

(f) Ambient air sampling:

(A) Sources subject to the provisions of this section shall locate and operate ambient air sampling sites in accordance with a plan submitted to and approved in writing by the Department. Such sites shall be located in such a manner as to detect maximum ambient air concentrations in the vicinity of the source.

(B) All monitoring sites shall be operated in such a manner as to provide continuous samples, except for a reasonable time allowed for instrument calibration and repair, or for replacement of equipment needing repair.

(C) Filters shall be analyzed and contaminant concentrations calculated within thirty (30) days of the date they are collected. Concentrations of contaminants at all sampling sites shall be reported to the Department each calendar month. Records of concentrations and other data necessary to determine concentrations shall be retained at the source and made available for inspection by the Department for a minimum of two (2) years after determinations have been made.

(D) The Department may require changes in the sampling network at any time in order to insure that the maximum ambient air concentrations of beryllium in the area of the source are being measured.

Emission Standard For Beryllium Rocket Motor Firing

340-25-475 The emission standard for Beryllium Rocket Motor Firing, **40 CFR, Part 61, Section 61.40 through 61.44**, adopted Friday, April 6, 1973, and as amended on August 17, 1977 and March 3, 1978, is adopted by reference and made a part of these rules. A copy of this emission standard is on file at the Department of Environmental Quality.

Emission Standard for Mercury

340-25-480 (1) Applicability. The provisions of this rule are applicable to sources which process mercury ore to recover mercury, sources using mercury chlor-alkali cells to produce chlorine gas and alkali metal hydroxide, and to any other source, the operation of which results or may result in the emission of mercury to the ambient air.

(2) Emission Standard. Emissions to the ambient air from any source shall not exceed 2,300 grams of mercury during any 24 hour period, except that mercury emissions to the atmosphere from sludge incineration plants, sludge drying plants, or a combination of these that process wastewater treatment plant sludges shall not exceed 3200 grams of mercury per 24-hour period.

(3) Stack sampling:

(a) Mercury ore processing facility:

(A) Unless a deferral of emission testing is obtained under subsection 340-25-465(6)(c) of these rules, each person operating a source processing mercury ore shall test emissions from his source, subject to the following:

(i) Within ninety (90) days of the effective date of these rules for existing sources or for new sources having startup dates prior to the effective date of this standard.

(ii) Within ninety (90) days of startup in the case of a new source having a startup date after the effective date of this standard.

(B) The Department shall be notified at least thirty (30) days prior to an emission test so that they may, at their option, observe the test.

(C) Samples shall be taken over such periods and frequencies as necessary to determine the maximum emissions occurring during any 24 hour period. Calculations of maximum 24 hour emissions shall be based on that combination of process operating hours and any variation in capacities or processes that will result in maximum emissions. No changes in operation which may be expected to increase total emissions over those determined by the most recent stack test shall be made until estimates of the increased emissions have been calculated, and have been reported to and approved in writing by the Department.

(D) All samples shall be analyzed and mercury emissions shall be determined and reported to the Department within thirty (30) days following the stack test. Records of emission test results and other data needed to determine mercury emissions shall be retained at the source and made available for inspection by the Department for a minimum of two (2) years following such determination.

(b) Mercury chlor-alkali plant:

(A) Hydrogen and end-box ventilation gas streams. Unless a deferral of emission testing is obtained under subsection 340-25-460(6)(c), each person operating a source of this type shall test emissions from his source following the provisions of subsection (3)(a) of this rule.

(B) Room ventilation system:

(i) Unless a deferral of emission testing is obtained under subsection 340-25-460(6)(c), all persons operating mercury chlor-alkali plants shall pass all cell room air in forced gas streams through stacks suitable for testing.

(ii) Emissions from cell rooms may be tested in accordance with provisions of paragraph (3)(b)(A) of this rule or may demonstrate compliance with paragraph (3)(b)(B)(iii) of this rule and assume ventilation emissions of 1,300 grams/day of mercury.

(iii) If no deferral of emission testing is requested, each person testing emissions shall follow the provisions of subsection (3)(a) of this rule.

(c) Any person operating a mercury chlor-alkali plant may elect to comply with room ventilation sampling requirements by carrying out approved design, maintenance, and housekeeping practices. A summary of these approved practices shall be available from the Department.

<u>(d) Stack sampling and sludge sampling at wastewater treatment plants shall be perforemd in accordance with 40 CFR 61.53(d) or</u>

40 CFR 61.54, last amended by Federal Register June 8, 1982, page 24703.

Standards of Performance for New Stationary Sources

Statement of Purpose

340-25-505 The U.S. Environmental Protection Agency has adopted in **Title 40, Code of Federal Regulations, Part 60,** Standards of Performance for certain new stationary sources. It is the intent of this rule to specify requirements and procedures necessary for the Department to implement and enforce the aforementioned Federal Regulation.

Definitions

340-25-510 (1) "Administrator" herein and in **Title 40, Code of Federal Regulations, Part 60,** means the Director of the Department or appropriate regional authority.

(2) "Federal Regulation" means **Title 40, Code of Federal Regulations, Part 60,** as promulgated prior to [June 1, 1975] April 17, 1982.

(3) "CFR" means Code of Federal Regulations.

(4) "Regional authority" means a regional air quality control authority established under provisions of ORS 468.505.

Statement of Policy

340-25-515 It is hereby declared the policy of the Deparment to consider the performance standards for new stationary sources contained herein to be minimum standard; and, as technology advances, conditions warrant, and Department or regional authority rules require or permit, more stringent standards shall be applied.

Delegation

340-25-520 The Commission may, when any regional authority requests and provides evidence demonstrating its capability to carry out the provisions of these rules, authorize and confer jurisdiction upon such regional authority to perform all or any of such provisions within its boundary until such authority and jurisdiction shall be withdrawn for cause by the Commission.

Applicability

340-25-525 This rule shall be applicable to stationary sources identified in rules 340-25-550 through [340-25-645]

340-25-655 for which construction or modification has been commenced, as defined in **Title 40, Code of Federal Regulations (40 CFR) 60.2** after the effective dates of these rules.

General Provisions

340-25-530 Title 40, CFR. Part 60, Subpart A. as promulgated prior to [October 8, 1980] April 17, 1982 , is by this reference adopted and incorporated herein. Subpart A includes paragraphs 60.1 to 60.16 which address, among other things, definitions, performance tests, monitoring requirements, and modification.

Performance Standards

Federal Regulations Adopted by Reference

340-25-535 Title 40, CFR, Parts 60.40 through 60.154, and 60.250 through 60.335, as established as final rules prior to [October 8, 1980] April 17, 1982, is by this reference adopted and incorporated herein. As of [October 8, 1980], April 17, 1982, the Federal Regulations adopted by reference set the emission standards for the new stationary source categories set out in rules 340-25-550 through [340-25-645] 340-25-655 (these are summarized for easy screening, but testing conditions, the actual standards, and other details will be found in the **Code of Federal Regulations**).

Standards of Performance for Gas Turbines

340-25-645 The pertinent federal rules are **40 CFR 60.330 to 60.335,** also known as **Subpart GG.** The following emission standards, summarizing the federal standards set forth in **Subpart GG,** apply to any stationary gas turbine with a heat input at peak load equal to or greater than 10.7 gigajoules per hour (1,000 HP) for which construction was commenced after Octboer 3, 1977 . [except as noted in subsection (1)(c) of this rule:]

(1) Standard for Nitrogen Oxides. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere from any stationary gas turbine, nitrogen oxides in excess of the rates specified in 40 CFR 60.332.

[(a) 75 ppm for units greater than or equal to 107.2 gigajoules/hour, which is located in a Metropolitan Statistical

Area and is in gas and oil transportation or production, or used for other purposes;

(b) 150 ppm for units greater than or equal to 107.2 gigajoules/hour, which is located outside a Metropolitan Statistical Area and is in gas and oil transportation or production;

(c) 150 ppm for units between 10.7 and 107.2 gigajoules/hour that commence construction, modification, or reconstruction after October 3, 1982;

(d) Exempt from the Nitrogen Oxide standards are units used for emergency standby, firefighting, military (except for garrison facility), military training, and research and development turbines.]

(2) Standard for Sulfur Dioxide. Owners or operators shall:

(a) Not cause to be discharged into the atmosphere from any gas turbine any gases which contain sulfur dioxide in excess of 150 ppm by volume at 15 percent oxygen, on a dry basis; or

(b) Not burn in any gas turbine any fuel which contains sulfur in excess of 0.80 percent by weight.

Standards of Performance for Lead-Acid Battery Manufacturing Plants

340-25-650 The pertinent federal rules are 40 CFR 60.370 to 60.374, also known as Subpart KK. The following standards set forth in Subpart KK apply to any lead-acid battery manufacturing plant that produces or has the design capacity to produce in one day (24 hours) batteries containing an amount of lead equal to or greater than 5.9 Mg (6.5 tons), for which construction or modification of any facility affected by the rule commenced after January 14, 1980.

Standards for Lead No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere:

(1) From any grid casting facility any gases that contain lead in exess of 0.40 milligram of lead per dry standard cubic meter of exhaust (0.000176 gr/dscf).

(2) From any paste mixing facility any gases that contain in excess of 1.00 milligram of lead per dry standard cubic meter of exhaust (0.00044 gr/dscf).

(3) From any three-process operation facility any gases that contain in excess of 1.00 milligram of lead per dry standard cubic meter of exhaust (0.00044 gr/dscf).

(4) From any lead oxide manufacturing facility any gases that contain in excess of 5.0 milligrams of lead per kilogram of lead feed (0.010 lb/ton).

(5) From any lead reclamation facility any gases that contain in excess of 4.50 milligrams of lead per dry standard cubic meter of exhaust (0.00198 gr/dscf).

(6) From any other lead-emitting operation any gases that contain in excess of 1.00 milligram per dry standard cubic meter of exhaust (0.00044 gr/dscf).

(7) From any affected facility other than a lead reclamation facility any gases with greater than 0 percent opacity.

(8) From any lead reclamation facility any gases with greater than 5 percent opacity.

Standards of Performance for Phosphate Rock Plants

340-25-655 The pertinent federal rules are 40 CFR 60.400 to 60.404, also known as Subpart NN. The following standards set forth in Subpart NN apply to phosphate rock plants which have a maximum plant production capacity greater than 3.6 megagrams per hour (4.0 tons per hour), for which construction or modification of the facility affected by this rule commenced after September 21, 1979.

Standard for Particulate No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere:

(1) From any phosphate rock dryer any gases which:

(a) Contain particulate matter in excess of 0.030 kilogram per megagram of phosphate rock feed (0.060 lb/ton), or

(b) Exhibit greater than 10-percent opacity.

(2) From any phosphate rock calciner processing unbeneficiated rock or blends of beneficiated and unbeneficiated rock, any gases which:

(a) Contains particulate matter in excess of 0.12 kilogram per megagram of phosphate rock feed (0.23 lb/ton), or

(b) Exhibit greater than 10-percent opacity.

(3) From any phosphate rock calciner processing beneficiated rock any gases which:

(a) Contain particulate matter in excess of 0.055 kilogram per megragram of phosphate rock feed (0.11 lb/ton), or

(b) Exhibit greater than 10-percent opacity.

(4) From any phosphate rock grinder any gases which:

(a) Contain particulate matter in excess of 0.006 kilogram per megagram of phosphate rock feed (0.012 lb/ton), or

(b) Exhibit greater than zero-percent opacity.

(5) From any ground phosphate rock handling and storage system any gases which exhibit greater than zero-percent opacity.

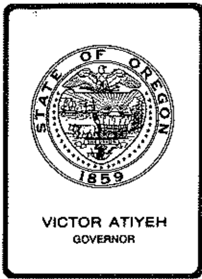
Compliance

340-25-700 Compliance with standards set forth in this rule shall be determined by performance tests and monitoring methods as set forth in the Federal Regulation adopted by reference in rule 340-25-530.

More Restrictive Regulations

340-25-705 If at any time there is a conflict between Department or regional authority rules and the Federal Regulation (40 CFR, Part 60), the more stringent shall apply.

AA2363 (1)
8/11/82



VICTOR ATIYEH
GOVERNOR

Department of Environmental Quality

522 S.W. 5th AVENUE, BOX 1760, PORTLAND, OREGON 97207

Prepared: July 30, 1982
Hearing Date: October 5, 1982

NOTICE OF PUBLIC HEARING

A CHANCE TO BE HEARD ABOUT:

Proposed Changes and Additions to DEQ Rules Concerning Handling of Asbestos, and Changes to DEQ's Emission Standards for Hazardous Air Contaminants and New Source Performance Standards to Make the State Rules Consistent With Federal Rules

The U.S. Environmental Protection Agency (EPA) has promulgated New Source Performance Standards (NSPS) starting in 1971, and National Emission Standards for Hazardous Pollutants (NESHAPS) starting in 1973. To minimize duplication of environmental administration, EPA delegates authority for the State to administer these rules after the State adopts rules at least as stringent as the federal rules.

The Department of Environmental Quality (DEQ) has received delegation to administer NSPS rules adopted by the Environmental Quality Commission (EQC) in September, 1975, and April, 1981; and NESHAPS rules adopted in September, 1975. In a March 3, 1982 letter, the EPA requested that DEQ adopt additions and amendments to the Oregon Administrative Rules to bring the state rules up-to-date with the federal rules.

The DEQ found some areas of concern in the federal asbestos NESHAPS. The DEQ is proposing to adopt federal NESHAPS rules with certain changes highlighted below.

WHAT IS THE DEQ PROPOSING:

Interested parties should request a copy of the complete proposed rule package. Some highlights are:

** A proposed rule forbids open storage or accumulation of asbestos or asbestos containing material. The new rule is numbered 340-25-465(10)(e).

** The Department proposes to omit the exemption point for small demolition or renovation jobs (260 lineal feet or 160 square feet of asbestos) added to the federal rule in October 1975.

** A proposed addition to the asbestos demolition or renovation rule would make the owner and the contractor equally responsible.

WHO IS AFFECTED BY THIS PROPOSAL:

Demolition contractors, owners of buildings to be demolished, persons planning to build or modify lead-acid battery manufacturing plants, phosphate rock plants, persons surfacing roads with asbestos-containing waste materials, fabricators who use asbestos as a raw material, and waste disposal site operators who plan to accept asbestos waste.

HOW TO PROVIDE YOUR INFORMATION:

Written comments should be sent to the Department of Environmental Quality, Air Quality Division, Box 1760, Portland, Oregon 97207, and should be received by 5:00 p.m. on October 5, 1982.

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

City	Time	Date	Location
Portland	3:00 p.m.	October 5, 1982	Yeon Building Room 1400 (14th Floor) 522 S.W. 5th

WHERE TO OBTAIN ADDITIONAL INFORMATION:

Copies of the proposed rules may be obtained from:

Peter Bosserman   Phone: (503) 229-6278
DEQ Air Quality Division
Box 1760
Portland, Oregon   97207
Outside Portland and within Oregon call toll free 1-800-452-7813

LEGAL REFERENCES FOR THIS PROPOSAL:

This proposal amends Oregon Administrative Rules: Emission Standards for Hazardous Air Contaminants, 340-25-450 to 25-480, and Standards of Performance for New Stationary Sources, 340-25-505 to 25-645. It is proposed under authority of ORS 468.295(3). The corresponding federal rules are 40 CFR 61 and 40 CFR 60.

This proposal does not affect land use as defined in the Department's coordination program with the Department of Land Conservation and Development.

FURTHER PROCEEDINGS:

After public hearing the Commission may adopt rule amendments identical to the proposed amendments, adopt modified rule amendments on the same subject matter, or decline to act. The adopted regulations will be submitted to the Environmental Protection Agency as part of the State Clean Air Act Implementation Plan. The Commission's deliberation should come on October 15, 1982 as part of the agenda of a regularly scheduled Commission meeting.

A Statement of Need and Fiscal Impact Statement are attached to this notice.

STATEMENT OF NEED FOR RULEMAKING

Pursuant to ORS 183.335(2), this statement provides information on the intended action to amend a rule, OAR 340-25-450 to OAR 340-25-700.

Legal Authority

The statutory authority is ORS 468.295(3) where the Commission is authorized to establish different rules for different sources of air pollution.

Need for the Rule

Two rule changes are needed to protect workers and to protect people who later enter the premises from cancer-causing asbestos particles. These proposed changes in the Emission Standards and Procedures For Asbestos would make the Oregon rules more stringent than the existing federal rule (40 CFR 61.22):

1. No exemption for small demolition and renovation projects (where friable asbestos is less than 260 lineal feet or 160 square feet);

2. An Oregon rule to forbid any open storage or accumulation of asbestos or asbestos-containing waste material in 340-25-465(10)(e).

The other changes bring the older Oregon rules up-to-date with the latest changes and additions to the federal "National Emission Standards for Hazardous Air Pollutants", 40 CFR 61, and with the federal "Standards of Performance for New Stationary Sources", 40 CFR 60. As Oregon rules are kept up-to-date with the federal rules, then the federal EPA delegates jurisdiction for their rules to the Department, allowing Oregon industry and commerce to be regulated by only one environmental agency. This action was urged most recently by EPA's March 3, 1982 letter.

Principal Documents Relied Upon

1. 40 CFR 60, 61 Code of Federal Regulations, as amended in recent Federal Registers concerning "Standards of Performance for New Stationary Sources".

2. Adamo v. EPA, 1978, Supreme Court decision declaring that EPA's asbestos rule 40 CFR 61.22 was not an emission standard but a work practice.

3. Consumers Central Heating Co. v. PSAPCA, a December 3, 1980 Washington State Pollution Control Hearings Board final order which vacated violations and $1250 civil penalties because no visible emissions were

witnessed, in spite of the circumstantial evidence of considerable asbestos debris left on the premises.

4. Asbestos and Disease, by Dr. Irving J. Selikoff and Dr. Douglas H.K. Lee, 1978, Academic Press, New York.

5. U.S. Environmental Protection Agency letter, March 3, 1982, John R. Spencer to W.H. Young, concerning delegation of federal rules to Oregon.

Fiscal Impact Statement

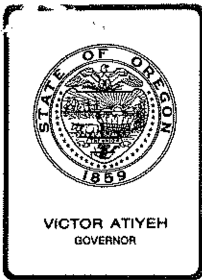
Asbestos rules and the other NESHAPS and NSPS rules are already promulgated by EPA. Adoption by and delegation to DEQ simplifies environmental administration generally at less costs. However, DEQ has proposed changes to make the state asbestos rule more stringent than the federal rule, and these changes would affect small businesses. The changes are:

1. No exemption would be allowed for small demolition and renovation jobs, causing some demolition and renovation contractors to purchase specially marked bags, apply more water, and incur special dump fees.

2. Open storage or accumulation of asbestos or asbestos-containing waste material would be forbidden, causing the owner (or contractor) some additional clean-up and disposal costs.

To somewhat mitigate these increased costs on small businesses, the Department has removed 10 and 20 day prior notice requirements in the federal rule, simplified the rule leaving out 9 definitions and nearly 2 pages of waste site practices used only at asbestos mines (there are no mines of asbestos in Oregon), and allowed for encapsulation rather than removal of asbestos.

DEQ feels these improvements to the federal rule are necessary to protect the public health from carcinogenic asbestos particles escaping to the atmosphere and the costs that may be incurred by small businesses would be far outweighed by the health benefits.



Environmental Quality Commission

Mailing Address: BOX 1760, PORTLAND, OR 97207
522 SOUTHWEST 5th AVENUE, PORTLAND, OR 97204 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. E, August 27, 1982, EQC Meeting

Mr. John Mullivan - Appeal of Subsurface Variance Denial

Background

The pertinent legal authorities are summarized in Attachment "A".

On December 11, 1981, a 11,250 square foot lot identified as tax lot 4700, in section 20 BD, township 2 north, range 10 west, Tillamook County, was evaluated for on-site sewage disposal by Ms. Kimberley Swift, Tillamook County Sanitarian. She characterized the property as having rapidly draining dune sands over a permanent groundwater aquifer. Because of the small lot size, rapidly drained soils, and permanent groundwater, she determined the property could be approved for a split waste system, using a gray-water seepage bed and a Department of Commerce approved non-discharging toilet. A full waste load system using either a sand filter or pressurized system could not be approved because the design flow would exceed the maximum loading rate ratio of 450 gallons per 1/2 acre per day allowed by rule.

An application from Mr. Mullivan for variance from the on-site sewage disposal rules was received by the Department on January 23, 1982, found to be complete, and was assigned to Mr. Gregory Baesler, variance officer. Mr. Mullivan was notified of the assignment and provided a summary of the questions upon which the decision would be based (Attachment "B"). On February 26, 1982, Mr. Baesler examined the proposed site and held a public information type hearing. He found the property to be located on a fore-dune and deflation plain of Nedonna Beach, with a soil profile consisting of rapidly draining unconsolidated dune sands overlaying a permanently perched water table. The City of Rockaway provides water to this area from two wells located approximately 1900 feet northeast of this property. The Rockaway wells draw stored groundwater from the Nedonna Beach aquifer. Mr. Mullivan proposed that a pressurized system (seepage bed), to treat and dispose of the full waste load from a three-bedroom home, would not result in an observable decrease in usability of the groundwater. The Oregon Department of Water Resources indicates that the groundwater gradient needs

to be established for this aquifer, and that the aquifer recharge area should not be further jeopardized by allowing the density of septic waste disposal systems to increase. After closing the hearing, Mr. Baesler evaluated the information provided by Mr. Mullivan and others. He determined that because the groundwater gradient had not been established, the impact of increased pollutant loading on the aquifer could not be made. The property was found by Tillamook County staff to be acceptable for a split waste gray water system, using a pressurized seepage bed and a Department of Commerce approved non-discharging toilet fixture. Mr. Baesler was unable to find that strict compliance with the rule limiting sewage flow loading rates in rapidly draining material was inappropriate for cause, or that the property possessed special physical conditions to render strict compliance unreasonable. Mr. Mullivan was notified of the variance denial by letter dated April 22, 1982 (Attachment "C").

On May 14, 1982, the Department received from Mr. Mullivan a letter (Attachment "D") appealing Mr. Baesler's decision, listing the following particulars:

1. The decision is not supported by substantial evidence.

2. The decision is contrary to existing law.

3. It is improperly construed implacable law.

4. The decision reflects a failure to follow a procedure applicable to the matter.

The Department notified Mr. Mullivan by letter (dated May 25, 1982) that the appeal would be scheduled for Commission review at the July 16, 1982 EQC meeting. At the July meeting the Commission postponed consideration of this matter until August 27, 1982, at the request of Mr. Mullivan's attorney, Mark P. O'Donnell.

Evaluation

Pursuant to ORS 454.660, decisions of the variance officer may be appealed to the Environmental Quality Commission. Mr. Mullivan made such an appeal. The Commission must determine if strict compliance with the rule or standard is inappropriate for cause, or that special physical conditions render strict compliance to be unreasonable, burdensome, or impractical.

Upon the Department's receipt of the complete variance application, Mr. Mullivan was notified by letter of the time and location of the site visit and information gathering hearing. Information contained in the notice letter constitutes, for the record, a summary of the questions which would determine the matter. After evaluating the site and after holding an information gathering hearing to gather testimony relevant to the requested variance, Mr. Baesler was unable to determine that pollution of the Nedonna Beach aquifer would not occur if the proposed system was installed. He was unable to find that strict compliance with the Department's rule was

inappropriate, or that special physical conditions render strict compliance to be unreasonable.

Summation

1. The pertinent legal authorities are summarized in Attachment"A".

2. Tillamook County staff evaluated the property for on-site sewage disposal and determined that because of the small lot size, rapidly draining soils, and presence of a permanent groundwater aquifer, the only system that can be approved for the property is a split waste system.

3. Mr. Mullivan submitted a variance application to the Department. The application was assigned to Mr. Baesler. Mr. Mullivan was notified by letter of the time and place of the site visit and hearing. He was also provided a summary of the questions which would determine the matter.

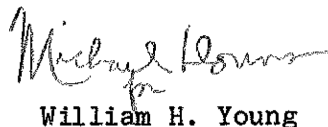
4. Mr. Baesler examined the property and conducted an information gathering hearing. After closing the hearing Mr. Baesler reviewed and evaluated the variance record. He found the testimony provided did not support a favorable decision. Although the variance request to install a full waste load system was denied, the split waste gray water system remains an option Mr. Mullivan could use.

5. Mr. Mullivan filed for appeal of the decision by letter.

6. The appeal was scheduled for EQC consideration at the July 16, 1982 meeting. However, at the request of Mr. Mark P. O'Donnell the matter was set over to the August 27, 1982 meeting.

Director's Recommendation

Based upon the findings in the Summation, it is recommended that the Commision adopt the findings of the variance officer as the Commission's findings and uphold the decision to deny the variance.



William H. Young

Attachments: 4
Attachment "A" Pertinent Legal Authorities
Attachment "B" Assignment Letter
Attachment "C" Variance Denial Letter
Attachment "D" Letter of Appeal

Sherman O. Olson, Jr:l
229-6443
June 24, 1982
XL1728

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 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. Mr. Baesler was appointed as a variance officer pursuant to the Oregon Administrative Rules: OAR 340-71-415.

6. Decisions of the variance officers to grant variances may be appealed to the Commission: ORS 454.660.

XL1728.A
6/24/82

ATTACHMENT "B"

VICTOR ATIYEH
GOVERNOR

Department of Environmental Quality

522 SOUTHWEST 5TH AVE. PORTLAND, OREGON

MAILING ADDRESS: P.O. BOX 1760, PORTLAND, OREGON 97207

February 23, 1982

John Mullivan
3885 NW Jackson School Rd.
Hillsboro, OR 97123

Re: WQ-SSS-Variance Assignment
T.L. 4700; Sec. 20BD;
T. 2N; R. 10W, W.M.;
Tillamook County

Dear Mr. Mullivan:

The Department of Environmental Quality is in receipt of a completed application for variances from Oregon Administrative Rules governing subsurface sewage disposal, OAR Chapter 340, Division 71.

As discussed with Ms. Mullivan in a telephone conversation on February 23, 1982, a public information gathering hearing to consider your requests is being scheduled for February 26, 1982. I will meet with you at the proposed drainfield site at 9:30 a.m. to examine the test pits that you are to provide, to gather soils and topographical information relevant to your proposal. As specified on the variance application form, the test pits must be dug to a depth of five (5) feet or to bedrock. Please refer to the attached plan of your proposal for the most desirable locations to place these test pits.

Immediately after the site visit, an information gathering hearing, as provided for in OAR Chapter 340, 71-430, will be held at the Tillamook County Courthouse. You are invited to have your attorney, consultant, and any other interested person in attendance at both the site visit and the information gathering hearing.

At the time of your hearing, please be prepared to offer those facts and reasons which you feel give assurance that your requested variance, if granted, will not result in the creation of a public health hazard or cause pollution of public waters. Also be prepared to offer the reasons why you find that strict compliance with the rules would be unreasonable, burdensome, or impractical.

By receipt of a copy of this letter, Tillamook County Environmental Health Department is notified of this pending variance. It is requested that a representative from this section be in attendance at both the site visit and the hearing.

If you have any questions, please feel free to contact me at 229-5296.

Sincerely,

Gregory D. Bassler, R.S.
Environmental Analyst
Northwest Region

GDB:o
RC177
Enclosure

cc: On-Site Sewage Section, DEQ
Oregon Water Resources Department
Attn: William Bartholomew
North Coast Branch, Astoria, DEQ
Tillamook County Environmental Health Department
Attn: Kim Swift, R.S.
William H. Dosk, R.S.

VICTOR ATIYEH
GOVERNOR

Department of Environmental Quality

522 S.W. 5th AVENUE, BOX 1760, PORTLAND, OREGON 97207

April 22, 1982

CERTIFIED MAIL No.348625
Return Receipt Requested

John Mullivan
3885 N.W. Jackson School Road
Hillsboro, Oregon 97123

Re: WQ-SSS-Variance Denial
T.L. 4700; Sec. 20BD
T2N; R.10W; W.M.
Tillamook County

Dear Mr. Mullivan:

This correspondence will serve to verify that your requested variance hearing, as provided for in Oregon Administrative Rules, Chapter 340, Rule 71-430 was held on February 26, 1982 and continued to April 8, 1982 for receipt of additional testimony.

Just prior to the public information gathering hearing I visited the proposed site to gather soils and topographical information relevant to your variance proposal. The subject property is located on the foredune and deflation plain of Nedonna Beach. The warranty deed describes the property as a platted lot (50x100') and also conveys the area between the lot and the Pacific Ocean. One test pit was evaluated at the time of my visit to the property. The profile consisted of rapidly draining unconsolidated dune sands overlying a permanently perched water table with no observable water to eighty-four inches. (During an earlier site evaluation by Tillamook County, the permanent water table was measured at eighty (80) inches below ground surface.) The slope of the deflation plain is approximately 5½%. Lots in the subdivision where this property is located are served with water from the city of Rockaway. The city has two (2) wells approximately 1900 feet northeast of the subject property.

Due to the rapidly draining soil characteristics, and lot size (a loading rate of four hundred fifty (450) gallons per acre per day would be exceeded),your lot was not found to be acceptable for a standard on-site system. It was, however, approved for a gray water pressurized distribution system - an alternative on-site sewage disposal system.

To overcome the site limitations, you, with the aid of your consultant, proposed to install a 20' x 30' pressurized seepage bed with one hundred lineal feet of pressure distribution pipe spaced four (4) feet apart. The seepage bed was to be installed twenty-four (24) to thirty-five (35)

inches deep. Other components incorporated into the proposal include a 1,000 gallon concrete septic tank, a 1,000 gallon dosing tank and a 1/3 h.p. pump with float controls. The proposed system was designed to serve a three (3) bedroom single family dwelling and to dispose of both black and gray water.

Variances from particular requirements of the rules or standards pertaining to on-site sewage disposal systems may be granted if it is found that strict compliance with the rule or standard is inappropriate for cause or special physical conditions render strict compliance unreasonable, burdensome or impractical.

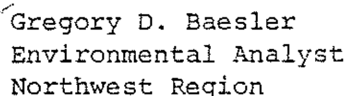
Your proposal, although well prepared, has failed to convince me that strict compliance with the rule addressing sewage flow loading rates in rapidly draining material is inappropriate for cause. Because the ground water gradient underlying the property has not been established by a hydrogeological study the impact of increased pollutant loading on the developed aquifier is unknown. The rule allowing the use of a gray water system was made to utilize properties of deficient size by decreasing the loading rates to a receiving ground water body. By installing this type of split waste system a reduction of pollutants by approximately fifty (50) percent can be realized.

Therefore, based on my evaluation of the verbal and written testimony contained in the record, I am not able to find strict compliance with the rule is inappropriate for cause, or that there are special physical conditions present which render strict compliance unreasonable. Your variance request is regretfully denied.

Pursuant to OAR 340-71-440, 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, Box 1760, Portland, Oregon 97207, within twenty (20) days of the date of the certified mailing of this letter.

Please feel free to contact me at 229-5296 if you have questions regarding this decision.

Sincerely,



Gregory D. Baesler
Environmental Analyst
Northwest Region

GDB/emc
cc: William H, Doak
NorthCoast Branch Office, DEQ
On-Site Sewage Section, DEQ
Tillamook County Health Department

ATTACHMENT "D"

May 14, 1982

Department of Environmental Quality
522 S.W. Fifth Avenue, Box 1760
Portland, Oregon 97207

Re: WQ-SSS - Variance Denial
T.L. 4700; Sec.20BD
T2N; R.10W; W.M.
Tillamook County

Dear Mr. Young:

We wish to appeal Mr. Baesler's decision for the following reasons;

1. The decision is not supported by substantial evidence.

2. The decision is contrary to existing law.

3. It is improperly construed implacable law.

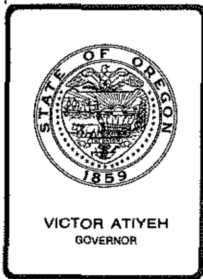
4. The decision reflects a failure to follow a procedure applicable to the matter.

Please notify us when the appeal date is set.

Sincerely yours,

John Mullivan
3885 N.W. Jackson School Road
Hillsboro, Oregon 97123

RECEIVED
MAY 14 1982
DEPT. OF ENVIROMENTAL QUALITY



Environmental Quality Commission

Mailing Address: BOX 1760, PORTLAND, OR 97207
522 SOUTHWEST 5th AVENUE, PORTLAND, OR 97204 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. F, August 27, 1982, EQC Meeting

Request for a Variance from Noise Control Regulations for Industry and Commerce, OAR 340-35-035, for Medford Corporation, Rogue River Division

Background and Problem Statement

The Medford Corporation (Medco) operates a veneer mill near Rogue River in Jackson County. Subsequent to a citizen complaint a noise survey conducted in August 1980 determined the mill generated the following statistical noise emissions at noise sensitive property:

Medco's Statistical Noise Emissions
Measured August 13, 1980

L_1	70	dBA
L_{10}	68	dBA
L_{50}	64	dBA

Noise control standards for industrial sources limit statistical noise emissions to the following values:

Allowable Statistical Noise Emissions
OAR 340-35-035 Table 7

	7 a.m. - 10 p.m.	10 p.m. - 7 a.m.
L_1	75	60
L_{10}	60	55
L_{50}	55	50

Therefore, the mill exceeded standards by approximately 9 decibels (dBA) during the day and 14 dBA at night. At that time (1980) the mill operated two shifts from approxiamtely 7 a.m. to 1 a.m.

Medco, upon notice from the Department, conducted a noise survey and implemented several noise abatement measures. However, the result of this effort was only a one to two decibel reduction. On December 30, 1980 Medco submitted a request for a variance from the rules as the achieved "sound level reduction is all that can be accomplished within the realm of economic feasibility".

Subsequent to the variance request, Department noise control staff conducted an extensive site investigation and noise survey. The results of this survey yielded results similar to those obtained in August 1980. In addition, noise emission values were attributed to various operations at the mill in order to identify major noise sources. The following noise sources identified by staff are shown in rank order as they impact the standards:

1. Cutoff saw
2. Block chipper
3. Veneer chipper
4. Hammer hog
5. Conveyors
6. Diesel powered loaders

Medco's response to staff's investigation was a proposal dated June 29, 1982 to add noise suppression equipment to achieve compliance with the daytime noise standards by July 1, 1983. However, a variance from the nighttime standards was requested. Medco bases its request on the claim that the mill must operate two shifts per day to be economically viable and therefore nighttime shut-down to achieve compliance would result in the closing down of the mill.

The Commission may grant a variance to Medco pursuant to ORS 467.060 and OAR 340-35-100 only if it finds that strict compliance with the rule or standard is inappropriate because:

(a) Conditions exist that are beyond the control of the persons applying for the variance;

(b) Special circumstances render strict compliance unreasonable, unduly burdensome or impractical due to special physical conditions or cause;

(c) Strict compliance would result in substantial curtailment or closing down of a business, plant or operation; or

(d) No other alternative facility or method of operating is yet available.

Alternatives and Evaluation

Medco has agreed to add control measures to a number of major noise sources that would provide an estimated 15 to 20 dBA reduction of noise emissions

from the specific equipment. Below are listed the equipment to be controlled, the amount of expected reduction and the completion date:

Equipment	Estimated Reduction	Completion Date
Cutoff saw	15 dBA	July 1, 1983
Log kickers	(Impact noise)	July 1, 1983
Hammer hog	20 dBA	July 1, 1983
Block chipper	20 dBA	March 31, 1983

Medco has also agreed to submit detailed engineering plans for Department review by November 1, 1982. Medco believes the above noise controls will achieve compliance with the daytime standards; however, the nighttime limits will probably continue to be exceeded under this proposal.

The proposed control measures address most of the major noise sources identified by the Department. However, some additional equipment may be suited to control. The veneer chipper, identified by the Department as a major source, was not included in Medco's proposal. In addition, diesel powered mobile equipment may contribute to the noise problem although this equipment is currently well muffled.

Medco claims a variance from the nighttime period is needed as the proposed noise controls will not achieve compliance with nighttime standards. As part of the variance, Medco agrees to a compliance schedule to meet the daytime standards by July 1, 1983. Alternatives to this proposal have been evaluated and discussed below.

It could be assumed that the veneer mill may, over time, install noise controls sufficient to achieve full compliance with the noise standards. Although Medco claims the nighttime standards will continue to be exeeded after controls are implemented, their noise control consultant indicates full compliance may be achieved. It should also be noted that Medco has decided not to implement controls on the veneer chipper that both the Department staff and Medco's consultant have identified for noise controls. Therefore, it is difficult to determine whether or not a permanent variance to the nighttime standards may be required until the effects of the proposed controls are evaluated.

An overall mill noise reduction of approximately 9 dBA is required for daytime compliance and 14 dBA to achieve nighttime compliance. Medco has claimed that strict compliance with the standards at this time would result in substantial curtailment or closing down of the mill. After the planned controls are installed, the plant may continue to exceed standards. If the daytime standards are met but nighttime standards are still not met, then strict compliance with the nighttime standards could also result in closing down of the mill as Medco claims the operation is not economically viable on less than a two shift operation.

The Department supports a variance from the day and nighttime noise standards during the period of time needed to implement the proposed

controls scheduled for completion by July 1, 1983. From July 1st until December 31, 1983, the Department supports a variance from the nighttime standards to provide sufficient time for Medco to evaluate the effectiveness of the installed controls and the need and feasibility of additional controls to meet the nighttime standards. Such a variance would be justified based upon the impact of strict compliance as discussed above. The following are proposed as conditions for a variance from strict compliance of the noise emission standards:

1. Install the following noise suppression measures within the specified time with engineering plans submitted for Department review and approval by November 1, 1982;

   a) Noise absorbing screening on the cutoff saw building by July 1, 1983.

   b) Reduction of log kicker noise on cutoff saw conveyor by July 1, 1983.

   c) Noise suppression house over bark hammer hog by July 1, 1983.

   d) Noise suppression screening on block chipper by March 31, 1983.

2. Evaluate the effectiveness of the noise control measures and, if necessary and feasible, propose additional controls toward strict compliance with the standards by September 1, 1983.

3. The variance would expire on December 31, 1983 at which time, if necessary, an extension of this variance could be requested.

Summation

The following facts and conclusions are offered:

1. Medford Corporation (Medco) operates a veneer mill in Rogue River that exceeds Commission noise emission standards by approximately nine decibels during the daytime (7 a.m. - 10 p.m.) and approximately fourteen decibels at night.

2. A variety of noise sources at the mill, including a cutoff saw, hammer hog and block chipper, contribute to the violations.

3. Medco's noise control consultant has recommended noise controls for a variety of the mill equipment that Medco has agreed to install.

4. Medco does not believe that the proposed noise controls will achieve strict complinace with the more stringent nighttime standards and has requested a permanent variance from the nighttime standards. If the mill is to continue to operate, both

the daytime and nighttime standards will be exceeded until proposed contols are installed by July 1983.

5. The Commission is authorized to grant variances from the noise standards pursuant to ORS 467.060 if strict compliance would result in closing down of a facility.

6. It is staff's opinion that Medco should be granted a time limited variance to install the proposed controls, evaluate their effectiveness and, if necessary and feasible, propose additional controls toward strict compliance with the nighttime standards.

Director's Recommendation

Based upon the findings in the Summation, it is recommended that the Medford Corporation, Rogue River Division, be granted a variance from strict compliance with the noise emission standards of OAR 340-35-035 Table 7. This variance shall be subject to the following conditions:

1. Engineering plans for proposed noise controls shall be submitted to the Department by November 1, 1982.

2. Proposed noise controls on the cutoff saw, log kickers, bark hammer hog and block chipper shall be installed by July 1, 1983.

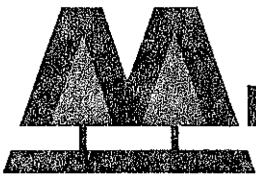
3. A report evaluating the effectiveness of the control measures and, if necessary, proposing additional controls toward strict compliance, shall be submitted to the Department by September 1, 1983.

4. This variance shall expire on December 31, 1983 at which time, if necessary, an extension of this variance may be requested.

for William H. Young

Attachments: A - Variance Request dated June 29, 1982
B - Consultant Report dated June 9, 1982
C - DEQ Noise Survey dated August 21, 1981
D - Variance Request dated December 30, 1980

John Hector:a
229-5989
August 6, 1982
NA2387 (1)



MEDFORD CORPORATION
P.O. BOX 550, MEDFORD, OREGON 97501 ★ TELEPHONE 503 - 773-7491

June 29, 1982

Mr. John M. Hecktor, Supervisor
Noise Pollution Control
Department of Environmental Quality
522 S.W. Fifth Avenue
Portland, OR 97204

Dear John:

Al Duble, the accoustical consultant retained by the company, has completed his report. On the basis of his work, it appears some improvement can be made in the noise levels within cost effective parameters.

Duble does not believe the plant can be brought into total compliance with the nighttime 50 dBA standard, which underscores the need for a variance.

We propose, as a part of the variance, to install the following noise suppression measures:

1. Install noise absorbing screening on the cutoff saw building. Completion by July 1, 1983.

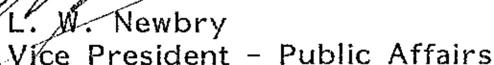
2. Rebuild log kickers on cutoff saw conveyor to reduce impact noise. Completion by July 1, 1983.

3. Install noise suppression house over bark hammer hog. Completion by July 1, 1983.

4. Install additional noise suppression screening on block chipper. Completion by March 31, 1983.

These measures will provide acceptable noise conditions during the nighttime hours, but will not achieve the nighttime standard. We, therefore, respectfully request a variance from the standard for this plant with the stipulation that compliance with the above measures will be completed within the times indicated.

Sincerely,



L. W. Newbry
Vice President - Public Affairs

LWN/dl

RECEIVED
JUN 30 1982
Noise Pollution Control

Attachment B
Agenda Item F
August 27, 1982 EQC Meeting

ALBERT G. DUBLE
ACOUSTICAL CONSULTANT

ROUTE 3, BOX 321A NEWBERG, OREGON 97132 BUS: 503-244-5205 RES: 503-538-8044

MEMBER - INSTITUTE OF NOISE CONTROL ENGINEERING

June 9, 1982

L.W. Newbry, Vice President
Medford Corporation
P.O. Box 550
Medford, Oregon 97501

RE: Rogue River Veneer Mill - Noise Reduction

Dear Lynn:

Attached is my acoustical analysis and recommendations of the environmental noise situation at the veneer mill. A cursory check of adjacent property noise levels indicates the DEQ measurements are probably very close to correct. The noise controls proposed should individually drop noise levels to the DEQ nighttime standards but the accumulative effect may still exceed the 50 dBA standard. The cutoff saw is the marginal case since part of the saw shed east side must be open. A lenghthy machine cycling test and propagation analysis would be required to closely estimate final levels and I don't believe this would be cost effective now. My estimates are usually close enough if attention to detail is paid during assembly or construction to limit sound leaks and block major airborne paths.

The controls are conceptual in nature without detailed physical measurement for construction. These can be taken by the contractor should you choose to proceed with any projects.

Call me if I can be of further assistance to you on the matter or if questions should arise.

Very truly yours,

Al Duble

Albert G. Duble
Acoustical Consultant

AGD/jo

MEDFORD CORPORATION VENEER MILL - Rogue River - Oregon.
ENVIRONMENTAL NOISE SOURCE ANALYSIS

DISCUSSION

Adequate noise reductions can be obtained with the hardware described herein for the hog and chippers and these machines should be individually in DEQ compliance at the adjacent property of concern. Cutoff saw noise reduction with the proposed metal building add-on section should reach 15 dBA if the internal building surfaces are fiberglass treated as described. The saw could still be 5 to 10 dBA over the nighttime standard on saw peaks if the debarker east bay openings are left uncovered as is. The controls described are feasible from the engineering standpoint. Cost feasibility must be determined by Medford Corp. from the facts presented here and in Table 1.

An interview with Mr. Williams indicated he is particularly sensitive to the cut-off saw, impact noise due to log drops and log kickers, and late evening road noises caused by employee vehicles leaving the mill. This is surprising since about 150 diesel trucks visit the mill in a 24 hour period. It is probable that frontage road traffic may be of concern once the mill machine noise is reduced. With this in mind, the following suggestions for vehicular noise controls are presented for future use:

1. Issue memo to second shift employees regarding noisy getaways and motorcycle mufflers.

2. Issue memo to heavy vehicle contract haulers regarding diesel truck operating habits to limit noise (early gear shifts vs rpm, jake brakes, mufflers, etc.)

Two major sources are responsible for impact noise. Two sets of log kickers along the cut-off saw conveyor have loose elbow pins and steel-to-steel impact in the energized position. These should be adjusted for clearance of UHMW plastic used for impact plates. Pins should be tightened to limit slack.

Front loader to lathe conveyor log drops cause another impact noise. A change in loader operational technique may help. At other locations, a ½" UHMW plastic sheet between conveyor chains has helped to limit noise. A tight chain could also aid the cause.

ACOUSTICAL RECOMMENDATIONS

CUT-OFF SAW

Non-interference with production would require a 45' X 18' side-shed addition to the debarker/cut-off saw metal building. A sketch of this addition is shown in Detail 1. The structure can be of the type presently used for the existing building with a minimum metal skin thickness of 20 ga. for both walls and roof. The roof and upper half of the east sidewall should be lined with a 2½" to 3½" fiberglass metal building insulation with a 2 mil. (maximum) plastic facing. Slots will be provided for chip and production lumber and these should be minimum area openings covered with PVC strip curtains.

Materials and labor estimates for this and all noise controls are shown in Table 1.

Noise reduction will be limited by the east side bays left open for operation of the debarking process. Absorptive treatment of the ceiling and upper sidewalls of the cut-off saw and debarker building will help limit this leakage. This cost is estimated separately in Table 1.

HOG ENCLOSURE

An efficient enclosure would be a simple box with two small access doors and a cut-out on top for the delivery chute. Materials selected are steel and fiberglass. The hog deck should be solid and steel skirts should be used to close in the space under the hog platform. The noise reduction should be sufficient to meet the DEQ nighttime standard. An enclosure is chosen since there is no efficient way to limit rock accumulation in hog material. If local fire codes require inside sprinklers, the cost will be additional to that quoted.

BLOCK CHIPPER

Due to the physical configuration this chipper will require enclosure of both the lower and chipper shed sides, and the side sections over the infeed conveyor. The conveyor shed roof will be lined with fiberglass insulation. The conveyor shed floor must also be solid. All cover materials are a minimum 20 ga. steel (double with insulation), or double layers of plywood, both with 4 inches of exposed ceiling fiberglass insulation. The insulation must have high sound absorption at 125 and 250 Hz. and be able to shed sawdust. The east end of the conveyor shed should be closed in with a walkway entry door and PVC strips over the conveyor.

VENEER CHIPPER

This machine can be enclosed using the existing uncompleted enclosure as a base of construction. Enclosure for this chipper will lower occupational noise exposure for the chipper feederman at the east end of the conveyor. Chipping noise levels at his work station are 95 to 110 dBA.

Construction uses plywood over sheetrock to complete the chipper enclosure, adding a top and a 20 foot tunnel over the conveyor. The conveyor bottom should have a V shaped scrap drop out chute with a minimum size slot. The chipper deck should have ¼" steel tredplate or 2" tongue and grove decking. A solid core door and 4" of wall and ceiling insulation completes the enclosure.

TABLE 1

Noise Control Cost Estimates

Machine	Control	Est.N.R.*	Est.Cost
Cut-off Saw	Metal Bldg.addition and absorptive treatment of existing bldg.	15	$12,000 5,000 Total $17,000
Hog Enclosure	4" steel panel system and steel deck.	20	$3,500
Block Chipper	Metal bldg. additional material, ceiling insulation and solid deck.	20	$6,500
Veneer Chipper	Wood and sheetrock system enclosure with tunnel over conveyor.	15	$3,600

*Estimated A-weighted noise reduction to obtain DEQ nighttime compliance for the machine (if possible).

Aid in estimating control costs was supplied from the following:

Steel Systems - R & W Industries
Hubbard, Oregon
Mr. Russ Wolf

Wood Systems - Country Construction
Newberg, Or.
Mr. Jeff Council

Insulation The Harver Company
Portland, Or.
Mr. Dale Stewart

Attachment C
Agenda Item F
August 27, 1982 EQC Meeting

STATE OF OREGON

INTEROFFICE MEMO

Noise Control (DEPT.) 6365 (TELEPHONE)

TO: Files CC: SWR, Medford DATE: August 24, 1981

FROM: Jerry Wilson through John Hector

SUBJECT: NP - Medford Corporation (MedCo), Rogue River, Jackson County

At the request of the Southwest Region Office, and pursuant to an outstanding variance request by MedCo, I traveled to and made noise measurements near MedCo's Rogue River mill.

Noise measurements were made at the Lloyd Williams residence, 5204 N. River Road, Rogue River, according to Departmental procedures. Samples were taken from 1300 PDT on July 16, 1981 until 1100 PDT on July 17, 1981, using a DA 607p community noise analyzer with DEQ's automatic wind noise inhibitor. The system as equipped meets ANSI Type 1 specifications. Measurements were performed according to DEQ procedures.

During the first two hours of the sample (1300 to 1500 PDT July 16, 1981), I remained on site with the noise monitor to exclude contaminating noises from the sample. Excluded sounds were from road vehicle traffic, aircraft and other non-MedCo sources. I also took this time to record levels of sounds corresponding to specific sources within total plant operation that I could identify. These readings are shown below along with traffic counts for the respective hours:

Medford Corporation, Rogue River
Noise Levels of Specific Sources at NSP
1300 - 1500 PDT 7/16/81

Source	Minimum (dBA)	Maximum (dBA)	Central Tendency (dBA)
Plant noise overall during operation	60	71	66
Cutoff saw	64	70	68
Veneer chipper	61	65	64
Block chipper	64	68	66
Conveyors and hydraulics	63	69	
Dropping noise, logs on deck and conveyors		68 - 73	
Loaders during afternoon break	57		59
Loader passing at nearest point on property		64	
Rocks banging in fuel hog		78-81	
Fuel hog and mulch hog (normal operation)		NOT DISTINGUISHABLE	
Break time, fans, chippers, etc. idling	55	60	57 - 58
Air horn, plant signal			69
Ring debarker		NOT AUDIBLE OVER OTHER EQUIPMENT	

Medford Corporation
Memo to the file
August 24, 1981

Traffic Counts on N. River Road

	Hour	
	1300 PDT	1400 PDT
Cars (*1 tractor included)	44	64*
Motorcycles	4	1
Trucks (heavy)	6	9
Trucks, audible from I-5	6	3
Airplanes	0	1

The hourly results obtained through measurements with the DA 607p noise analyzer are attached.

On July 17, 1981, Mr. Dean Price, plant manager, took Larry Jack, of the Medford Office, and myself on a tour of the facility. Mr. Price noted that several of the conveyor drives had been modified with idler wheels to prevent conveyor slap. We observed that the conveyors were not slapping and that some had been lined with plastic material. Log loaders were also equipped with mufflers in good repair. Mr. Price also showed us the 60 inch ring debarker which was installed at a cost of $1.2 million. This type of debarker shows marked advantages in reduced noised and improved efficiency over "rosser head" type debarkers.

During our discussions with Mr. Price, Larry Jack and I observed several noisy operations. These were operations either not investigated by MedCo's consultant or not recommended for treatment. We pointed out to Mr. Price that there were no significant barriers or enclosures between these operations and adjacent residences. We noted that a limited closed circuit television system has been installed to monitor conveyor jam ups. I told Mr. Price that other companies, such as the Murphy Company plant in Myrtle Point, Oregon, had enclosed operations and used closed circuit TV systems to significantly reduce noise while retaining capability to easily operate and maintain the equipment.

Mr. Price also showed us the "fuel hog" which has been the subject of several complaints. This unit normally runs at levels that are not easily distinguishable from other plant noises at nearby residences. The problem occurs when unwanted rocks travel by conveyor into the fuel hog. It uses a set of 24 hammers, weighing 55 lbs. each, to pulverize wood scraps into fuel material. This process is contained inside a metal chamber. Rocks entering this equipment are kicked back up, bounce off the metal sides and reenter the hammering process until they are pulverized and pass through the hammers. The fuel hog is not enclosed and the intervening structure is not a significant sound reducing barrier. I suggested to Mr. Price that a combination of noise reduction techniques should be applied, including damping (lagging), enclosure and absorption.

Medford Corporation
Memo to the file
August 24, 1981

Mr. Price was very cordial, thanked us for our suggestions and stated his willingness to continue working with us. This summarizes our site investigation.

Conclusions

At this point, several conclusions can be made. These matters will be discussed in the same order as the unresolved issues mentioned in John Hector's June 29, 1981 memo to the file.

1. Measured noise emissions from MedCo's Rogue River mill are clearly in excess of DEQ noise limits. Results of two hours of sampling are shown here:

Noise Levels at NSP

	MedCo Plant 7/16/81		DEQ Limits	
	1300 PDT	1400 PDT	7 a.m. - 10 p.m.	10 p.m. - 7 a.m.
L_1	71 dBA	69 dBA	75 dBA	60 dBA
L_{10}	66	66	60	55
L_{50}	63	63	55	50

Measurements using the community noise analyzer show that approximately the same levels exist whenever the plant is running (about 6 a.m. to 2:30 a.m.).

2. The magnitude of ambient noise levels from traffic and other sources not associated with MedCo was only sampled during early morning hours while the plant was closed. The ambient levels measured are near DEQ nighttime limits and are probably due to traffic from the I-5 freeway. Noise levels from the plant, measured during early morning hours, are 10 dBA or more above the measured ambient levels, as shown here:

Noise Levels at NSP (7/17/81)

	MedCo Plant		Ambient Levels	
	0000	0100	0300	0400
L_1	70	70	57	59
L_{10}	65	65	53	55
L_{50}	62	61	48	49

Noise measurements during the first two daytime hours were only interrupted approximately 4 and 5 minutes, respectively, due to extraneous noise sources.

From these findings, the following conclusions apply:

Medford Corporation
Memo to the file
August 24, 1981

a. DEQ measurements at MedCo were negligibly influenced by ambient noise levels.

b. If the MedCo plant itself were to comply with DEQ night-time limits, the resulting sound levels, including ambient noise, would be as follows:

Estimated Nighttime Noise Levels at NSP with MedCo (in compliance) plus Ambient

	dBA
L_1	62.5
L_{10}	58
L_{50}	52.5

3. In evaluating the effectiveness of mitigation action taken thus far, the following can be stated:

   a. Conveyor chains do not appear to slap or squeak.

   b. Log loaders and fork lifts appear to have mufflers in good repair.

   c. Barriers erected around two chippers do not effectively reduce noise levels leaving the plant site.

   d. Since Larry Jack's first noise survey on this mill, recent measurements show the statistical L_1, L_{10} and L_{50} noise levels have changed 0, -2 and -1 dBA, respectively.

4. I have reevaluated the major sources in rank order along with possible additional noise mitigation work. These are listed in the table below:

Rank	Source	Noise Reduction Techniques
I	Cut off saw	Enclosure*, absorption
II	Block chipper	Enclosure, absorption
III	Veneer chipper	Enclosure, absorption
IV	Fuel hog	Damping, enclosure, absorption
V	Mulch hog	Damping, enclosure, absorption
VI	Conveyors	Lining conveyor runs and returns, partially completed. Acoustical tunnels to and from acoustical enclosures.
VII	Diesel loaders	Mufflers already installed, some are turbocharged. No further action recommended at present.

* The word "enclosure" denotes either total enclosure or barrier noise control techniques.

The above listing is based largely on our July 17, 1981 tour of the site, along with the noise measurements performed at NSP. It should be noted that most all operations of the plant are under roof cover. There is a major structure to support the roof as well as substructures around certain individual operations. These structures might form the framework upon which the acoustical enclosures could be built. This would depend on engineering load safety factors, decoupling from structural vibration and other considerations.

5. I believe that it would be difficult for the MedCo mill to totally comply with DEQ noise control limits. Noise control technology which would yield compliance exists for all the sources except for the diesel log loaders. Some additional noise reduction techniques, such as engine side covers, etc., could be applied to the mobile equipment. However, these units usually operate on parts of the MedCo property that are somewhat removed from the nearest residences. These additional measures would not be recommended at present.

6. Estimating the cost of additional noise pollution controls is beyond the scope of this study.

7. Determining whether MedCo will take additional control measures rather than pursue a variance is difficult to ascertain. The following facts would probably influence their decision on the matter:

   a. Certain control strategies are available that MedCo may not have examined previously.

   b. The plant has faced shutdowns such as the two week shutdown starting around July 19, 1981 due to market conditions. This was reported to us by Mr. Price.

   c. The estimated cost of additional controls.

   d. The historical tendency for the EQC to look favorably on variance requests after companies have shown significant progress on feasible mitigation techniques.

In Summary

MedCo has shown willingness to cooperate. There are additional feasible noise controls that can be applied to the source. Discussions with MedCo will be needed to determine items #6 and #7 above.

GTW:pw
Attachment

MEDCo, ROGUE RIVER, JACKSON CO

NSP - LLOYD WILLIAMS, 5204 N. RIVER RD, ROGUE RIVER, OR

CAL 12:45 PDT 7/16/81

THURSDAY JULY 16, 1981 — FRIDAY JULY 17, 1981

	13	14	15	16	17	18	19	20	21	22	23	00	01	02	03	04	05	06	
L_{EQ}	64	64	63	65	64	63	64	63	64	64	62	63	63	58	50	52	56	58	L_{EQ}
$L_{.1}$	75	72	76	76	73	72	73	72	73	74	72	75	73	70	62	70	70	73	$L_{.1}$
L_1	71	69	71	72	70	70	70	69	70	70	69	70	70	67	57	59	65	67	L_1
L_{10}	66	66	65	66	66	66	66	65	66	66	65	65	65	63	53	55	58	60	L_{10}
L_{50}	63	63	61	62	63	61	62	60	63	62	60	62	61	52	48	49	52	56	L_{50}
L_{90}	56	53	57	60	60	58	60	57	60	60	58	59	56	45	43	44	45	53	L_{90}
	*	*											PLANT SHUTDOWN BY 0230				PLANT START UP BY 0540		

EST FANS AT 56dBA

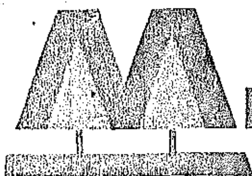
	07	08	09	10
L_{EQ}	65	65	64	65
$L_{.1}$	76	74	75	74
L_1	71	71	71	72
L_{10}	66	67	66	67
L_{50}	63	63	62	63
L_{90}	61	60	58	60

END CAL
1104 PDT 7/17/81
0.1 dB change

* ROAD VEHICLE NOISE EXCLUDED FROM SAMPLE. AIR TRAFFIC ALSO EXCLUDED.

L_{EQ}	
$L_{.1}$	
L_1	
L_{10}	
L_{50}	
L_{90}	

Attachment D
Agenda Item F
August 27, 1982 EQC Meeting



MEDFORD CORPORATION

P.O. BOX 550, MEDFORD, OREGON 97501 · PHONE 503 - 773-7491

December 30, 1980

Dept. of Environmental Quality
RECEIVED
JAN 5 1981
Noise Pollution Control

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED

SOUTHWEST REGION OFFICE

Mr. Larry Jacks
Environmental Specialist
Department of Environmental Quality
223 West Main, Room 202
Medford, OR 97501

Dear Larry:

In response to the complaint registered against Medford Corporation, Rogue River Division, on August 25, 1980 by the Department, the company has taken the following actions:

1. Retained the engineering firm of Marquess and Associates to ascertain the extent of the problem and to make recommendations as to solutions (copy of Marquess and Associates report attached).

2. Followed and implemented the recommendations of the consulting firm with the exception of action item number 2 relating to diesel trucks.

3. In addition to the above recommendations, sound absorbing walls were erected around the two chippers on the premise.

4. Retained Marquess and Associates to take additional sound level readings after taking the remedial actions to determine the impact of these actions (letter attached).

The company took no action on the diesel powered trucks because this equipment is owned by other persons and is not under company control. Further, road equipment is treated differently in the regulations from industrial sources and should be dealt with accordingly.

Medford Corporation has accomplished all the remedial recommendations suggested by the consultant and believes that sound level reduction is all that can be accomplished within the realm of economic feasibility. It is obvious from the M&A report that the Rogue River Division cannot meet the requirements of the regulation due in great measure to the background noise generated by Interstate 5.

Because of the remedial action already taken and the resultant reduction in L1 and L10 noise levels, the company does not contemplate any further action or the need for a compliance schedule.

Mr. Larry Jacks
Page 2
December 30, 1980

In accordance with the provisions of ORS 467.060, Medford Corporation requests a variance from the provisions contained in OAR Chapter 340, Division 35, as they may apply to the Rogue River Division. A variance in this situation is justified in view of the circumstances existing at this location.

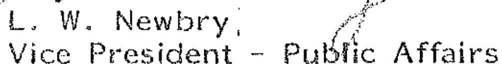
It is extremely doubtful, as pointed out by the consulting firm, that this plant can be equipped to bring the noise levels within the prescribed levels. This is particularly true in the nighttime hours. Strict enforcement of these regulations can only result in the closure of the mill. The economic realities are such that at least two shift operation is essential to insure any return on the investment. A closure of this plant would result in the loss of the only industry in the City of Rogue River, an annual income to the enterprise of $12 million, and a loss of 84 jobs.

A mill of one kind or another has existed on this site for more than 40 years. The previous owners operated the mill virtually as it exists today for several of those years without serious complaint. It is indeed unfortunate that residences are in such close proximity to the mill; however, this situation has also existed over a long period of time. A major problem in the community of Rogue River is the topography. It is situated in a very narrow valley which, in addition to the community itself, must also accommodate the Rogue River, I-5, two other major thoroughfares, and a railroad--all running parallel to one another. This dictates that available land must accommodate all uses within very narrow confines.

Medford Corporation respectfully requests favorable consideration of this variance and stands ready to provide further information to sustain its position.

Sincerely,

MEDFORD CORPORATION

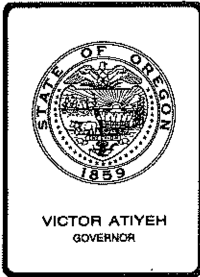


L. W. Newbry
Vice President - Public Affairs

LWN/dl

cc: Stuart Foster
Gary Grimes

Enclosures: Marquess & Associates Report
Marquess & Associates Letter



Environmental Quality Commission

Mailing Address: BOX 1760, PORTLAND, OR 97207
522 SOUTHWEST 5th AVENUE, PORTLAND, OR 97204 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. G., August 27, 1982, EQC Meeting

Proposed Adoption of a Temporary Revision of Administrative Rule 340-81-020 Regarding the Eligibility of Land Costs Used in providing State Financial Assistance to Public Agencies for Pollution Control Facilities (Pollution Control Bond Fund)

Background

In 1971, the Environmental Quality Commission established rules for the administration of a loan, grant and local bond purchase program in order to assist public agencies to plan and construct pollution control facilities pursuant to Article XI-H of the Oregon constitution and as further defined by Oregon Revised Statutes 449.455. The state financial assistance program was undertaken concurrently with a federal construction grant-in-aid program; the state program resulted in a greater federal percentage share of participation in local projects during the early 1970's, due to the demonstrated interest of the state in pollution control.

The 1971 Oregon Administrative rules adopted many concepts inherent in the federal construction grant, including a limitation on the eligibility of costs related to land acquisition. From 1956 until 1977, federal rules prohibited grant assistance for the acquisition of land for treatment facility sites, including plants, pump stations, or pipe-related projects. In 1977, federal rules were revised to encourage the use of innovative or alternative technologies for the treatment of waste water. Since innovative and alternative systems, by definition, generally do not discharge waste water to surface waters, they tend to be land-intensive uses. The encouragement of such land-based systems was accomplished by providing 85 percent federal eligibility for the cost of the system including land.

Also, beginning in federal fiscal year 1980, the distance increased dramatically between the declining levels of federal construction grant appropriations and the recognized needs of communities on the state priority list. In 1980 and 1981, the Department directed its efforts to establishing an awareness among local governments that (1) federal funding level decreases were expected to be permanent; (2) planning for sewerage improvements could not rely on the uncertain timing and amounts of federal assistance; and

(3) other financing strategies within the intent of state law should be thoroughly examined. On October 9, 1981, the Environmental Quality Commission adopted its Policy on Sewerage Works Planning and Construction in Absence of Federal Funding, further demonstrating alternative planning strategies to cope with the decreased federal funding support. Minor changes in the authority of the EQC to purchase local bonds for pollution control facilities were enacted by the Oregon Legislature in 1981 so that a 100 percent bond purchase alternative was made available. Previously, bond purchases were limited to not more than 70 percent of eligible project costs under the federal construction grants program and were sufficient only to assist in financing the local share cost of a grant funded project.

Evaluation and Discussion

For the past three years, decreasing levels of federal funding support for construction of sewerage works improvements have necessitated independent local financing strategies to achieve these goals. Many of the administrative rules established in 1971 were predicated on the idea of companion federal and state/local programs. This integration of programs was apparent in a common limitation in the eligibility of land costs for participation in either program; land costs were considered distinctly local costs.

Present circumstances, however, should reflect a more independent state and local approach to the financing of water pollution control facilities. Increasingly, projects are expected to be constructed with a reduced share of federal funding or none at all. Land for treatment plant sites, especially, is an integral part of the capital improvement financing strategy which communities must plan. Current circumstances do not provide a rationale for distinguishing the cost of acquisition of land for a treatment plant site, where necessary. Therefore, in order to better implement the intent of the constitutional provision and the Oregon Legislature and provide a comprehensive funding program for needed water pollution control facilities, land acquisition costs should be eligible for assistance from the pollution control bond fund.

The DEQ is presently considering a request for assistance from the pollution control bond fund which may be prejudiced if immediate action is not taken on the proposed rule revision. The project is expected to receive its first construction grant in the first quarter of Federal Fiscal 83 beginning in October 1982. The grant cannot be awarded unless they have secured the land where the plant will be constructed. Proceeds from the planned bond sale are essential for the land acquisition. If the temporary rule is not adopted, the project may be delayed with a potential loss of grant funds.

The Department intends to develop a comprehensive update of Division 81 of the Administrative Rules governing State Financial Assistance for Pollution Control Facilities during the 180 day effective period for this temporary rule.

Summation

1. In 1971, the EQC established rules for the administration of the pollution control bond fund pursuant to the direction in the Oregon constitution and state statutes. The definition of eligible costs excluded land acquisition costs and reflected the definition of land eligibility used in the federal construction grants program.

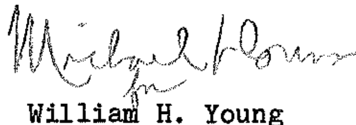
2. Changes in the federal definition of land eligibility for some projects occurred in 1977. The declining federal appropriations levels since 1979 have resulted in the need for a more independent state and local financial assistance strategy.

3. Land acquisition costs are integral to the capital improvement financing strategy which communities must develop and should be eligible for assistance from the pollution control bond fund.

4. Failure to adopt a temporary rule change to OAR 340-81-020 to better implement the general intent of state financial assistance to public agencies planning to construct water pollution control facilities may prejudice a project that is relying on assistance from the Bond Fund for funds to acquire land for construction of a new regional treatment plant. Federal grant funds scheduled for award after October 1, 1982, cannot be awarded until the land is secured. Failure to act may delay the project and could cause loss of initial grant funds.

Director's Recommendation

Based on the findings in Summation, the Director recommends that the Commission adopt a temporary revision to OAR 340-81-020 which will provide that costs related to land acquisition are eligible for state financial assistance. The temporary rule will be effective for 180 days after its adoption.



William H. Young

Attachments: 2
"A" OAR 340-81-020, as Revised
"B" Statement of Need for Rulemaking

B. J. Smith:l
229-5415
August 13, 1982

WL1853

ATTACHMENT "A"

STATE FINANCIAL ASSISTANCE
DIVISION 81

State Financial Assistance to Public Agencies for Pollution Control Facilities

Water Pollution Control Facilities

Eligible Costs

340-81-020 Eligible costs for water pollution control facilities shall include: construction and materials costs; planning; engineering design and inspection costs; [and] project related legal and fiscal costs [, except those] ; and costs related to land acquisition.

WL1856
8/9/82

ATTACHMENT "B"

Agenda Item No. G, August 27, 1982, EQC Meeting

STATEMENT OF NEED FOR RULEMAKING

Pursuant to ORS183.335(7), this statement provides information on the Environmental Quality Commission's intended actions to consider a temporary revision to OAR Chapter 340, Division 81, Section 020.

(1) Legal Authority

ORS 468.020 authorizes the Environmental Quality commission to adopt rules and standards in accordance with ORS Chapter 183.

(2) Need for the Rule

This modification is needed in order to better implement the intent of ORS 454.505 et seq which establishes a program for state aid to assist in the construction of municipal sewage treatment works and is needed to accomplish the state's policy of water purity as stated in ORS 468.710. The proposed rule will enable the Department of Environmental Quality to purchase municipal bonds for land acquisition costs where such acquisition is an integral part of a project for construction of a sewage treatment works facility. The failure of the EQC to act promptly on this proposed temporary rule will result in serious prejudice to a pending application for pollution control bond purchase. The project is expected to receive its first construction grant in the first quarter of Federal Fiscal 83 beginning in October 1982. The grant cannot be awarded unless they have secured the land where the plant will be constructed. Proceeds from the planned bond sale are essential for the land acquisition. If the temporary rule is not adopted, the project may be delayed with a potential loss of grant funds.

(3) Principal Documents Relied Upon in This Rulemaking

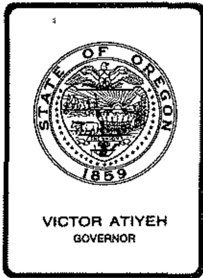
(a) ORS Chapter 454
(b) OAR Chapter 340, Division 81

(4) Fiscal and Economic Impact of Rulemaking

The fiscal impact of this rulemaking is upon municipalities and special districts seeking to sell municipal bonds for water pollution control facilities to the Department of Environmental Quality. The temporary rule affects the eligibility of land acquisition costs as an item for which bonds may be purchased. Since few federal grant dollars are expected to assist communities for this purpose and because many capital improvement plans for sewerage treatment facilities include land acquisitions as an integral element of the local program, the inclusion of land costs are expected to benefit communities because they may pay less to improve or construct sewerage facilities.

The proposed rules will have a minimal fiscal impact on the Department of Environmental Quality. All costs for construction or acquisition of land which are financed through a pollution control bond purchase will be adequately secured for repayment.

BJS:l
WL1857
8/9/82



Environmental Quality Commission

Mailing Address: BOX 1760, PORTLAND, OR 97207
522 SOUTHWEST 5th AVENUE, PORTLAND, OR 97204 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. H, August 27, 1982, EQC Meeting

Request for Declaratory Ruling as to the Applicability of OAR 340-61-031 to the Application of the Metropolitan Service District for Preliminary Approval of a Solid Waste Disposal Site Known as Wildwood Landfill in Multnomah County

Background

In July 1981, the Department gave a "preliminary approval" to the Metropolitan Service District (Metro) for their proposed Wildwood landfill site in northwest Multnomah County. (See Exhibit 1 of petitioners' submittal.) This was done after review of a feasibility study submitted by Metro, which included a first conceptual landfill design. The preliminary approval included a report outlining the Department's areas of concern.

Since receiving preliminary approval, Metro has proceeded with further data gathering and development of proposed remedies, including changes in the conceptual landfill design. Information gathering is continuing and the final landfill design to be proposed is not ready for formal submission to the Department. There is no permit application before the Department for Wildwood.

Oregon law allows the Commission in its discretion to issue declaratory rulings on the application of certain facts to agency rules, through a hearing process.

Clarence Koennecke and West Hill and Island Neighbors, Inc., have presented a petition to the EQC to make a "declaratory ruling as to the applicability of OAR 340-61-031 (Attachment I) to the application of the Metropolitan Service District for preliminary approval of a solid waste disposal site known as Wildwood Landfill in Multnomah County." Specifically, they contend that "the design concept for which Metro is seeking land use approval from Multnomah County does not have the preliminary approval of the DEQ." They also contend that insufficient work has been completed by Metro to satisfy the Department's rules for a complete feasibility study report (OAR 340-61-030, see Attachment I). This report is a required exhibit of a solid waste disposal permit application. Information being gathered toward completing that exhibit is used by the Department to give "preliminary approval."

The petitioners raised the same issue in a memorandum to Multnomah County at the June 17, 1982 land use hearing. The Multnomah County planning staff recommended denial in their August 5, 1982 staff report based on the following:

> "The preliminary DEQ review is an important, probative piece of data. It identifies issues which need further research and review prior to granting DEQ permits. These issues are the same regardless of the conceptual plan being considered. The Hearings Officer will not exclude the DEQ testimony."

During the continued land use hearings of August 5 and 6, 1982, no challenge to the county staff position was voiced.

Evaluation

Those who propose new solid waste disposal sites have a need for early review and response from the Department on proposed new sites, to reduce the risk of investing large amounts of money evaluating and planning a site which, to the Department, may have severe limitations at the outset. This technical assistance has routinely been provided verbally and in writing.

The concept of "preliminary approval" of a site was added to the Department's rules in August of 1981, at the request of landfill operators to further satisfy their need for early Department feedback. It is a discretionary courtesy offered to a future permit applicant, but is not part of the Department's permitting process. The Department began giving written "preliminary approvals" prior to offering this response in the rules.

"Preliminary approval" is a discretionary act, a communication medium which is not binding on the Department. It tells the requesting entity that, preliminary to the formality of the permitting process, the site has some apparent merit, and certain areas of concern must be dealt with, to the eventual satisfaction of the Department, if a permit application is to be successful.

It is the "directive" of the preliminary approval that additional information be gathered and designs be changed. To challenge a preliminary approval on the basis of changing design or inadequate information is therefore illogical on the face of it. No changes have occurred that would cause the Department to withdraw its preliminary approval from Wildwood. We believe the Commission should exercise its discretion to not go through the process of making declaratory ruling, since it would seem to be a futile act.

Summation

1. In July 1981, the Department gave a preliminary approval to Metro for the proposed Wildwood landfill site in northwest Multnomah County, including description of "areas of concern" which must be addressed if formal approval is to be requested.

2. Using the Department's preliminary approval as partial guidance, Metro is proceeding to gather additional site information and develop a specific landfill design upon which to apply for a solid waste disposal permit. No permit application for Wildwood is pending with the Department.

3. Clarence Koennecke and West Hill and Island Neighbors, Inc., request a declaratory ruling by the Environmental Quality Commission on the application of the Department's preliminary approval to a changed design concept for Wildwood Landfill and incomplete feasibility study report, required for a formal permit application.

4. In its hearings process, Multnomah County Planning Department rejected petitioners' argument that the Department's preliminary approval does not apply to changed landfill design.

5. Preliminary approval is not part of the Department's solid waste permitting process. It may be requested by a prospective permit applicant and may be granted by the Department at its discretion prior to entering the formal permit process and submitting a complete feasibility study report.

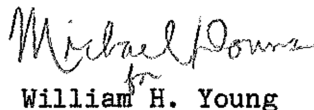
6. The intent of preliminary approval is to satisfy a need to know the Department's opinion of a proposed disposal site and get direction on areas of concern to be addressed. The intent is further satisfied by the gathering of information and changes in the proposal.

7. Wildwood site conditions have not changed such that the Department would withdraw its preliminary approval.

8. The Department believes that going through the declaratory ruling proceedings on the discretionary preliminary approval process would not change anything and therefore be a futile act.

Director's Recommendation

Based upon the Summation, it is recommended that the Environmental Quality Commission not issue a declaratory ruling in this matter.



William H. Young

Attachment I: OAR 340-61-030 and 031

Ernest A. Schmidt:c
SC625
229-5356
August 11, 1982

Attachment I
Agenda Item No. H
8/27/82 EQC Meeting

Feasibility Study Report

340-61-030 A feasibility study report shall include, but not be limited to, the following:

(1) An Existing Conditions Map of the area showing land use and zoning within 1/4 mile of the disposal site. Also, any airport runway within 10,000 feet of the site or within 5,000 feet if used only by propeller-driven aircraft.

Note: Runways may be shown on a scaled insert.

The map shall show all structures, natural features of the land and the precise geographical location and boundaries of the disposal site. An on-site bench mark shall be indicated and a north arrow drawn. Unless otherwise approved by the Department, the scale of the map shall be no greater than one inch equals 200 feet and, for landfills, topography of the site and area within 1/4 mile shall be shown with contour intervals not to exceed five feet.

(2) A description of the proposed method or methods to be used in processing and disposing of solid wastes, including anticipated types and quantities of solid wastes, justification of alternative disposal method selected, general design criteria, planned future use of the disposal site after closure, type of equipment to be used, and projected life of the site.

(3) For a landfill, a detailed soils, geologic, and groundwater report of the site prepared and stamped by a professional Engineer, Geologist or Engineering Geologist with current Oregon registration. The report shall include consideration of surface features, geologic formations, soil boring data, water table profile, direction of groundwater flow, background quality of water resources in the anticipated zone of influence of the landfill, need and availability of cover material, climate, average rates of precipitation, evapotranspiration, runoff, and infiltration (preliminary water balance calculations):

(a) Soil borings shall be to a minimum depth of twenty feet below the deepest proposed excavation and lowest elevation of the site or to the permanent groundwater table if encountered within twenty feet. A minimum of one boring per representative landform at the site and an overall minimum of one boring per each ten acres shall be provided. Soil boring data shall include the location, depth, surface elevation and water level measurements of all borings, the textural classification (Unified Soil Classification System), permeability and cation exchange capacity of the subsurface materials and a preliminary soil balance.

(b) For all water wells located within the anticipated zone of influence of the disposal site, the depth, static level and current use shall be identified.

(c) Background groundwater quality shall be determined by laboratory analysis and shall include at least each of the constituents specified by the Department.

(4) A proposal for protection and conservation of the air, water and land environment surrounding the disposal site, including control and/or treatment of leachate, methane gas, litter and vectors, and control of other discharges, emissions and activities which may result in a public health hazard, a public nuisance or environmental degradation.

Stat. Auth.: ORS Ch. 459
Hist: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81

Preliminary Approval

340-61-031 (1) The Department may issue written preliminary approval to any applicant for a Solid Waste Disposal Permit, prior to submission of detailed engineering plans and specifications, based on the material submitted in accordance with the requirements of rule 340-61-030.

(2) The purpose of the preliminary review and approval process is to inform the applicant of the Department's concerns, if any, regarding the proposal and to provide guidance in the development of the detailed plans and specifications required to complete the permit application. Receipt of preliminary approval does not grant the applicant any right to begin construction or operation of a disposal site.

(3) Request for preliminary approval shall be made to the Department in writing. Within 45 days of receipt of such request, the Department shall either grant or deny preliminary approval or request additional information..

(4) Granting of preliminary approval shall not prevent the Department from denying or conditionally approving a completed permit application.

(5) If the Department denies preliminary approval, it shall clearly state the reasons for denial. Failure to receive preliminary approval shall not prevent an applicant from completing a permit application. Any application completed after denial of preliminary approval shall specifically address those concerns listed in the Department's letter of denial

Stat. Auth.: ORS Ch. 459
Hist: DEQ 26-1981, f. & ef. 9-8-81

August 13, 1982

Joe B. Richards
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Mary V. Bishop
01520 S. W. Mary Failing Drive
Portland, OR 97219

Re: Agenda Item No. H,
August 27, 1982, EQC Meeting

Item No. H on the August 27, 1982 EQC meeting agenda is a request for declaratory ruling by a citizen group concerned with METRO's proposed Wildwood landfill site. The Commission is being asked to schedule a hearing and issue a declaratory ruling with respect to the applicability of OAR 340-61-031 to the preliminary approval issued by DEQ to METRO on July 23, 1981 in connection with the proposed landfill site. Alternatively, the applicant asks that the Commission instruct the Director of DEQ to inform the Multnomah County hearings officer that the Department's preliminary approval does not apply to METRO's current design concept being evaluated in a permit proceeding pending before the county.

Department's response, in the form of a staff report, asks the Commission to deny the petition and not issue the ruling.

Under ORS 183.410 and agency rule, OAR 340-11-062, the Commission is required to exercise discretion whether to issue a ruling. If the Commission decides to issue a ruling, it must schedule a hearing at which the merits of the petition will be considered. The Commission may hear the matter itself or designate a presiding officer who will conduct the hearing and prepare a written opinion. If the Commission declines to issue a ruling, no further action is required.

I have enclosed a copy of the Petition for Declaratory Ruling and a copy of Department's response. I have not reproduced Petition Exhibits 2 and 3 which are volumes 1 and 3 of the Wildwood Sanitary Landfill Feasibility Study. These volumes are available for your review at Department's offices.

If you have any questions about procedure, please call me. My telephone number is 229-5383.

Very truly yours,

Linda K. Zucker
Hearings Officer

LKZ:k
HK1179
Enclosures: All to Commission; Staff report only to others
cc: William H. Young, Director, DEQ
Robb Haskins, Assistant Attorney General
Ernest A. Schmidt, Solid Waste Division, DEQ
James M. Finn, Attorney at Law
Paul Norr, Multnomah County Hearings Officer
Larry Epstein, Manager, Division of Planning & Development
Andrew Jordan, General Counsel, Metropolitan Service District

SCHWABE, WILLIAMSON, WYATT, MOORE & ROBERTS
ATTORNEYS AT LAW
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1111 THIRD AVENUE BUILDING
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JOHN E. HART
ROGER A. LUEDTKE

FORREST W. SIMMONS
OF COUNSEL

ROY D. LAMBERT
W. A. JERRY NORTH
JAMES T. WALDRON
ROBERT D. DAYTON
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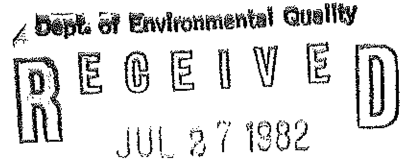
GARY D. KEEHN*
RICHARD J. KUHN
JAMES S. RICE
JANET M. SCHROER
KEVIN F. KERSTIENS

* WASHINGTON STATE BAR ONLY
** OREGON STATE AND WASHINGTON STATE BARS

July 21, 1982

JUL 29 1982

Department of Environmental Quality
P.O. Box 1760
Portland, Oregon 97204



Attention: Northwest Regional Office

NORTHWEST REGION

RE: Wildwood Sanitary Landfill

Dear Sir or Madam:

Enclosed herein is the Petition for Declaratory Ruling by Petitioners Clarence Koennecke and West Hill & Island Neighbors, Inc. Briefly, the Petition seeks a declaratory ruling by the Commission that the design concept for which the Metropolitan Service District is seeking land use approval from Multnomah County in a pending land use hearing does not have the preliminary approval of the Department of Environmental Quality.

In the alternative to issuing a declaratory ruling, Petitioners suggest that the Environmental Quality Commission could simply issue a directive to the Director of the Department of Environmental Quality that the Director should inform the Multnomah County hearings officer, Paul Norr, that the preliminary approval issued by the Department of Environmental Quality on July 23, 1981 does not apply to the design concept for which Metro is seeking land use approval in the pending proceeding before the Multnomah County hearings officer.

Thank you for your consideration. Please contact the undersigned if there are any questions about the matters contained in this letter or the Petition.

Sincerely yours,

James M Finn

JAMES M. FINN

JMF/clb
Attachment

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

In the Matter of the application of CLARENCE KOENNECKE and WEST HILL & ISLAND NEIGHBORS, INC., for a declaratory ruling as to the applicability of OAR 340-61-031 to the application of the Metropolitan Service District for preliminary approval of a solid waste disposal site known as Wildwood Landfill in Multnomah County.	)	PETITION FOR DECLARATORY RULING

1. Petitioner West Hill & Island Neighbors, Inc. is a group of citizens with residences in the area of the proposed Wildwood Landfill site. Petitioner Clarence Koennecke is a resident of Multnomah County whose residence is within one-half mile of the proposed Wildwood Landfill site. Petitioners are actively engaged in opposing the application of the Metropolitan Service District (Metro) a community service use permit from Multnomah County. This application is pending before a Multnomah County hearings officer. This declaratory ruling will determine whether the hearings officer can make an appropriate finding as to whether the Department of Environmental Quality has issued its preliminary approval for Metro's current proposal for the Wildwood Landfill site.

2. On July 23, 1981, the Department of Environmental Quality granted to Metro preliminary approval of a plan for a landfill to be located at the Wildwood Sanitary Landfill site. A copy of the Department's letter granting preliminary approval has been attached to this Petition as Exhibit 1. The approval was specifically based on a general design concept proposed by Metro for the site. A copy of

Volume I of the CH_2M Hill feasibility study performed for Metro setting out this design concept has been attached to this Petition as Exhibit 2.

Metro, in May, 1982, proposed a totally different design concept for the landfill in Volume III of CH_2M Hill's feasibility study for the Wildwood Landfill, which is attached to this Petition as Exhibit 3. This new design concept is a change from the design concept for which DEQ granted preliminary approval in July of 1981. Among the many changes, the new design concept places the landfill in a different area, uses a different approach to excavation, uses a different method for covering of the refuse, and uses a different approach to the problem of groundwater diversion.

Metro is seeking land use approval from Multnomah County for the Wildwood Landfill. Metro is relying on the DEQ preliminary approval as part of the necessary showing it must make to obtain County authorization.

Metro, however, no longer intends to use the design concept for which the DEQ granted preliminary approval. Metro now plans only to use the new design concept. The letter dated from Metro's counsel, Andrew Jordan, to the hearings officer to this effect, is attached to this Petition as Exhibit 4.

3. The Oregon Administrative Rules as to which petitioners request a declaratory ruling are OAR 340-61-031(1), which states in relevant part:

> "(1) The Department may issue written preliminary approval to any applicant for a Solid Waste Disposal permit, prior to submission of detailed engineering plans and specifications, based upon the materials submitted in accordance with the requirements of Rule 340-61-030,"

and OAR 340-61-030(3) and (4) in their entirety.

4. Although Metro and Multnomah County are treating the DEQ's approval as applying to Metro's new design concept, it does not for two reasons. First, the preliminary approval granted July 23, 1981 was granted for a totally different conceptual design, as explained in paragraph 2 of this petition. Second, Metro's feasibility report for the new conceptual design does not comply with EQC rules. Metro has not provided sufficient information to the Department of Environmental Quality on borings for the landfill site, as required under OAR 340-61-030(3)(a). This rule requires at least one boring be made for each ten acres at a landfill site. The actual site of garbage disposal at the Wildwood Landfill will occupy about 150 acres, yet only four borings have been made within this area. Metro has also failed to select one of the alternatives for leachate disposal it has discussed in its new feasibility study, as required under OAR 340-61-030(4).

Petitioner West Hill & Island Neighbors, Inc., through their attorneys, has twice requested DEQ to rescind the preliminary approval granted to Metro or, in the alternative, to declare that the preliminary approval does not apply to the new design advanced by Metro for the Wildwood Landfill. However, the DEQ has rejected both requests. The letters requesting the DEQ action and the letters containing DEQ's response are attached to this Petition as Exhibit 5, collectively.

5. The question presented for declaratory ruling by the Commission is whether the EQC administrative rules as applied to Metro's new design concept for the Wildwood Landfill mean that the design does not have preliminary approval from DEQ, since it is

based on a design not submitted to DEQ for approval in accordance with OAR 340-61-031.

6. Petitioner requests that the Commission rule that the preliminary approval dated July 23, 1981, does not apply to Metro's current design for the landfill since (1) the proposed landfill design being pursued by Metro is not the same as the design plan which was given preliminary approval on July 23, 1981; and (2) since the feasibility report for the new design plan does not meet the preliminary approval guidelines established by EQC rules.

7. The following persons are interested parties in this matter:

A. Paul Norr, Multnomah County Hearings Officer, 2018 SE Elliott Avenue, Portland, Oregon 97214;

B. Larry Epstein, Manager, Division of Planning & Development, Multnomah County, 2115 SE Morrison, Portland, Oregon 97214; and

C. Andrew Jordan, General Counsel, Metropolitan Service District, 527 SW Hall Street, Portland, Oregon 97201.

DATED this 22nd day of July, 1982.

SCHWABE, WILLIAMSON, WYATT,
MOORE & ROBERTS

By ______________________
JAMES M. FINN
Of Attorneys for Petitioners

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

In the Matter of the application of CLARENCE KOENNECKE and WEST HILL & ISLAND NEIGHBORS, INC., for a declaratory ruling as to the applicability of OAR 340-11-031 to the application of the Metropolitan Service District for preliminary approval of a solid waste disposal site known as Wildwood Landfill in Multnomah County.	)	PETITION FOR DECLARATORY RULING

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A. Paul Norr, Multnomah County Hearings Officer, 2018 SE Elliott Avenue, Portland, Oregon 97214;

B. Larry Epstein, Manager, Division of Planning & Development, Multnomah County, 2115 SE Morrison, Portland, Oregon 97214; and

C. Andrew Jordan, General Counsel, Metropolitan Service District, 527 SW Hall Street, Portland, Oregon 97201.

DATED this 22nd day of July, 1982.

SCHWABE, WILLIAMSON, WYATT,
MOORE & ROBERTS

By
JAMES M. FINN
Of Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Petition for Declaratory Ruling upon:

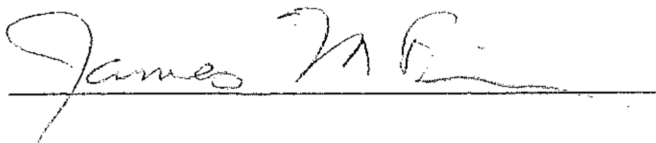
Mr. Paul Norr
Multnomah County Hearings Officer
2018 SE Elliott Avenue
Portland, Oregon 97214

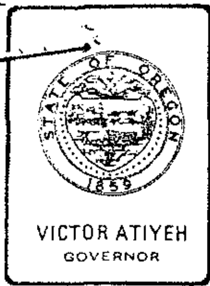
Mr. Larry Epstein
Manager
Division of Planning & Development
Multnomah County
2115 SE Morrison
Portland, Oregon 97214

Mr. Andrew Jordan
General Counsel
Metropolitan Service District
527 SW Hall Street
Portland, Oregon 97201

by mailing to each of them a true copy, certified by me as such, in a sealed envelope, with postage paid, to each of their regular mailing addresses. Between the post office and said addresses, there is a regular communication by U.S. Mail.

DATED this 23RD day of July, 1982.





VICTOR ATIYEH
GOVERNOR

Department of Environmental Quality

522 SOUTHWEST 5TH AVE. PORTLAND, OREGON

MAILING ADDRESS: P.O. BOX 1760, PORTLAND, OREGON 97207

TY
rcd from
DEQ
12/9/81

July 23, 1981

Merle Irvine
Director, Solid Waste Department
Metropolitan Service District
527 SW Hall St.
Portland, OR 97201

Re: Wildwood Landfill
SW--Multnomah County

Dear Mr. Irvine:

We have reviewed the feasibility study report for the proposed Wildwood Sanitary Landfill prepared by CH_2M/Hill Northwest, Inc. Your July 14, 1981 letter requests preliminary approval of the site from DEQ based on the feasibility report and DEQ staff involvement in the Landfill Siting Interagency Task Force.

Preliminary approval is hereby granted subject to the conditions and comments contained in the attached Preliminary Plan Review Report.

Preliminary approval is not a guarantee at this point that a permit will be issued (because unforeseen conditions may be discovered during your further investigation or during the Department's final review process). Basically, it means that the Department believes the site is feasible within the general design parameters proposed to date, and that the degree of environmental risk is sufficiently low that we will continue to evaluate further information.

Final approval for this proposed disposal site will be based upon consideration of the following items:

a. Final design plans and specifications that satisfactorily address the areas of concern summarized in the attached plan review report.

b. Approval by the Multnomah County Planning Commission, including a statement of compatibility with the county's comprehensive land use plan and zoning requirements.

Sincerely,

Ernest A. Schmidt
Administrator
Solid Waste Division

TS:c
SC381
Attachment
cc: Northwest Region
Multnomah County Planning Commission

EXHIBIT 1

METROPOLITAN SERVICE DISTRICT
527 S.W. HALL ST., PORTLAND, OR. 97201, 503/221-1646

May 26, 1982

Rick Gustafson
EXECUTIVE OFFICER

Metro Council
Cindy Banzer
PRESIDING OFFICER
DISTRICT 9
Bob Oleson
DEPUTY PRESIDING OFFICER
DISTRICT 1
Charlie Williamson
DISTRICT 2
Craig Berkman
DISTRICT 3
Corky Kirkpatrick
DISTRICT 4
Jack Deines
DISTRICT 5
Jane Rhodes
DISTRICT 6
Betty Schedeen
DISTRICT 7
Ernie Bonner
DISTRICT 8
Bruce Etlinger
DISTRICT 10
Marge Kafoury
DISTRICT 11
Mike Burton
DISTRICT 12

Mr. Larry Epstein, Zoning Manager
Multnomah County Dept. of
Environmental Services
2114 SE Morrison
Portland, OR 97214

Re: CS 18-81 (Wildwood Landfill)

Dear Mr. Epstein:

This is to confirm our conversation of May 25th, during which you inquired whether Metro is seeking County approval of both of the conceptual landfill designs we submitted (Feasibility Study Volumes I and III) or just one of them. Your inquiry was based upon the premise that review of both designs would lend confusion to the process and, perhaps, delay.

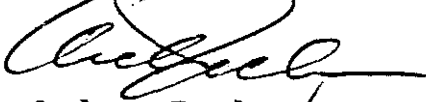
I have been authorized to notify you that Metro wishes to limit consideration of its application for Community Service designation to the alternative conceptual design indicated in Volume III of the Wildwood Sanitary Landfill Feasibility Study. It should be noted, however, that most of the information and documentation contained in Volume I is applicable to the design proposed in Volume III. Therefore, though we consent to withdraw the original conceptual design from consideration, Volume I remains otherwise relevant to the review.

It should be understood that our reliance upon the alternate design represents a statement of preference for that design, not abandonment of the original design or of the geotechnical information offered in support of that design. We understand that if Metro should decide, after completion of Phase 2 of the project, that the original design is superior, we would be required to seek re-approval of the Community Service designation.

EXHIBIT 4

I trust that withdrawal of the original conceptual design and focus upon the alternate design will simplify and expedite your review of our proposal. It should also simplify the opponents' review.

Yours truly,



Andrew Jordan
General Counsel

c: Metro Council
Rick Gustafson
Jay Waldron
Paul Norr
Mike Kennedy

SCHWABE, WILLIAMSON, WYATT, MOORE & ROBERTS
ATTORNEYS AT LAW
1200 STANDARD PLAZA
1100 S.W. 6TH AVENUE
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NANCIE POTTER ARELLANO
JOHN J. FENNERTY
ANDREW J. MORROW, JR.
MARY E. EGAN
THOMAS V. DULCICH
BRIAN M. PERKO

February 1, 1982

Mr. William Young, Director
Department of Environmental Quality
522 S.W. Fifth Avenue
P. O. Box 1760
Portland, Oregon 97207

Dear Mr. Young:

On behalf of West Hill and Island Neighbors (WHI), I request that the Department of Environmental Quality rescind the preliminary approval granted on July 23, 1981, to the Metropolitan Service District (MSD) for the Wildwood Landfill SW--Multnomah County.

The rules of the Environmental Quality Commission governing solid waste management provide specific requirements that must be met for issuance of preliminary approval for a solid waste disposal site. OAR 340-61-031(1). The proposed Wildwood Landfill does not meet these requirements. MSD has not provided sufficient information to DEQ on borings for the landfill site (see OAR 340-61-030(3)(a)) nor has MSD indicated which of three alternatives for leachate disposal it proposes to use (see OAR 340-61-030(2), (4)). Your rules require that at least one boring be made for each ten acres at a landfill site. The actual site of garbage disposal at Wildwood will occupy about 165 acres yet only 4 borings have been made within this area.

The lack of sufficient borings has resulted in consultants for MSD concluding that slope stability and offsite migration of leachates are not major concerns. Geological consultants for WHI have concluded the opposite: (a) the project will result in a high potential for landslides and (b) leachates will migrate off-site and endanger groundwater and water in the Multnomah Channel.

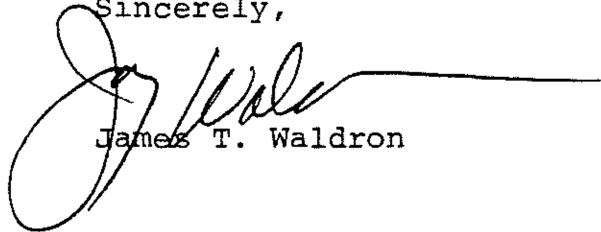
EXHIBIT 5

Multnomah County employed a geological consultant to examine the geology for the landfill. The consultant concluded that there would be "a high potential for causing large-scale slope failure" and that available data does not support the conclusion that leachate will not migrate offsite. Enclosed is a copy of the consultant's report.

The consultants for WHI and Multnomah County recommend that more borings be made. Your rules require that additional borings should be made and other actions taken before the DEQ can grant preliminary approval. When questioned recently about the need for additional work, representatives of MSD indicated that no more work will be done.

I request that you rescind DEQ's preliminary approval of the Wildwood site until compliance with your rules is demonstrated.

Sincerely,



James T. Waldron

JTW/rl
Enclosure
Certified Mail/Return
Receipt Requested

FOUNDATION SCIENCES, INC.

TELEX: 360763
TELECOPIER

1630 S.W. MORRISON ST.
PORTLAND, OREGON 97205
TEL. 503-224-4435

January 8, 1982

Multnomah County
Department of Environmental Services
Land Development Section
2115 S. E. Morrison St.
Portland, OR 97215

Attention: Larry Epstein

SUBJECT: REVIEW OF GEOTECHNICAL ELEMENTS OF WILDWOOD LANDFILL FEASIBILITY STUDY BY CH2M HILL

Dear Mr. Epstein:

PURPOSE AND SCOPE OF REVIEW

At your request Foundation Sciences, Inc. (FSI) has reviewed the geotechnical elements of Volume 1, Wildwood Sanitary Landfill Feasibility Study prepared by CH2M Hill Northwest Inc. and boring logs provided by CH2M Hill. The purpose of the review was to establish the adequacy of the geotechnical studies and the validity of their findings with regard to constructing the landfill as proposed in the conceptual design presented in the feasibility study. Specific areas of concern were the feasibility of the conceptual design presented in Volume 1 with reference to slope stability and subsurface hydrology. In addition to this review, FSI is to provide consultation to the staff of the Multnomah County Department of Environmental Sciences during the permit application process.

SUMMARY

Based upon our review and interpretation of the materials provided we are of the opinion that the landslide in its present condition can best be described as a large translational slide.

We believe that this slide could be remobilized by construction involving excavation of deep cuts and placement of a large stockpile, as proposed by the conceptual design presented in Volume 1 of the Feasibility Study. We are also of the opinion that the groundwater regime may not be as well defined as indicated by the Feasibility Study. Both of these factors could have a major impact on the feasibility of the landfill if it is constructed using the design proposed in Volume 1 of the Wildwood Sanitary Landfill Feasibility Study.

The concerns about slope stability and groundwater expressed herein do not, in our opinion, necessarily preclude the use of the Wildwood Site for development of a sanitary landfill. They do, however, indicate to us the need to better define the geologic and geohydrologic site conditions, so that a design which incorporates these conditions fully can be evaluated. Based upon our present understanding of the site, we are of the opinion that for a relatively small amount of effort, a significant amount of insight could be developed about slope stability and geohydrology. We recommend that this effort (described under Conclusions and Recommendations) be conducted, and that its results be used to verify the suitability of the existing conceptual design, or, if necessary, to formulate a conceptual design more compatible with site conditions prior to final review and approval of the site by the County.

BACKGROUND

Test borings on the site indicated to CH2M Hill that the surface of the Scappoose Formation forms a bowl-shaped depression which opens to the southeast. Permeability tests suggested to them that leachate would not penetrate significantly into the Scappoose Formation and would be naturally channeled through the overlying landslide materials to the southeast corner of the site where it could be collected by a cutoff and manifold system.

Direct shear tests of landslide debris in Boring B-6 found an internal friction angle between 23° and 26°. Based upon these results CH2M Hill concluded that cuts of 2.5 and 2.0 horizontal to 1 vertical can be made in the debris without inducing major slope instability. Together with the apparent depth and distribution of slide debris, the direct shear test data are interpreted to show the feasibility of making deep (100 - 150 ft) cuts in, and stock-piling large amounts of material on, the landslide. It has been concluded by CH2M Hill that any slope instability that may occur will be localized and controllable by commonly used engineering techniques. However, in our opinion, there are other interpretations of the site geology, as well as questions as to the applicability of shear test data to the analysis of slope stability.

INTERPRETATION OF SITE GEOLOGY

Earlier mapping of the area (Kienle; Shannon & Wilson, 1978) had shown the old landslide to be more extensive than indicated by CH2M Hill. During reconnaissance of the site on November 11, 1981, landslide debris was found exposed along roads north of B-4 and B-5 - areas shown as bedrock on Figures 5-1 and A-6 of the Feasibility Study.

During this reconnaissance, the area mapped as Columbia River Basalt (Tcr) and Scappoose Formation (Ts) south of the proposed landfill was also found to be internally sheared and to have anomalous juxtapositions of Tcr and Ts. There, Tcr is exposed at elevations lower than the Ts, which underlies it stratigraphically. a roadcut exposure of one prominent shear cutting Ts revealed a 2 to 4 in. thickness of slickensided red-brown, silty clay. The orientation of the shear, and the apparent motion of Ts across the shear zone are consistent with the high-angle reverse shearing commonly found at the toes of large transla-

tional landslides. The shearing and anomalous position of Tcr could also be due to faulting. However, in our opinion, it is more likely the result of a large translational slide. This interpretation is shown on the modified Figure A-6, attached. Modification of the geology on Figure A-6 to agree with our field reconnaissance and the actual topography along Cross Section FF-F' (as shown on Figure 4-1 of the study), together with a short extension of the profile southward reveals a much different interpretation than that shown by CH2M Hill. The rotated blocks in the headscarp area (visible in the field) and large, bulbous toe area typical of translational slides are clearly present. Because of the major differences in interpretation along profile FF-F' (Figure A-6), profile C-C' was also examined and slightly modified (attached Figure A-7). Topography in the headscarp area was changed to agree with that shown on the geologic map (Figure 5-1). The thickness of the Tcr given on modified Figure A-7 was obtained from mapping by Beeson and others (unpublished). The subsurface hill at B-1 was eliminated because B-1 did not penetrate the entire thickness of slide debris. Apparently high blow counts near the bottom of B-1 were interpreted as indicating proximity to the Ts; however, large blocks of hard debris such as the one drilled in B-9 are common in slide blocks.

Elimination of the subsurface hill and a more precise rendering of the headscarp area combine to yield a profile which appears to be a large translational landslide, as opposed to the interpretation given in the Feasibility Study. Thus, our reinterpretation of both profiles FF-F' and C-C' support the concept of a single, large translational slide rather than an irregular series of smaller, overlapping slides.

To pursue this concept, a bedrock contour map was constructed of the top of the Scappoose Formation (attached modified Figure 5-1). This map shows a generally bowl-shaped depression in the Scappoose Formation as found by the CH2M Hill study. However, the bowl may be much more open at the south than previously interpreted, since we interpret the area south of the site as landslide debris rather than bedrock (see modified Figure 5-1 of the Feasibility Study attached). The CH2M Hill interpretation of the Sun Ray test holes shows that the bowl continues to deepen south of the site (220 ft below sea level in S-7) as shown on the modified Figure 5-1.

Using the inferred bedrock contours and the borehole data we constructed a profile (X-X') along the general axis of the slide, from the inferred headscarp to US 30. This profile is also consistent with the interpretation of a translational landslide.

The major argument against a translational landslide is that one would expect to find definite "slide plane" material at its bottom; material not apparently found, according to the feasibility study (Figure A-3). However, our review of Field Logs of the borings suggests that possible slide plane material was penetrated in Borings B-2, -5, -7, -8, -9, and -10. Borings B-1, -2A, -3, -11, and -13, did not reach the Ts, Therefore, field logs of six of the nine borings which reached the Ts suggest slide plane material. The logs report variously: "reddish and sticky", "very sticky and plastic material" (B-2), "very, very sticky material and brown silty clay with basalt pebbles" (B-5), "green-gray clay with fresh rock fragments" (B-7), "blue-green clayey silt" (B-8), "softer drilling at 96 ft" (B-9), and "softer last 3 - 4 ft above Ts" (B-10). We have added the comments from the field logs at appropriate places on the annotated copy of Figure A-3 attached.

SLOPE STABILITY

The stability of a translational slide is related to the residual shear strength of material on the slide plane, the slide plane geometry, and pore water pressures at the slide plane. The samples tested for residual strength came from the slide mass - not the probable slide plane - and, in our opinion are not applicable to the analysis of potential reactivation of the old landslide debris, if our interpretation of the site geology is correct.

The low slopes of 5° to 15°, beneath the slide mass (see modified profiles FF-F', C-C' and profile X-X') suggest a low residual shea strength for the slide plane material. Index properties of a hand sample of the slickensided silty clay from the shear zone exposed at the toe of the slide south of the landfill site also indicate a residual shear strength between 5° and 10° in good agreement with the strength suggested by the slope data. These data suggest to us that removal of significant amounts of material from the slide has a high potential for causing large-scale slope failure. Even if the site is developed without major cuts and/or fills, clearer understanding of slop stability will still be required to guide conceptual design of the fill. The potential for changes in groundwater pore pressures beneath the possible slide plane and changes in slide mass from landfill development also need to be evaluated.

GEOHYDROLOGY

The major significance of the inferred potential for large slope instability is that it could preclude construction and maintenance of an engineered leachate collection system. In that case, the shape and relative impermeability of the Scappoose Formation would become the only reliable barrier to off-site migration of leachate. As noted previously, the bowlshape of the top of the Scappoose Formation appears to be much more open to the south than previously interpreted (Modified Figure 5-1). Thus, even if the Scappoose is

"virtually impermeable", as stated by CH2M Hill, a much longer cutoff would be required to collect leachate, possible 3,000 ft in length. In places, this cutoff would need to be more than 100 ft deep. Alternatively, a system of leachate collection wells could be installed, to avoid contamination of groundwater in the basin south of the site.

Success of either a leachate cutoff or a well system depends upon the "virtual impermeability" of the Scappoose Formation and upon the engineered system not being disrupted by large slope failures uphill of the system. In our opinion, available data do not establish the "virtual impermeability" of the Scappoose. The one laboratory test value of 2×10^{-8} cm/sec on core from B-4 is encouraging. However, all in situ tests showed values between 8.7×10^{-6} to 1.4×10^{-3} cm/sec, far from "virtually impermeable". Unfortunately incremental tests were not conducted so it is not possible to distinguish permeability of the landslide debris from the Scappoose with these data. The best of the in situ tests (in B-2) suggests a field permeability of about 10^{-5} for a 105-ft section of the Scappoose Formation. This average value of permeability could have resulted from inflow into the 105-ft section with $K = 10^{-5}$ cm/sec, a 10.5-ft section with $K = 10^{-4}$ cm/sec, or a 1-ft section with $K = 10^{-3}$ cm/sec (28.3 ft/day). Reports of pea gravels in the field logs and observation of relatively clean sands in the Scappoose Formation in other areas highlight the necessity for evaluation of the magnitude and distribution of permeabilities within the Scappoose Formation beneath the site.

At present, it is not possible to accurately evaluate the potential for contamination of nearby wells, in part because their locations are not known.

CONCLUSIONS AND RECOMMENDATIONS

The available data suggest to us that a large translational slide mass of unknown stability may underlie the proposed site. Careful evaluation of this interpretation is, in our opinion, necessary before a feasible design for development of the site can be formulated. Available groundwater and permeability data do not appear adequate to establish that the Scappoose Formation is "virtually impermeable" and can be relied upon to provide an adequate barrier to off-site migration of leachate. Thus, to resolve the issues raised by this review, we recommend that the following limited geotechnical investigation be conducted prior to the Phase II investigations currently proposed.

1. Detailed geologic mapping of the postulated slide and surrounding areas. This mapping will define the surface geometry and the extent of the landslide. It will also define current areas of creep and slope failure, and the distribution of different rock and soil types within the slide mass. Mapping of the area around the slide will provide data on the undisturbed characteristics, distribution and structure of the rocks and soils which contributed material to the slide mass, and, thus, clarify the mechanics of the slide. Limited cleaning of some cuts or outcrops, particularly those near Patterson Creek would help define the anomalous relationships between the Ts and Tcr in the toe of the postulated slide mass.

2. Sampling and residual shear strength testing of clayey materials obtained from the slide plane or subordinate planes where exposed. This work would inexpensively provide data on the strength of materials on the slide plane for a preliminary analysis of the stability of the slide mass.

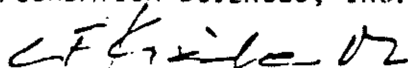
3. Drilling and continuous sampling of two pairs of borings in the slide area, at locations selected on the basis of the detailed geologic mapping. These borings should extend at least 100 ft into the Scappoose Formation to allow incremental packer tests and correlation of the Ts between holes. Crosshole flow tests should be conducted if results of the packer tests indicate they are required. Piezometers should also be installed to monitor seasonal groundwater variation in the Scappoose Formation. This work would provide data on the in situ permeability of the Scappoose Formation, as well as on the internal stratigraphy and structure of the formation.

4. Stability analysis of the slide mass using the data obtained from the investigation described above and from previous investigations. This analysis will indicate the potential for reactivation of the slide debris given various conceptual design schemes.

5. Qualitative modeling of groundwater flow using data from this investigation, together with data from nearby wells. We understand the reluctance of local well owners to divulge exact well data under the circumstances, but this information would allow a much clearer development of the potential for problems with leachate migration.

If you have any questions regarding this correspondence please contact us at your convenience.

Very truly yours,
FOUNDATION SCIENCES, INC.



C.F. (Rick) Kienle
Senior Geologist

CFK/tmm

LANDSLIDE HEADSCARP

—100 TOP OF SCAPPOOSE FM.

BORING NO.

⊕B1 - ⊕B13 CH2M Hill, 1980

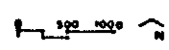
● S1 - ● S10 Sun-Ray Oil Co., 1956-57

●SM1-●SM8 Oregon State Highway Dept., 1972

GEOLOGIC UNITS

Qls	Quaternary Landslide Debris Unit
Qal/Qlc	Quaternary Alluvial and Lacustrine Deposits
Tcr	Columbia River Basalt Group
Ts	Scappoose Formation

Notes: 1. CH2M Hill boring locations are approximate.
2. Cross sections C-C', F-F', and J-J' shown on Figures A4 to A8



MODIFIED
FIGURE 5-1
Site Geology
WILDWOOD SANITARY LANDFILL FEASIBILITY STUDY

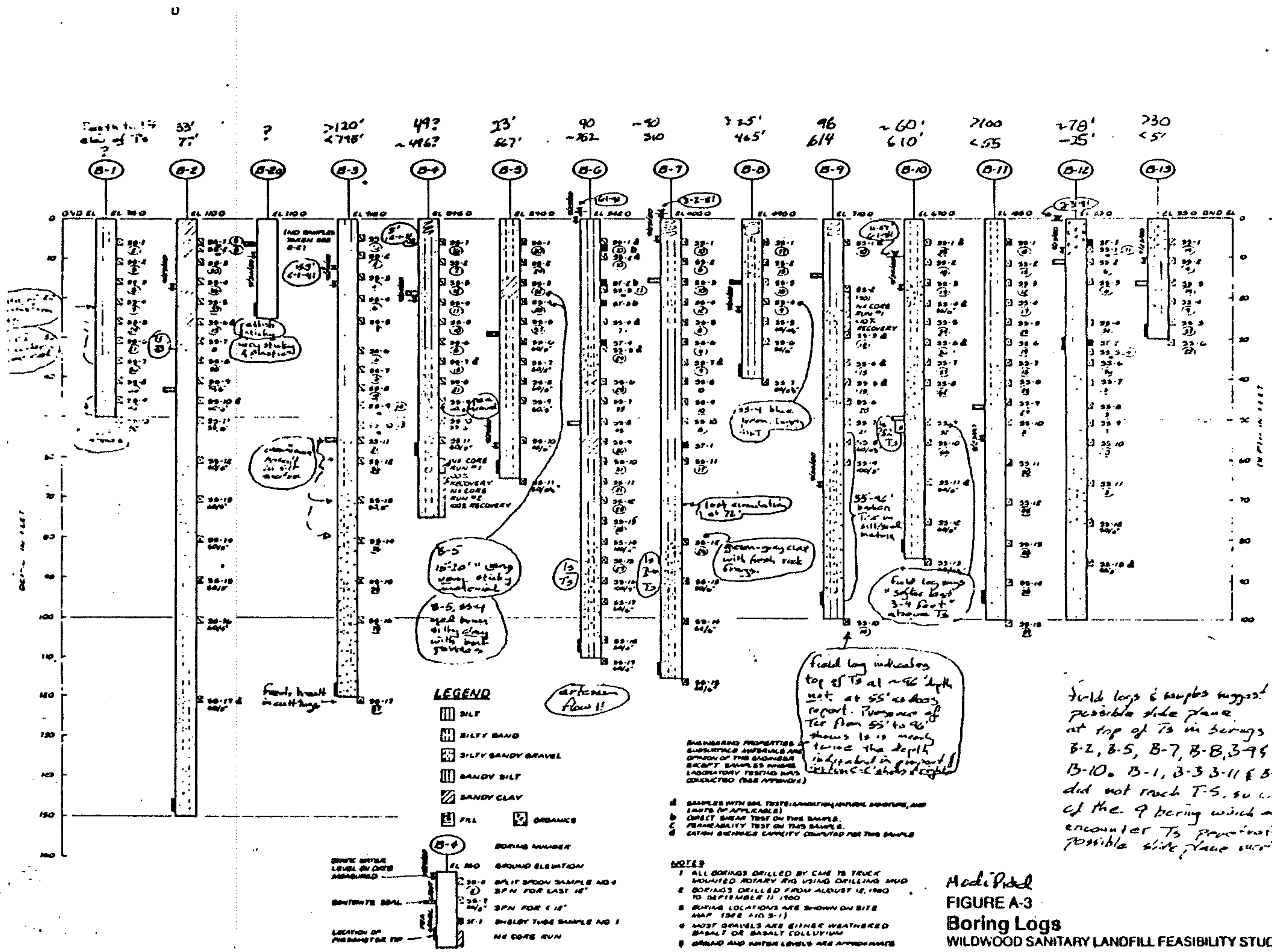


FIGURE A-3
Boring Logs
WILDWOOD SANITARY LANDFILL FEASIBILITY STUDY

WEST
C

T3N/R2W - 34dc (Projected)

Perched Water Table

Talus?

Qls

Ts

Saline Water at Depth

Contact Spring Area

Kaptur Slide Area

Tcr

EAST
C'

U.S. Highway 30

Creek

Multnomah Channel

Kaptur Slide Area

Tcr

Qal/Qlc

Qls — Quaternary Landslide Debris Unit
Qal/Qlc — Quaternary Alluvial and Lacustrine Deposits
Tcr — Columbia River Basalt Group
Ts — Scappoose Formation

FIGURE A-4

Existing Conditions
East-West Geologic Cross Section
WILDWOOD SANITARY LANDFILL FEASIBILITY STUDY

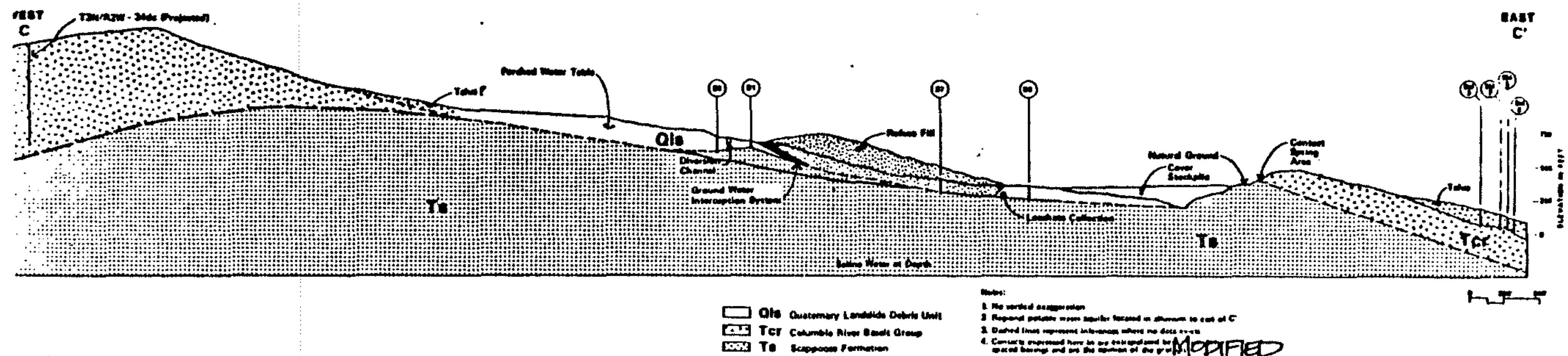


FIGURE A-7

After Landfill,
East-West Geologic Cross Section
WILDWOOD SANITARY LANDFILL FEASIBILITY STUDY

NORTH
FF

SOUTH
F'

Tcr
HEADSCARP
F qto(Et)
SECONDARY SCARP
B4
Qls
Ts
Ts
SLIDE PLANE
Saline Water at Depth
Virtually Impermeable ?
Natural Ground
350
SLIDE SURFACE BEFORE INCISION
AREA REMOVED BY EROSION
Qls
Tcr
Qls
Ts
ROAD

GIC UNITS

- Quaternary Landslide Debris Unit
- Qlc Quaternary Alluvial and Lacustrine Deposits
- Columbia River Basalt Group
- Scappoose Formation

Notes
1. No vertical exaggeration.
2. See Note 4 on Figure A-2.

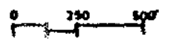
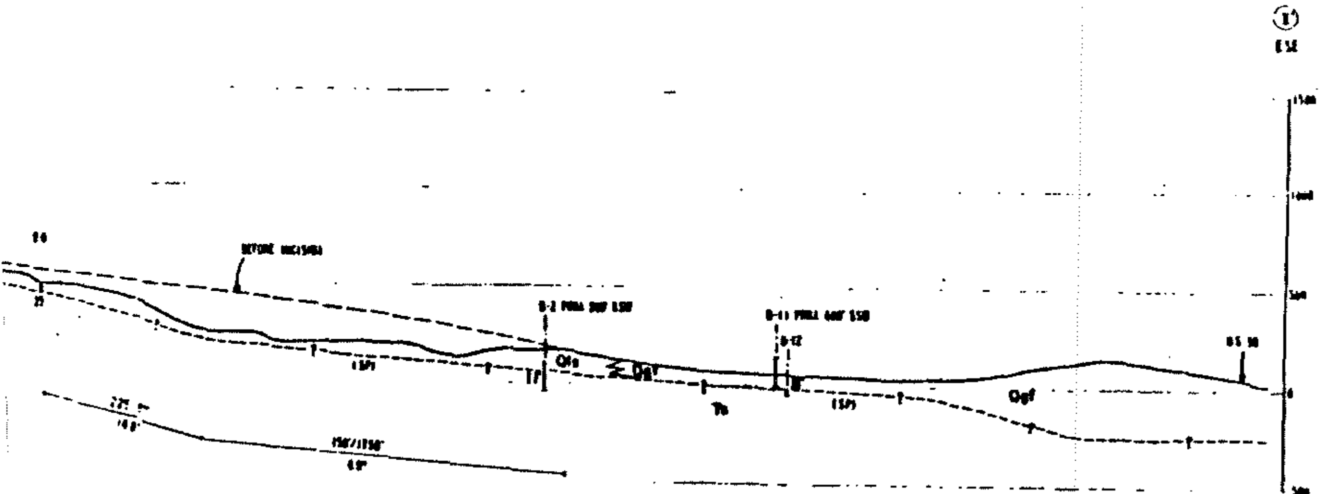


FIGURE A-6
Existing Conditions,
North-South Geologic Cross Section
WILDWOOD SANITARY LANDFILL FEASIBILITY STUDY



FOUNDATION SCIENCES, INC.
PORTLAND, OREGON

MULTNOMAH COUNTY
WILDWOOD LANDFILL
CROSS SECTION X-X'

DATE 1/82	JOB NO. 191-1	SCALE 1"=300'	FIG.

Department of Environmental Quality

522 SOUTHWEST 5TH AVE. PORTLAND, OREGON

MAILING ADDRESS: P.O. BOX 1760, PORTLAND, OREGON 97207

FEB 19 1982

James T. Waldron
Schwabe, Williamson, Wyatt, Moore & Roberts
Attorneys at Law
1200 Standard Plaza
1100 SW 6th Avenue
Portland, OR 97204

Re: Proposed Wildwood Landfill Site
Multnomah County

Dear Mr. Waldron:

Oregon Administrative Rules (OAR 340-61-030) require solid waste permit applicants to submit a detailed feasibility study. The feasibility study must include a geotechnical report prepared by an engineer or engineering geologist registered in the State of Oregon. For geotechnical investigations, the current rules require one subsurface boring per representative landform and an overall minimum of one boring per each ten acres. These rules were adopted August 28, 1981, and became effective September 8, 1981. Different requirements were in effect on July 23, 1981, when the Department granted preliminary approval. Prior to August 28, 1981, the rules did not specify a minimum density of subsurface borings for geotechnical investigations.

For any geotechnical exploration, however, individual boring location, depth and data interpretation are usually more important than the overall density of borings. Most importantly, borings should be selectively located where they will yield useful information about subsurface conditions (geology and groundwater). Thus, to be effective, subsurface exploration must extend beyond the immediate refuse fill area. Borings should be sited where support facilities (leachate collection/treatment systems, subsurface drainage systems, etc.) are planned and where the borings can serve long-term functions, e.g., groundwater monitoring.

Preliminary approval of this project by DEQ in July was based on our review of the technical and environmental information available to that date. In addition, we consulted with hydrogeologists from the Water Resources Department regarding site geologic and groundwater conditions. For the purposes of a feasibility study, we determined that information to be adequate. Basically, preliminary approval means that the Department believes the site is feasible within the general design concepts proposed and that we will continue to evaluate technical and environmental information. We certainly agree that more geotechnical work is needed to verify preliminary conclusions. It has been our understanding all along that further detailed analysis would be done during the preliminary design phase of the project (Phase 2).

James T. Waldron
Page 2
FEB [illegible] 1982

MSD staff recently submitted a work scope for Phase 2 (preliminary design) of the project. Phase 2 would focus on site geology and hydrogeology as well as other design-related technical/environmental aspects of the project. An extensive subsurface drilling program (more than 30 additional borings) is planned to supplement the preliminary findings. MSD also plans to conduct limited additional geotechnical work prior to the county land use hearing (now scheduled for May 1982). Specific concerns about slope stability and groundwater will be addressed.

We will soon be meeting with MSD to discuss Phase 2 objectives and the issues raised in the Foundation Sciences, Inc., report. At this stage of the project, final approval and permit issuance by DEQ are by no means automatic. All of the important technical and environmental questions raised during site investigations and during our review process have to be resolved. We intend to review this proposal very carefully as new information becomes available.

Please contact Tim Spencer of our Solid Waste Division (229-6015) or Charles Gray of our Northwest Regional Office (229-5288) if you wish to discuss the proposal in more detail.

Sincerely,

William H. Young
Director

TS:c
SC252
cc: Northwest Regional Office
Metro
Mike Kennedy, CH_2M/Hill

C: Clarence Koennecke
Walter Wright
Herb Schlicker
2/25/82

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RICHARD J. KUHN
JAMES S. RICE
JANET M. SCHROER
KEVIN F. KERSTIENS

* WASHINGTON STATE BAR ONLY
** OREGON STATE AND WASHINGTON STATE BARS

June 17, 1982

Mr. William Young
Department of Environmental Quality
522 SW Fifth Avenue
P.O. Box 1760
Portland, Oregon 97207

RE: Wildwood Sanitary Landfill

Dear Mr. Young:

As you know, this office represents the West Hill & Island Neighbors, an organization currently opposing the application of the Metropolitan Service District for a Multnomah County land use permit for the Wildwood Sanitary Landfill.

I have enclosed a copy of Volume III of CH_2M Hill's Feasibility Study for the Wildwood Landfill prepared for Metro and dated May, 1982. In this volume, CH_2M Hill has come up with an entirely new alternate conceptual design for the landfill, different from that for which the Department of Environmental Quality granted preliminary approval on July 23, 1981. Among other changes, this new concept places the landfill in a different area of the site, uses a different approach to excavation and covering of the refuse as well as a different approach to the problem of ground water diversion.

I have also enclosed a copy of a letter dated May 26, 1982 from Andy Jordan, Metro's General Counsel, to Larry Epstein at Multnomah County. In this letter, Jordan makes clear that Metro has withdrawn the original conceptual design from consideration for a Multnomah County land use permit and is asking the County to consider only the alternative conceptual design presented in Volume III.

In a letter dated February 1, 1982, Jay Waldron of this office requested that your Department rescind the preliminary approval that it had granted on July 23, 1981 to Metro for the Wildwood site. In your letter of February 19, 1982, you declined to do so. In that letter, you recognized that OAR 340-61-030 requires a more detailed feasibility study than has been submitted by Metro

but stated that that rule had gone into effect after your Department granted its preliminary approval. Later in the letter you stated that

> "Basically, preliminary approval means that the Department believes that the site is feasible within the general design concepts proposed ..."

Now that Metro has submitted a different design concept from that for which your Department granted preliminary approval, it seems clear that the Department of Environmental Quality ought now to rescind the preliminary approval granted on July 23, 1981 to Metro for its Wildwood Landfill proposal. Not only is Metro employing a different design concept than that for which preliminary approval was granted, but also this new concept is not backed up by the kind of detailed feasibility study that is required by OAR 340-61-030. Of course, the more recent version of this rule applies to Metro's new conceptual design for the landfill. For example, the rule requires that at least one boring be made for each ten acres at the landfill site. At Wildwood, only four borings have been made for a site that will occupy about 150 acres.

For the reasons stated above, we request, on behalf of West Hill & Island Neighbors, that the Department of Environmental Quality rescind the preliminary approval granted on July 23, 1981 to the Metropolitan Service District for the Wildwood Landfill. In the alternative, we would petition for a declaratory ruling under ORS 183.410 by the Department of Environmental Quality that the preliminary approval granted on July 23, 1981 does not apply to the conceptual design for the landfill outlined in Volume III of CH_2M Hill's feasibility study which is now under consideration for a land use permit by Multnomah County.

Thank you for your consideration.

Sincerely yours,

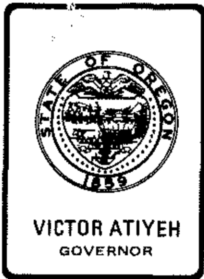
JAMES M. FINN

JMF:clb

Enclosures

HAND DELIVERED

cc Clarence Koennecke
Andrew Jordan
Paul Knorr
Larry Epstein



Department of Environmental Quality

522 SOUTHWEST 5TH AVE. PORTLAND, OREGON

MAILING ADDRESS: P.O. BOX 1760, PORTLAND, OREGON 97207

June 23, 1982

James M. Finn
Schwabe, Williamson, Wyatt, Moore & Roberts
Attorneys at Law
1200 Standard Plaza
1100 S.W. 6th Avenue
Portland, OR 97204

Dear Mr. Finn:

The concept of "Preliminary Approval" of a solid waste disposal site, as described in OAR 340-61-031, was added to the Department's rules in 1981 at the request of landfill operators. They felt a need to have an early review and response from the Department on proposed new sites, to reduce the risk of investing significant amounts of money evaluating a site with characteristics which to DEQ were severely limiting at the outset. As you know, we were responding to this need in a similar way before formalizing it in the rules.

"Preliminary Approval" is not a required step in the solid waste disposal site approval process. It is initiated by a request and at the discretion of a future solid waste disposal facility permit applicant. The Department views this response as a courtesy (technical assistance) prior to receiving the actual permit application and detailed plans and specifications which are eventually required.

The purpose of the preliminary review and approval process is described in OAR 340-61-031(2). Upon Metro's request regarding Wildwood the Department responded accordingly, pointing out areas of concern to be addressed. Metro is moving forward developing information and various conceptual landfill designs on the site to answer the Department's and others' raised concerns. We view this activity as consistent with the intent of "Preliminary Approval" of the site, leading toward an appropriate landfill design to be finally determined in the Department's official permit application review process. We do not have an application for a solid waste disposal permit nor detailed plans and specifications before us at this time.

I have enclosed a copy of the Department's rules relative to declaratory rulings, should you choose to pursue it.

Sincerely,

Bill

William H. Young
Director

EAS:b
SB1077
cc: Clarence Koennecke
Andrew Jordan
Paul Knorr
Larry Epstein
Northwest Region, DEQ
Robert Haskins, Department of Justice

RULES OF GENERAL APPLICABILITY AND ORGANIZATION

DIVISION 11

RULES OF PRACTICE AND PROCEDURE

[ED. NOTE: Administrative Orders DEQ 69 (Temp) and DEQ 72 repealed previous rules 340-11-005 through 340-11-170(SA 10).]

Definitions

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

(1) "Adoption" means the carrying of a motion by the Commission with regard to the subject matter or issues of an intended agency action.

(2) "Agency Notice" means publication in OAR and mailing to those on the list as required by ORS 183.335(6).

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

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

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

(6) "Filing" means receipt in the office of the Director. Such filing is adequate where filing is required of any document with regard to any matter before the Commission, Department or Director, except a claim of personal liability.

(7) "License" has the same meaning as given in ORS 183.310.

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

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

(10) "Person" has the same meaning as given in ORS 183.310.

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

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

Stat. Auth.: ORS Ch. 183 & 468
Hist: DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 122, f. & ef. 9-13-76; DEQ 25-1979, f. & ef. 7-5-79

Public Informational Hearings

340-11-007 (1) Whenever there is required or permitted a hearing which is neither a contested case hearing nor a rule making hearing as defined in ORS Chapter 183, the Presiding Officer shall follow any applicable procedural law, including case law and rules, and take appropriate procedural steps to accomplish the purpose of the hearing. Interested persons may, on their own motion or that of the Presiding Officer, submit written briefs or oral argument to assist the Presiding Officer in his resolution of the procedural matters set forth herein.

(2) Prior to the submission of testimony by members of the general public, the Presiding Officer shall present and offer for the record a summary of the questions the resolution of which, in the Director's preliminary opinion, will determine the matter at issue. He shall also present so many of the facts relevant to the resolution of these questions as he then possesses and which can practicably be presented in that forum.

(3) Following the public information hearing, or within a reasonable time after receipt of the report of the Presiding Officer, the Director or Commission shall take action upon the matter. Prior to or at the time of such action, the Commission or Director shall address separately each substantial distinct issue raised in the hearings record. This shall be in writing if taken by the Director or shall be noted in the minutes if taken by the Commission in a public forum.

Stat. Auth.: ORS Ch. 183 & 468
Hist: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 122, f. & ef. 9-13-76

Hearings on Variances

340-11-008 [DEQ 78, f. 9-6-74, ef. 9-25-76; Repealed by DEQ 122, f. & ef. 9-13-76]

Rulemaking

Notice of Rulemaking

340-11-010 (1) Notice of intention to adopt, amend, or repeal any rule(s) shall be in compliance with applicable state and federal laws and rules, including ORS Chapter 183 and sections (2) and (3) of this rule.

(2) In addition to the news media on the list established pursuant to ORS 183.335 (6), a copy of the notice shall be furnished to such news media as the Director may deem appropriate.

(3) In addition to meeting the requirements of ORS 183.335(1), the notice shall contain the following:

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

(b) Where the proposed rule is not set forth verbatim in the notice, a statement of the time, place, and manner in which a copy of the proposed rule may be obtained and a description of the subject and issues involved in sufficient detail to inform a person that his interest may be affected;

(c) Whether the Presiding Officer will be a hearing officer or a member of the Commission;

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

Stat. Auth.: ORS Ch. 183 & 468
Hist: DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; DEQ 122, f. & ef. 9-13-76

Request for a Public Hearing

340-11-015 [DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; Repealed by DEQ 122, f. & ef. 9-13-76]

Postponing Intended Action

340-11-020 [DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; Repealed by DEQ 122, f. & ef. 9-13-76]

Conduct of Rulemaking Hearing

340-11-025 (1) The hearing shall be conducted before the Commission, with the Chairman as the Presiding Officer, or before any member of the Commission or other Presiding Officer.

(2) At the commencement of the hearing, any person wishing to be heard shall advise the Presiding Officer of his name and address and affiliation on a provided form for listing witnesses, and such other information as the Presiding Officer may deem appropriate. Additional persons may be heard at the discretion of the Presiding Officer.

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

(4) The Presiding Officer shall thereupon describe the manner in which persons may present their views at the hearing.

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

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

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

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

(9) The Presiding Officer shall, where practicable and appropriate, receive all physical and documentary exhibits presented by witnesses. Unless otherwise required by law or rule, the exhibits shall be preserved by the Department for a period of one year, or, at the discretion of the Commission or Presiding Officer, returned to the persons who submitted them.

(10) The Presiding Officer may, at any time during the hearing, impose reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial matter. Persons with a concern distinct from those of citizens in general, and those speaking for groups, associations, or governmental entities may be accorded preferential time limitations as may be extended also to any witness who, in the judgment of the Presiding Officer, has such expertise, experience, or other relationship to the subject matter of the hearing as to render his testimony of special interest to the agency.

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

Stat. Auth.: ORS Ch. 183 & 468
Hist: DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 122, f. & ef. 9-13-76

Presiding Officer's Report

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

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

Stat. Auth.: ORS Ch. 183 & 468
Hist: DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; DEQ 78, f. 9-6-74, ef. 9-25-74

Action of the Commission

340-11-035 Following the rulemaking hearing by the Commission, or after receipt of the report of the Presiding Officer, the Commission may adopt, amend, or repeal rules within the scope of the notice of intended action.

Stat. Auth.: ORS Ch. 183 & 468
Hist: DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 122, f. & ef. 9-13-76

Answers, Motions, Amendments and Withdrawals of Petitions

340-11-040 [DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; Repealed by DEQ 122, f. & ef. 9-13-76]

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

340-11-045 [DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; Repealed by DEQ 122, f. & ef. 9-13-76]

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

340-11-047 (1) Any person may petition the Commission requesting the adoption (promulgation), amendment, or repeal of a rule. The petition shall be in writing, signed by or on behalf of the petitioner, and shall contain a detailed statement of:

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

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

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

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

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

(2) The petition, either in typewritten or printed form, shall be deemed filed when received in correct form by the Department. The Commission may require amendments to petitions under this section but shall not refuse any reasonably understandable petition for lack of form.

(3) Upon receipt of the petition:

(a) The Department shall mail a true copy of the petition together with a copy of the applicable rules of practice to all interested persons named in the petition. Such petition shall be deemed served on the date of mailing to the last known address of the person being served;

(b) The Department shall advise the petitioner that he has fifteen (15) days in which to submit written views;

(c) The Department may schedule oral presentation of petitions if the petitioner makes a request therefore and the Commission desires to hear the petitioner orally;

(d) The Commission shall, within thirty (30) days after the date of submission of the properly drafted petition, either deny the petition or initiate rule making proceedings in accordance with applicable procedures for Commission rulemaking.

(4) In the case of a denial of a petition to adopt, amend, or repeal a rule, the Commission shall issue an order setting forth its reasons in detail for denying the petition. The order shall be mailed to the petitioner and all other persons upon whom a copy of the petition was served.

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

Stat. Auth.: ORS Ch. 183 & 468
Hist: DEQ 122, f. & ef. 9-13-76

Notice of Hearing

340-11-050 [DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; Repealed by DEQ 122, f. & ef. 9-13-76]

Temporary Rules

340-11-052 The Commission may adopt temporary rules and file the same, along with supportive findings, pursuant to ORS 183. 335(5) and 183.355(2).

Stat. Auth.: ORS Ch. 183 & 468
Hist: DEQ 122, f. & ef. 9-13-76

Subpoenas

340-11-055 [DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; Repealed by DEQ 122, f. & ef. 9-13-76]

Intervention

340-11-060 [DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; Repealed by DEQ 122, f. & ef. 9-13-76]

Declaratory Rulings: Institution of Proceedings, Consideration of Petition and Disposition of Petition

340-11-062 (1) Pursuant to the provisions of ORS 183.410 and the rules prescribed thereunder by the Attorney General, and upon the petition of any person, the Commission may, in its discretion, issue a declaratory ruling with respect to the applicability to any person, property, or state of facts or any rule or statute enforceable by the Department or Commission.

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

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

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

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

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

(e) The question presented for decision by the Commission;

(f) The specific relief requested;

(g) The name and address of petitioner and of any other person known by the petitioner to have special interest in the requested declaratory ruling.

(3) The petition shall be typewritten or printed and in the form provided in Appendix 1 to this rule 340-11-062. The Commission may require amendments to petitions under this rule but shall not refuse any reasonably understandable petition for lack of form.

(4) The petition shall be deemed filed when received by the Department.

(5) The Department shall, within thirty (30) days after the petition is filed, notify the petitioner of the Commission's decision not to issue a ruling or the Department shall, within the same thirty days, serve all specially interested persons in the petition by mail:

(a) A copy of the petition together with a copy of the Commission's rules of practice; and

(b) A notice of the hearing at which the petition will be considered. This notice shall have the contents set forth in section (6) of this rule.

(6) The notice of hearing at which time the petition will be considered shall set forth:

(a) A copy of the petition requesting the declaratory ruling;

(b) The time and place of hearing;

(c) A statement that the Commission will conduct the hearing or a designation cf the Presiding Officer who will preside at and conduct the hearing.

(7) The hearing shall be conducted by and shall be under the control of the Presiding Officer. The Presiding Officer may be the Chairman of the Commission, any Commissioner, the Director, or any other person designated by the Commission or its Chairman.

(8) At the hearing, petitioner and any other party shall have the right to present oral argument. The Presiding Officer may impose reasonable time limits on the time allowed for oral argument. Petitioner and other parties may file with the agency briefs in support of their respective positions. The Presiding Officer shall fix the time and order of filing briefs.

(9) In those instances where the hearing was conducted before someone other than the Commission, the Presiding Officer shall prepare an opinion in form and in content as set forth in section (11) of this rule.

(10) The Commission is not bound by the opinion of the Presiding Officer.

(11) The Commission shall issue its declaratory ruling within sixty (60) days of the close of the hearing, or, where briefs are permitted to be filed subsequent to the hearing, within sixty (60) days of the time permitted for the filing of briefs. The ruling shall be in the form of a written opinion and shall set forth:

(a) The facts being alleged by petitioner;

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

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

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

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

(12) A declaratory ruling issued in accordance with this section is binding between the Commission, the Department, and the petitioner on the state of facts alleged, or found to exist, unless set aside by a court.

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

Stat. Auth.: ORS Ch. 183 & 468
Hist: DEQ 122, f. & ef. 9-13-76

Conduct of the Hearing

340-11-065 [DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-24-74; Repealed by DEQ 122, f. & ef. 9-13-76]

Disqualification

340-11-070 [DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-24-74; Repealed by DEQ 122, f. & ef. 9-13-76]

Powers of Chairmen or Hearings Officer

340-11-075 [DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-24-74; Repealed by DEQ 122, f. & ef. 9-13-76]

Who May Appear at Hearings

340-11-080 [DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-24-74; Repealed by DEQ 122, f. & ef. 9-13-76]

Standard of Conduct at Hearings

340-11-085 [DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-24-74; Repealed by DEQ 122, f. & ef. 9-13-76]

Hearings Reporter

340-11-090 [DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-24-74; Repealed by DEQ 122, f. & ef. 9-13-76]

Contested Cases

Transcript of Testimony

340-11-095 [DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; DEQ 78, f. 9-6-74, ef. 9-25-74; Repealed by DEQ 122, f. & ef. 9-13-76]

Service of Written Notice

340-11-097 (1) Whenever a statute or rule requires that the Commission or Department serve a written notice or final order upon a party other than for purposes of ORS 183.335 or for the purposes of notice to members of the public in general, the notice or final order shall be personally delivered or sent by registered or certified mail.

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

(a) The party; or

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

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

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

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

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

Stat. Auth.: ORS Ch. 183 & 468
Hist: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 122, f. & ef. 9-13-76

Written Notice of Opportunity for a Hearing

340-11-100 (1) Except as otherwise provided in ORS 183.430 and ORS 670.285, before the Commission or Department shall by order suspend, revoke, refuse to renew, or refuse to issue a license, or enter a final order in any other contested case as defined in ORS Chapter 183, it shall afford the licensee, the license applicant or other party to the contested case an opportunity for hearing after reasonable written notice.

(2) Written notice of opportunity for a hearing, in addition to the requirements of ORS 183.415(2), may include:

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

(b) A statement that the party may elect to be represented by legal counsel;

(c) A statement of the party or parties who, in the contention of the Department or Commission, would have the burden of coming forward with evidence and the burden of proof in the event of a hearing.

Stat. Auth.: ORS Ch. 183 & 468
Hist: DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 122, f. & ef. 9-13-76

Generally

340-11-105 [DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; Repealed by DEQ 78, f. 9-6-74, ef. 9-25-74]

Answer Required: Consequences of Failure to Answer

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

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

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

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

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

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

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

Stat. Auth.: ORS Ch. 183 & 468
Hist: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 122, f. & ef. 9-13-76

Oath or Affirmation
340-11-110 [DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; Repealed by DEQ 78, f. 9-6-74, ef. 9-25-74]

Right to Full and True Disclosure of the Facts
340-11-115 [DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; Repealed by DEQ 122, f. & ef. 9-13-76]

Subpoenas and Depositions
340-11-116 Subpoenas.

(1) Upon a showing of good cause and general relevance any party to a contested case shall be issued subpoenas to compel the attendance of witnesses and the production of books, records and documents.

(2) Subpoenas may be issued by:

(a) A hearing officer; or

(b) A member of the Commission; or

(c) An attorney of record of the party requesting the subpoena.

(3) Each subpoena authorized by this section shall be served personally upon the witness by the party or any person over 18 years of age.

(4) Witnesses who are subpoenaed, other than parties or officers or employees of the Department or Commission, shall receive the same fees and mileage as in civil actions in the circuit court.

(5) The party requesting the subpoena shall be responsible for serving the subpoena and tendering the fees and mileage to the witness.

(6) A person present in a hearing room before a hearing officer during the conduct of a contested case hearing may be required, by order of the hearing officer, to testify in the same manner as if he were in attendance before the hearing officer upon a subpoena.

(7) Upon a showing of good cause a hearing officer or the Chairman of the Commission may modify or withdraw a subpoena.

(8) Nothing in this section shall preclude informal arrangements for the production of witnesses or documents, or both.

Stat. Auth.: ORS Ch. 183 & 468
Hist: DEQ 122, f. & ef. 9-13-76; DEQ 25-1979, f. & ef. 7-5-79

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

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

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

Except for good cause shown, failure of any party to appear at a duly scheduled pre-hearing conference or the hearing on the merits shall be presumed to be a waiver of right to proceed any further, and, where applicable:

(a) A withdrawal of the answer;

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

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

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

(a) Statement and evidence of the party with the burden of coming forward with evidence in support of his proposed action;

(b) Statement and evidence of defending party in support of his alleged position;

(c) Rebuttal evidence, if any;

(d) Surrebuttal evidence, if any.

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

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

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

(a) The Presiding Officer;

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

(c) Counsel for the Commission or the Department;

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

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

(7) The hearing may be continued with recesses as determined by the Presiding Officer.

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

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

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

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

Stat. Auth.: ORS Ch. 183 & 468
Hist: DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 122, f. & ef. 9-13-76

The Record
340-11-121 The Presiding Officer shall certify such part of the record as defined by ORS 183.415(7) as may be necessary for review of final orders and proposed final orders. The Commission or Director may review tape recordings of proceedings in lieu of a prepared transcript.

Stat. Auth.: ORS Ch. 183 & 468
Hist: DEQ 122, f. & ef. 9-13-76

Evidentiary Rules

340-11-125 (1) In applying the standard of admissibility of evidence set forth in ORS 183.450, the Presiding Officer may refuse to admit hearsay evidence inadmissible in the courts of this state where he is satisfied that the declarant is reasonably available to testify and the declarant's reported statement is significant, but would not commonly be found reliable because of its lack of corroboration in the record or its lack of clarity and completeness.

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

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

Stat. Auth.: ORS Ch. 183 & 468
Hist: DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; DEQ 122, f. & ef. 9-13-76

Objections

340-11-130 [DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; Repealed by DEQ 78, f. 9-6-74, ef. 9-25-74]

Appeal of Hearing Officer's Final Order

340-11-132 (1) Hearing Officer's Final Order: In a contested case if a majority of the members of the Commission have not heard the case or considered the record, the Hearing Officer shall prepare a written Hearing Officer's Final Order including findings of fact and conclusions of law. The original of the Hearing Officer's Final Order shall be filed with the Commission and copies shall be served upon the parties in accordance with rule 340-11-097 (regarding service of written notice).

(2) Commencement of Appeal to the Commission:

(a) The Hearing Officer's Final Order shall be the final order of the Commission unless within 30 days from the date of mailing, or if not mailed then from the date of personal service, any of the parties or a member of the Commission files with the Commission and serves upon each party a Notice of Appeal. A proof of service thereof shall also be filed, but failure to file a proof of service shall not be a ground for dismissal of the Notice of Appeal.

(b) The timely filing and service of a Notice of Appeal is a jurisdictional requirement for the commencement of an appeal to the Commission and cannot be waived; a Notice of Appeal which is filed or served late shall not be considered and shall not affect the validity of the Hearing Officer's Final Order which shall remain in full force and effect.

(c) The timely filing and service of a sufficient Notice of Appeal to the Commission shall automatically stay the effect of the Hearing Officer's Final Order.

(3) Contents of Notice of Appeal. A Notice of Appeal shall be in writing and need only state the party's or a Commissioner's intent that the Commission review the Hearing Officer's Final Order.

(4) Procedures on Appeal:

(a) Appellant's Exceptions and Brief — Within 30 days from the date of service or filing of his Notice of Appeal, whichever is later, the Appellant shall file with the Commission and serve upon each other party written exceptions, brief and proof of service. Such exceptions shall specify those findings and conclusions objected to and reasoning, and shall include proposed alternative findings of fact, conclusions of law, and order with specific references to those portions to the record upon which the party relies. Matters not raised before the Hearing Officer shall not be considered except when necessary to prevent manifest injustice. In any case where opposing parties timely serve and file Notices of Appeal, the first to file shall be considered to be the appellant and the opposing party the cross appellant.

(b) Appellee's Brief — Each party so served with exceptions and brief shall then have 30 days from the date of service or filing, whichever is later, in which to file with the Commission and serve upon each other party an answering brief and proof of service.

(c) Reply Brief — Except as provided in subsection (4)(d) of this rule, each party served with an answering brief shall have 20 days from the date of service or filing, whichever is later, in which to file with the Commission and serve upon each other party a reply brief and proof of service.

(d) Cross Appeals — Should any party entitled to file an answering brief so elect, he may also cross appeal to the Commission the Hearing Officer's Final Order by filing with the Commission and serving upon each other party in addition to an answering brief a Notice of Cross Appeal, exceptions (described in subsection (4)(a) of this rule), a brief on cross appeal and proof of service, all within the same time allowed for an answering brief. The appellant-cross appellee shall then have 30 days in which to serve and file his reply brief, cross answering brief and proof of service. There shall be no cross reply brief without leave of the Chairman or the Hearing Officer.

(e) Briefing on Commission Invoked Review — Where one or more members of the Commission commence an appeal to the Commission pursuant to subsection (2)(a) of this rule, and where no party to the case has timely served and filed a Notice of Appeal, the Chairman shall promptly notify the parties of the issue that the Commission desires the parties to brief and the schedule for filing and serving briefs. The parties shall limit their briefs to those issues. Where one or more members of the Commission have commenced an appeal to the Commission and a party has also timely commenced such a proceeding, briefing shall follow the schedule set forth in subsections (a), (b), (c), (d), and (f) of this section (4).

(f) Extensions — The Chairman or a Hearing Officer, upon request, may extend any of the time limits contained in this section (4). Each extension shall be made in writing and be served upon each party. Any request for an extension may be granted or denied in whole or in part.

(g) Failure to Prosecute — The Commission may dismiss any appeal or cross appeal if the appellant or cross appellant fails to timely file and serve any exceptions or brief required by these rules.

(h) Oral Argument — Following the expiration of the time allowed the parties to present exceptions and briefs, the Chairman may at his discretion schedule the appeal for oral argument before the Commission.

(i) Scope of Review — In an appeal to the Commission of a Hearing Officer's Final Order, the Commission may, substitute its judgment for that of the Hearing Officer in making any particular finding of fact, conclusion of law, or order. As to any finding of fact made by the Hearing Officer the Commission may make an identical finding without any further consideration of the record.

(j) Additional Evidence — In an appeal to the Commission of a Hearing Officer's Final Order the Commission may take additional evidence. Requests to present additional evidence shall be submitted by motion and shall be supported by a statement specifying the reason for the failure to present it at the hearing before the Hearing Officer. If the Commission grants the motion, or so decides of its own motion, it may hear the additional evidence itself or remand to a Hearing Officer upon such conditions as it deems just.

Stat. Auth.: ORS Ch. 183 & 468
Hist: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 115, f. & ef. 7-6-76; DEQ 25-1979, f. & ef. 7-5-79

Presiding Officer's Proposed Order in Hearing Before the Department

340-11-133 [DEQ 78, f. 9-6-74, ef. 9-25-74; Repealed by DEQ 122, f. & ef. 9-13-76]

Presiding Officer's Proposed Order in Hearing Before the Department

340-11-134 (1) In a contested case before the Department, the Director shall exercise powers and have duties in every respect identical to those of the Commission in contested cases before the Commission.

(2) Notwithstanding section (1) of this rule, the Commission may, as to any contested case over which it has final administrative jurisdiction, upon motion of its Chairman or a majority of its members, remove to the Commission any contested case before the Department at any time during the proceedings in a manner consistent with ORS Chapter 183.

Stat. Auth.: ORS Ch. 183 & 468
Hist: DEQ 122, f. & ef. 9-13-76

Final Orders in Contested Cases Notification

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

(2) Final orders shall include the following:

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

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

(c) Conclusions of law;

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

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

Stat. Auth.: ORS Ch. 183 & 468
Hist: DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74

Powers of the Director

340-11-136 (1) Except as provided by rule 340-12-075, the Director, on behalf of the Commission, may execute any written order which has been consented to in writing by the parties adversely affected thereby.

(2) The Director, on behalf of the Commission, may prepare and execute written orders implementing any action taken by the Commission on any matter.

(3) The Director, on behalf of the Commission, may prepare and execute orders upon default where:

(a) The adversely affected parties have been properly notified of the time and manner in which to request a hearing and have failed to file a proper, timely request for a hearing; or

(b) Having requested a hearing, the adversely affected party has failed to appear at the hearing or at any duly scheduled prehearing conference.

(4) Default orders based upon failure to appear shall issue only upon the making of a prima facie case on the record.

Stat. Auth.: ORS Ch. 183 & 468
Hist: DEQ 122, f. & ef. 9-13-76

Miscellaneous Provisions

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

Stat. Auth.: ORS Ch. 183 & 468
Hist: DEQ 122, f. & ef. 9-13-76

Tax Credit Fees

340-11-200 (1) Beginning November 1, 1981, all persons applying for Pollution Control Facilities Tax Credits pursuant to ORS 468.170 shall be subject to a two-part fee consisting of a non-refundable filing fee of $50 per application, and an application processing fee of one-half of one percent of the cost claimed in the application of the pollution control facility to a maximum of $5,000 except that if the application processing fee is less than $50, no application processing fee shall be charged. An amount equal to the filing fee and processing fee shall be submitted as a required part of any application for a pollution control facility tax credit.

(2) Upon the Department's acceptance of an application as complete, the filing fee becomes non-refundable.

(3) The application processing fee shall be refunded in whole when submitted with an application if:

(a) The Department determines the application is incomplete for processing; or

(b) The Commission finds that the facility is ineligible for tax credit; or

(c) The Commission issues an order denying the pollution control facility tax credit; or

(d) Applicant withdraws application before final certification by the Commission.

(4) The application processing fee shall be refunded in part if the final certified cost is less than the facility cost claimed in the original application. The refund amount shall be calculated by subtracting one-half of one percent of the actual certified cost of the facility from the amount of the application processing fee submitted with the application. If that calculation yields zero or a negative number, no refund shall be made.

(5) The fees shall not be considered by the Environmental Quality Commission as part of the cost of the facility to be certified.

(6) All fees shall be made payable to the Department of Environmental Quality.

Stat. Auth.: ORS Ch. 183 & 468
Hist: DEQ 31-1981, f. 10-19-81, ef. 11-1-81

OREGON ENVIRONMENTAL QUALITY COMMISSION MEETING

August 27, 1982

14th Floor Conference Room
Department of Environmental Quality
522 S. W. Fifth Avenue
Portland, Oregon

TENTATIVE AGENDA

9:00 am CONSENT ITEMS

These routine items are usually acted on without public discussion. If any item is of special interest to the Commission or sufficient need for public comment is indicated, the Chairman may hold any item over for discussion.

A. Minutes of the July 16, 1982, EQC meeting.

B. Monthly Activity Report for June, 1982.

C. Tax Credits.

9:05 am PUBLIC FORUM

This is an opportunity for citizens to speak to the Commission on environmental issues and concerns not a part of this scheduled meeting. The Commission may discontinue this forum after a reasonable time if an exceptionally large number of speakers wish to appear.

HEARING AUTHORIZATIONS

D. Request for authorization to conduct a public hearing on revisions to the Emission Standards for Hazardous Air Contaminants 340-25-450 to 480 to make the Department's rules pertaining to control of asbestos and mercury consistent with the federal rules and to amend Standards of Performance for New Stationary Sources 340-25-505 to 645 to include the federal rule for new lime plants.

ACTION AND INFORMATIONAL ITEMS

Public testimony will be accepted on the following except items which a public hearing has previously been held. Testimony will not be taken on items marked with an asterisk (*). However, the Commission may choose to question interested parties present at the meeting.

E. Mr. John Mullivan: Appeal of subsurface variance denial.

F. Request for a variance from noise control regulations for industry and commerce, OAR 340-35-035, for Medford Corporation, Rogue River Division.

G. Proposed adoption of a temporary revision of Administrative Rule 340-81-020 regarding the definition of the eligibility of land costs used in providing state financial assistance to public agencies for pollution control facilities.

(MORE)

H. Request for declaratory ruling as to the applicability of OAR 340-61-031 to the application of the Metropolitan Service District for preliminary approval of a solid waste disposal site known as Wildwood Landfill in Multnomah County.

I. Pollution Control Bond Fund - Request for approval of resolution authorizing issuance and sale of Pollution Control Bonds in the amount of $15 million.

J. Status report: Portland-area backyard burning.

K. Public meeting: Oregon's Hazardous Substances Response Plan.

L. Informational report: METRO Waste Reduction Program.

* M. Proposed adoption of amendments to rules for equipment burning salt-laden wood waste from logs stored in salt water, OAR 340-21-020(2), as an amendment to the State Implementation Plan.

* N. Proposed adoption of amendments to rules governing on-site sewage disposal: fees for Multnomah County, OAR 340-72-070; and fees for Jackson County, OAR 340-72-080.

* O. Proposed action to:
  (a) Approve the Clatsop Plains Groundwater Protection Plan as a revision to the Statewide Water Quality Management Plan for the North Cost/Lower Columbia Basin.
  (b) Amend the On-Site Sewage Disposal Rules for the Clatsop Plains.

WORK SESSION

The Commission reserves this time, if needed, for further consideration of any item on the agenda.

Because of the uncertain length of time needed, the Commission may deal with any item at any time in the meeting except those set for a specific time. Anyone wishing to be heard on any item not having a set time should arrive at 9:00 am to avoid missing any item of interest.

The Commission will breakfast (7:30 am) at the Portland Motor Hotel, 1414 S. W. Sixth Avenue, Portland; and will lunch at DEQ Headquarters, 522 S. W. Fifth Avenue, Portland.

At the conclusion of the Commission's regularly scheduled agenda, they will continue in work session to discuss legislative concepts and current budget matters.

FULL REPORT IN FILE

Volume I

WILDWOOD SANITARY LANDFILL

FEASIBILITY STUDY

Prepared by:
CH2M HILL
NORTHWEST, INC.

METRO

MAY 1981

EXHIBIT 2

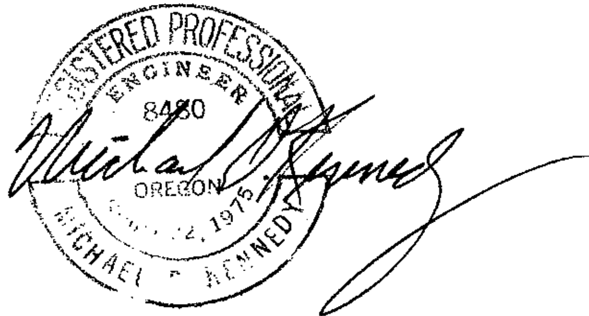
Volume I

WILDWOOD SANITARY LANDFILL

FEASIBILITY STUDY

Submitted To:

Metropolitan Service District
527 S.W. Hall Street
Portland, Oregon 97201



By:

CH2M HILL NORTHWEST, INC.
200 S.W. Market Street
Portland, Oregon 97201

502A

PREFACE

This feasibility study report consists of two volumes. Volume I contains the report text, which has been revised to reflect comments received on the draft report from public agencies and citizens. A summary of the major issues raised during the public agency and citizen review period is included in Appendix H to Volume I, along with a general response.

Volume II includes all the comments that have been received, and a response to each question raised in these comment letters. A number has been placed in the left hand margin of the comment letter where a question has been raised, or where a response is required. The responses to each comment follow in numerical order, directly behind all the comment letters.

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FULL REPORT IN FILE

Exhibit A58

Volume III

WILDWOOD SANITARY LANDFILL

FEASIBILITY STUDY

Prepared by:
CH2M HILL
NORTHWEST, INC.

METRO

MAY 1982

EXHIBIT 3

Volume III

WILDWOOD SANITARY LANDFILL

FEASIBILITY STUDY

Submitted To:

Metropolitan Service District
527 S.W. Hall Street
Portland, Oregon 97201

By:

CH2M HILL NORTHWEST, INC.
200 S.W. Market Street
Portland, Oregon 97201

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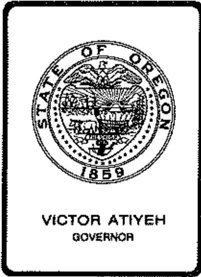

Environmental Quality Commission

Mailing Address: BOX 1760, PORTLAND, OR 97207
522 SOUTHWEST 5th AVENUE, PORTLAND, OR 97204 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Amendment to Agenda Item I, August 27, 1982 EQC Meeting

Since the staff report was written regarding the proposed sale of $15 million of Pollution Control Bonds, the following significant changes have occurred which require considerable rethinking of the proposal:

1. The continued decline in interest rates has produced a major rally in the bond market. If the sale were to take place as this is written, we are advised that we might obtain a rate in the region of 10.25%-10.50% compared with the 11%-12% we could expect a short time ago. The market remains volatile, and we could see further changes between now and October 5, our planned date of sale.

2. Concern about the passage of Ballot Measure No. 3 and its implications has increased. Municipalities would effectively be prevented from selling general obligation bonds, and the Department could be left holding excess funds in a declining interest rate market.

3. Two major service districts with substantial bonding authority already approved by their voters have requested the Department to accelerate the funding of their projects. The only practical way to achieve this is to arrange for simultaneous sales of their bonds to coincide with our sale on October 5.

The Tri-Cities Service District of Clackamas County has voter-approved bonding authority for $25 million with an interest limit of 10%.

The Metropolitan Wastewater Service District of Lane County has remaining authority of $12.5 million with no special interest limitation.

Evaluation and Alternatives

While the current trend in long-term interest rates is encouraging and would normally prompt one to consider selling more bonds, the Department considers that the effect of the passage of Ballot Measure No. 3 would so dramatically reduce the ability of municipalities to sell general

obligation bonds that it makes any new sale on our part a risk, unless the proceeds of such a sale can be loaned out before November 2. Effectively, therefore, the Department proposes that the October sale be for $27.5 million to provide for immediate demand as follows:

Cash balance 6/30/82		$24,760,000
Expended:		
METRO	$ 1,157,700	1,157,700
		$23,602,300
Expended by 10/5/82:		
Cottage Grove	$ 2,500,000	
Silverton	1,390,000	
METRO	500,000	
Other	100,000	4,490,000
		$19,112,300
Proposed sale proceeds		27,500,000
		$46,612,300
Expend 10/5/82:		
Tri-Cities, Clackamas County	$25,000,000	
MWMC	12,500,000	37,500,000
Balance 10/5/82		$ 9,112,300
Expend by 11/2/82:		
Multnomah County/Gresham		3,000,000
Balance 11/2/82		$ 6,112,300

The balance of old funds to be carried over is now shown as $19 million compared with $7 million previously due to Tri-Cities and MWMC deferring $10 million which had been planned for interim loans and a reappraisal of the chances of other municipalities taking loans.

The blended interest rate likely to result now improves as illustrated below:

Interest rate on existing funds	$19.0 m.	7.5%
Interest rate on new sale	27.5 m.	10.5%
"Blended" rate available	$46.5 m.	9.3%

In order to achieve the limit of 10% needed by Tri-Cities, we estimate we could sell the $27.5 million at a maximum rate of 11.5%.

The attached letter from Howard Rankin deals with the implications of Ballot Measure No. 3 on the Department's ability to issue general obligation bonds.

Director's Recommendation

The Director recommends that the Commission adopt the Resolution in Attachment 2 of the staff report amended to authorize the issuance of $27.5 million in State of Oregon Pollution Control Bonds, Series 1982.

Bill

William H. Young

BK1215
Attachment - Letter from Howard Rankin
F. W. O'Donnell:k
(503)229-6270
August 26, 1982

RANKIN, McMURRY, VAVROSKY & DOHERTY

LAWYERS

1600 BENJ. FRANKLIN PLAZA
ONE S.W. COLUMBIA STREET
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STODDARD D. JONES
(1945-1982)

TELEPHONE 226-6400
AREA CODE 503

August 23, 1982

Mr. William H. Young
Director
Department of Environmental Quality
State of Oregon
Yeon Building, Third Floor
522 S.W. Fifth Avenue
Portland, Oregon 97204

RE: Proposed Ballot Measure No. 3
November 2, 1982, General Election

Dear Mr. Young:

You have asked for our opinion as to the legality of an issue of State of Oregon Pollution Control Bonds under Article XI-H of the Oregon Constitution, should Ballot Measure No. 3 be adopted at the General Election of November 2, 1982.

Section 2 of Ballot Measure No. 3, subparagraph (a), establishes the maximum amount of all ad valorem taxes levied against any real property not to exceed one and one-half percent per annum of the true cash value of the property, subject to certain limitations for political subdivisions as provided in Section 4 of the proposed Measure.

Article XI-H of the Oregon Constitution provides that bonds issued for the purposes of this Article shall be "direct obligations of the State". In addition, Section 4 of the Article authorizes the levy of ad valorem taxes upon all taxable property within the State in sufficient amount to provide for the payment of the indebtedness incurred under the Article. This levy shall be in addition to any other revenues, gifts, grants, user charges, assessments and other fees (self-liquidating resources) as provided in Section 2 of the Article.

General Obligation Bonds are usually defined as bonds which are payable from an unlimited general ad valorem tax on all taxable property. Also, we note Oregon Revised Statutes Section 286.061 defines ". . . bonds issued pursuant to . . . ORS 468.195 (Pollution Control Bonds) shall be direct general obligations of the State of Oregon".

The usual definition of "General Obligation Bonds" historically has been applied to political subdivisions of a state. Bonds issued as a direct obligation of the state are payable from any and all resources of the state, including the power to levy ad valorem taxes. In the marketplace, bonds of a sovereign state may be termed "general obligations of the state", even though such bonds are secured by a limited tax levy or may lack any specific authority for any tax levy. Thus, "general obligation" refers to the direct promise of the State to pay the obligation as a State obligation from any and all resources available to the State.

The restriction by constitution of one source of revenue does not destroy the market acceptance of a state general obligation debt. It is the restriction of the revenue to a single or class of revenue source which would affect the issue of general obligations by the state. Illustrative of this concept is the market acceptance of Oregon Veterans' Welfare Bonds (Article XI-A). These bonds are rated and accepted as "general obligations of the state", though payment is restricted to a two mill tax levy. The inherent power of the state to raise revenue, unless constitutionally limited, does not extend to political subdivisions subject to the six percent limitation of Article XI, Section 11, of the Oregon Constitution.

Ballot Measure No. 3 expressly restricts the levy of all taxes to not exceeding one and one-half percent of the true cash value of the taxable property. The legislature will determine the allocation of the levy for the purposes of this limitation. The manner and allocation of the maximum tax levy is very uncertain.

In the event of the passage of Ballot Measure No. 3, it is our opinion that the State of Oregon may issue Pollution Control Bonds as "general obligations of the State constituting a direct obligation, payable from any and all resources of the State, and, in addition, upon legislative approval of the allocation of the limitation of levies, from State property levies sufficient to retire the indebtedness".

The practical application of this opinion would require (a) legislative allocation to the State of a portion of the limitations sufficient to retire all State obligations, and (b) legislative amendment to Oregon Revised Statutes 286.061, redefining the term "general obligation", and (c) if necessary,

legislative appropriation of funds sufficient from the general fund of the State to pay State indebtedness for which there are insufficient other funds available.

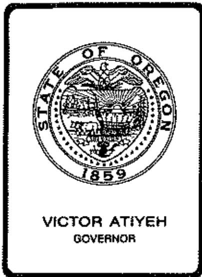
Thus, it is our opinion that, upon the successful passage of Ballot Measure No. 3, extensive legislative revisions and amendments will be necessary prior to any further issuance of Article XI-H Pollution Control General Obligation Bonds.

Very truly yours,

RANKIN, McMURRY, VavROSKY
& DOHERTY

Howard A. Rankin

HAR:slc



Environmental Quality Commission

Mailing Address: BOX 1760, PORTLAND, OR 97207
522 SOUTHWEST 5th AVENUE, PORTLAND, OR 97204 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. I, August 27, 1982, EQC Meeting

Pollution Control Bonds Sale--Request for Approval of Resolution Authorizing Issuance of Pollution Control Bonds in the amount of $15 Million.

Background

Under ORS 468.195 and 286.033, the Commission may authorize issuance of State of Oregon general obligation bonds for financing pollution control facilities as specified in Article XI-H of the Oregon Constitution, subject to the approval of the State Treasurer.

The Commission has authorized four previous sales of Pollution Control Bonds, the most recent for $40 million in 1980. Currently, outstanding principal in respect of past sales amounts to $129.4 million compared with the maximum of $260 million permitted under ORS 468.195. ORS 286.085 established a limit of $50 million for sales of Pollution Control Bonds during the 1981-83 biennium.

The Department estimates that the available funds in the Pollution Control Bond Fund will be reduced to approximately $7 million by October. Since potential demand for loans is of the order of $100 million over the next three years (see Attachment 1), a new sale will be necessary if the loan program is to continue.

Evaluation and Alternatives

Although the various municipalities throughout the state have indicated a total requirement for loans exceeding $100 million, the Department is proposing to limit the next sale to a maximum of $15 million, considerably lower than previous sales which ranged from $30 million to $45 million each. A cautious approach is advocated for the following reasons:

1. Long-term interest rates are still close to historical highs but could decline over the next year or so.

2. Forecasting the timing and amount of individual loans is difficult because of wide variations in local planning processes and capabilities, the need in most cases for bond elections and uncertainties regarding Federal Construction Grants. Passage in November of the initiative petition to limit property taxes to 1 1/2 percent would present further complications.

3. The Department would like to obtain legally binding commitments from municipalities in advance of the sale but we have been advised by bond counsel that this is not a practical possibility in the case of general obligation bonds which are used to secure the great majority of loans made.

4. The sale is therefore primarily intended to cover loans estimated to be made by June 1983.

5. Special mention should be made of the Metro content shown in the forecast in Attachment 1. This amounts to a total of $45.8 million of possible new loans (probably in the form of revenue bonds) in addition to loans and grants already authorized of $10.9 million. These loans are to be the subject of prior legislative review. The Department believes that in view of the size and special nature of these loans, consideration should be given to having a special sale or sales of state bonds with the object of passing the proceeds through directly to Metro on a negotiated sale basis.

ORS 286.036 states, "the agency, with the approval of the State Treasurer, shall determine the maximum interest to be borne by the bonds, the interest basis and definition thereof. The maximum effective interest rate shall be certified to the State Treasurer as prudent in light of prevailing interest rates, market conditions and the projected program revenues, if any, and the State Treasurer must approve or disapprove."

Given the economic uncertainties, the volatility of the financial markets, and the recent drop in the state's bond rating, the Department considers it too early to make a firm recommendation on interest rates and, as suggested by the State Treasurer's office, proposes that the formal resolution allow for interest of up to 13 percent to allow flexibility. The Department will, however, arrange for the necessary consultations with the State Treasurer and financial institutions and conduct appropriate conference calls with Commissioners in order to obtain their final decision on the maximum interest rate prior to publication of the Notice of Sale.

The current thinking of the Department, for illustrative purposes runs as follows:

Interest rate on existing funds	$ 7.0 million	7.5%
Interest rate on new sale	15.0 million	12.0%
"Blended" rate on available funds	$22.0 million	10.6%

With the addition of 0.1 percent administration surcharge the Department should with 10.7 percent money be an attractive source of funds to most municipalities. The above calculation also illustrates the beneficial impact of existing funds in achieving a competitive rate.

The Commission may wish to consider the following alternatives:

1. A larger sale. Not recommended by the Department as being unnecessarily risky at this time.

2. A smaller sale of $10 million. The Department considers this worthy of further study and will continue to assess loan demand and other factors and retain the flexibility to reduce the sale.

3. Defer the sale into 1983. Although there is a general expectation that long term interest rates may come down, there is no assurance that this will happen soon. Delay would shrink or eliminate existing funds and any beneficial effect they could have.

Timetable

The Department has discussed the proposed sale with the State Treasurer's office which is in general agreement and which has suggested the following timetable:

August 27, 1982	EQC authorizes issuance of $15 million State of Oregon Pollution Control Bonds Series 1982.
September 22, 1982	Publish Notice of Sale; preliminary Official Statement available.
October 5, 1982	Date of Sale
October 22, 1982	Closing, delivery of bonds.

The Department will arrange conference calls with the Commissioners to establish the maximum interest rate payable, any changes to terms, conditions or amount of sale and to award the bid.

Resolution

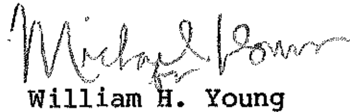
Rankin, McMurry, VavRosky and and Doherty have been retained as bond counsel for the Department and have drafted the Resolution shown as Attachment 2.

Summation

The Department estimates that there is sufficient potential demand for loans from the Pollution Control Bond Fund to require a sale of up to $15 million of State General Obligation Pollution Control Bonds. The Commission may authorize issuance of these bonds and bond counsel has prepared the appropriate resolution for adoption by the Commission.

Director's Recommendation

Based upon the summation, the Director recommends that the Commission adopt the Resolution in Attachment 2 authorizing the issuance of $15 million in State of Oregon Pollution Control Bonds, Series 1982.



William H. Young

Attachments: 1. Pollution Control Bond Fund - Loans
2. Resolution Authorizing Issuance of Bonds

BH544
Fergus W. O' Donnell:h
(503)229-6270
August 7, 1982

POLLUTION CONTROL BOND FUND

Cash balance 6/30/82			$ 24,760,000
Less: Encumbrances			3,010,000
Currently available			$ 21,750,000

IN PROCESS:	July 82-June 83		
Cottage Grove	$ 2,500,000		
Silverton	1,500,000		
Tri-Cities (Clackamas County)	5,000,000		
MWMC (Lane County)	5,000,000		
Tillamook City (Bancroft)	435,000		
Wasco County L.I.D. (Bancroft)	200,000		
			14,635,000
Estimated available October			$ 7,115,000
Proposed sale proceeds			15,000,000
Available after sale			$ 22,115,000

ESTIMATED NEW LOANS:	July 82-June 83	July 83-July 85
Sewerage		
Burns	$ 200,000	$
Hubbard	800,000	
Multnomah County/Gresham	3,000,000	
Monroe	400,000	
Echo	250,000	
MWMC (Lane County)		6,500,000
Tri Cities (Clackamas County)		10,500,000
River Rd/Santa Clara (Lane Cty)		4,000,000
Roseburg Metro (Douglas County)		13,000,000
Scio	400,000	
Cresswell	500,000	
Newport (Bancroft)	1,000,000	
Newberg	10,000,000	
Wauna Westport		200,000
Charleston S. D.		1,000,000
Milton Freewater		1,000,000
Seaside		4,000,000
Cannon Beach		500,000
Lincoln City		250,000
Green S. D. Landers Lane		200,000
Wedderburn S. D.		100,000
TOTAL Sewerage	$ 16,550,000	$ 41,250,000
Solid Waste		
Metro (Revenue bonds)		
- Res. Rec. Pipeline	1,500,000	15,300,000
- Wash Cty. Transfer St.	1,500,000	4,500,000
- E. Mult. Cty T'fer St.		6,000,000
- Wildwood		17,000,000
Clatsop County (Revenue)		1,000,000
Columbia County (Revenue)		500,000
Lane County		1,500,000
TOTAL Solid Waste	$ 3,000,000	$ 45,800,000
GRAND TOTAL NEW LOANS	$ 19,550,000	$ 87,050,000

BK1142

RESOLUTION AUTHORIZING ISSUANCE OF BONDS

THE ENVIRONMENTAL QUALITY COMMISSION OF THE STATE OF OREGON, AS THE GOVERNING BODY OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY, A STATE AGENCY, FINDS:

1. Additional moneys are needed for deposit in the pollution control fund to operate the programs financed with that fund pursuant to Article XI-H of the Constitution of Oregon and Oregon Revised Statutes Chapter 468.

2. In addition to moneys on hand in the pollution control fund, $15 million will be required for projects during the next three years.

3. The interest rate at which tax exempt bonds may be sold has increased substantially since the Commission last issued bonds in 1980. The increased interest rate will require an increase in the rate at which money is loaned to public corporations to fund eligible projects. Although the potential demand for loans exceeds $100 million, the Department of Environmental Quality recommends that the sale be limited to $15 million in order to minimize risk in view of uncertainties regarding the future trend of interest rates.

THE ENVIRONMENTAL QUALITY COMMISSION OF THE STATE OF OREGON RESOLVES:

Section 1. Bonds to be Issued. The Department of Environmental Quality has consulted with the State Treasurer as to the issuance of bonds, pursuant to Article XI-H to provide funds for planning, acquisition, construction, alteration or improvement of facilities for the collection, treatment, dilution and disposal of all forms of waste in or upon the air, water and lands of the State of Oregon. Upon the approval of the State Treasurer there shall be issued State of Oregon General Obligation Pollution Control Bonds in the amount of Fifteen Million Dollars ($15,000,000). The bonds shall be in denominations of $5,000 each, and shall mature serially on October 1 of each year as follows:

Year	Amount	Year	Amount

TO BE COMPLETED LATER

The bonds maturing after _______________ 1, 19___ shall be redeemable at the option of the State of Oregon on __________ 1 and on any interest payment date thereafter, in inverse order of maturity and by lot within a maturity, at par plus ____ from the date fixed for redemption to the date of maturity.

Section 2. The bonds shall be executed with a facsimile signature of the Governor and of the Secretary of State of the State of Oregon and the manual signature of the State Treasurer or the Deputy State Treasurer. The bonds shall bear a facsimile of the seal of the State of Oregon. The bonds shall be issued in coupon form without privilege of registration.

Section 3. The Environmental Quality Commission does determine that the maximum effective rate of interest which the bonds shall bear is 13 percent per annum. The Environmental Quality Commission does certify to the State Treasurer that this maximum effective interest rate is prudent in light of prevailing interest rates, market conditions, and the projected program revenues of the Department. The principal of and interest on the bonds shall be payable at the office of the New York City fiscal agent of the State of Oregon.

Section 4. The bonds will be dated the first day of October, 1982 with interest payable on the first day of April and the first day of October of each year, commencing April 1, 1983 and will be at rate or rates in multiples of one-eighth (1/8) or one-twentieth (1/20) of one percent (1%) per annum.

Section 5. The State of Oregon will prepare and make available upon request to bidders and investors a Preliminary Official Statement in compliance with the requirements of Oregon Revised Statutes 287.018. The bonds shall be awarded to the lowest bidder by public competitive sale and the State of Oregon may reject any or all bids and readvertise the sale of bonds in the manner required by law.

Section 6. The bonds shall be sold at not less than ______ percent of par value, plus accrued interest thereon.

Section 7. The notice of sale of the bonds, upon approval by the State Treasurer, shall be published not more than twenty (20) calendar days, nor less than ten (10) calendar days, prior to the sale date, in a newspaper or financial journal of general circulation printed and published in the City and State of New York and in a newspaper or financial journal of general circulation printed and published in the City of Portland, Oregon. The notice of sale shall contain the statutory requirements as set forth in Oregon Revised Statutes 286.058.

Section 8. The State Treasurer shall cause to be prepared, with the approval of the attorney general, a form of direct, general obligation, interest-bearing bonds of the State of Oregon to provide funds for carrying out the purposes of Article XI-H of the Constitution of the State of Oregon.

Section 9. The Environmental Quality Commission does appoint the law firm of Rankin, McMurry, VavRosky & Doherty as bond counsel for this bond issue. Sealed bids shall be received on behalf of the Commission to and including the hour of 11:30 a.m. on the fifth day of October, 1982 at the offices of Rankin, McMurry, VavRosky & Doherty, bond counsel in Portland, Oregon.

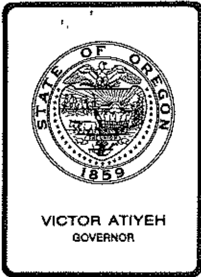
Section 10. The Environmental Quality Commission does request that the State Treasurer approve the issuance of the bonds, the date of issuance, the maximum effective interest rate, the preliminary official statement, the notice of sale and the proposed advertisement for bids for the purchase of the bonds, and the appointment of bond counsel.

Respectfully submitted,

____

Secretary, Environmental Quality Commission

Approved by the Environmental
Quality Commission on the
_____ day of ___________ , 1982



Environmental Quality Commission

Mailing Address: BOX 1760, PORTLAND, OR 97207
522 SOUTHWEST 5th AVENUE, PORTLAND, OR 97204 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. J, August 27, 1982, EQC Meeting

Status Report - Portland Area Backyard Burning

Background

Implementation of a ban on backyard burning in the Portland area has been postponed several times since first considered by the EQC in the early 1970's. At the December 19, 1980 meeting, the EQC voted unanimously to implement rules which called for a ban after December 31, 1980. The Commission also directed the Department to develop further rule modifications which could alleviate hardship burning problems and address possible ban boundary inequities. At the January 30, 1981 meeting, the EQC adopted temporary backyard burning rules which reduced burn ban boundaries to the highly populated metropolitan area and established a hardship burning permit program with an associated $30 fee.

Substantial public and political opposition to the ban developed in early 1981 highlighted by introduction of a bill in the '81 Oregon Legislature which would have permanently prohibited the EQC from banning backyard burning. In consideration of this opposition and potential legislation, the EQC on March 13, 1981 revised the January 30, 1981 temporary rule to allow backyard burning in the Portland Metro area based on a finding that the EQC had overestimated the ability of local government to provide alternative disposal cleanup methods and that debris posed a fire and pest hazard.

The '81 Oregon Legislature subsequently adopted SB327 which prevented the EQC from imposing a ban on backyard burning before June 30, 1982 but allowed imposition of a ban after that date if the EQC finds that:

1) Such prohibiting is necessary in the area to meet air quality standards; and
2) Alternative disposal methods are reasonably available to a substantial majority of the population in the affected area.

At the August 28, 1981 meeting, the EQC adopted permanent backyard burning rules which allow backyard burning in the Spring and Fall on days with good smoke dispersion characteristics. These rules have no end date for such burning in the Portland area.

Evaluation

Current state statutes now allow the EQC to consider banning backyard burning provided certain conditions are met. The next burn season is scheduled to start October 1. It is thus timely to consider the status of backyard burning in the Portland area, including the development of alternative disposal systems.

Recent Smoke Management Activities

During the three burn seasons that have occurred since the 1980 burn ban was rescinded, the meteorological regulation of burn days has been handled about the same as previous years. Some efforts were made to make the program more objective but it was decided that retaining some professional judgement in making burning decisions results in a more effective program.

Complaints against smoke from backyard burning continue to be received with 36 recorded for the Spring '82 period. In addition Northwest Region records during this period indicate 47 individuals expressed opposition to burning and 10 expressed favor of continued burning. With budget cuts the enforcement program for Portland area residential backyard burning has been substantially reduced. Most complaints are not followed up with a field visit and only 11 notices of violations were issued and no civil penalties were assessed in the Spring '82 period. There is some indication that the compliance with burning regulations may be degrading or will degrade with increased burning of wet/green wood, burning outside of daily specified burn time periods, burning of trash other than woody, leafy material and burning on prohibited days.

Most complaints have been associated with burning during the early part of the burn period when burning appears to be the greatest.

Air Quality Impacts

Assessing the air quality impact from backyard burning has always been a difficult task because of the small-sized light-weight particulate emitted from such practices, the lack of adequate monitoring in residential areas where the majority of burning occurs and the chemical similarity of backyard burning smoke to wood heating smoke which renders the state-of-the-art chemical mass balance techniques almost useless to distinguish between the two sources.

Despite all the limitations in identifying backyard burning impacts, some success has been achieved in identifying impacts thru nephlometer pattern recognition techniques, trend analysis and modeling. The Department's January 30, 1981 report to the EQC on backyard debris alternative disposal methods identified maximum measured impacts from backyard burning in downtown Portland of 15 ug/m^3-24 hour average and modeled maximum concentrations in residential areas of about 40 ug/m^3. Average modeled burn-day daily impacts in residential areas approached 7 ug/m^3.

Considering EPA's daily particulate significant impact criteria of 5 ug/m^3 and the national air quality standard of 150 ug/m^3, backyard burning impacts would have to be characterized as significant contributors to particulate levels in the Portland area.

An interesting analysis has recently been made of the number of particulate ambient air violations occurring during the burning season and the number of violation days coinciding with actual burn days. This data is shown in the table below.

Table 1

Days Exceeding 150 ug/m^3 TSP Standard

(1976 through April 1982)

Site	Total Days >150 ug/m^3	Days >150 ug/m^3 During Burn Season	Days >150 ug/m^3 With Open Burning	Days >150 ug/m^3 % With Open Burning During Burn Season
Central Fire	39	20	4	20
Pacific Motor Trucking	36	13	7	54
SE 58th/Lafayette	2	1	1	100
SE 122nd/Glisan	7	5	2	40
Milwaukie H.S.	6	4	1	25
Lake Oswego	24	10	5	50
Oregon City	6	2	1	50
Beaverton	12	8	2	25
Total	132	63	23	

This data indicates that about 50% of the TSP violation days that occurred in the period 1976 through April 1982 occurred during the burning season and of those occurring during the burning season about 1/3 occurred on days with allowed open burning. Violations from volcanic ash have been excluded from this table.

Another interesting observation is the generally higher percentage of violation days occurring on burn days during the burn season in residential areas compared to the downtown Portland commercial area site (Central Fire). This would tend to indicate backyard burning is likely a significant cause of air quality standard violations in these areas.

Additional nephlometer pattern recognition analysis since that included in the January 30, 1981 report to the EQC has confirmed similar measured impacts at least in the range of 15 ug/m^3 -24 hour average. October 11, 1980 and March 6, 1982 are noteworthy days, with March 6, 1982 having an extraordinarily high early evening smoke peak. This peak is suspected to be caused in substantial part to backyard fire burnout smoke being trapped under a rapidly forming intense nightime radiation inversion. Wood heat load was considered low to moderate that day with a high temperature of 58° F that day and temperature still at 52° F at 7 p.m.

Development of Alternative Disposal Methods

In January of 1981 the Metropolitan Service District applied for and received a $265,000 grant from the EPA for a yard debris demonstration program. Generally, the objectives of the grant were to demonstrate viable processing techniques for the conversion of yard debris into a marketable product and show that a system to collect and process yard debris is either generally available or ready for implementation in the affected areas.

Metro is now in the process of completing its final evaluation of the program. Their report should be complete and available for release by the first of September. Metro's commitment to an on-going yard debris program cannot be defined until the final report has been completed and their council acts on its recommendations which is also scheduled to occur sometime in September. However, several milestones have been reached and can be discussed now.

Specifically, the program addressed three elements; collection, processing/marketing, and education/promotion. Each element has been tested and an information base developed for the Portland area. From this experience an on-going method to deal with yard debris is evolving thru the private sector.

Since the program was initiated, a number of collection activities have occurred to further demonstrate methods to collect and recover yard debris from the homeowner. These activities included:

- Ten neighborhood cleanup projects which were conducted within the City of Portland where yard debris was segregated into drop boxes and then transported to a processing site.

- An adjusted garbage collection fanchise ordinance in Clackamas County to address collection of segregated yard debris in the county's unincorporated areas - implementation is pending.

- Projects by several local jurisdictions to demonstrate an ability to collect yard debris such as Beaverton with an on-going Spring central collection site; Oregon City which has on-going Public Works Department house-by-house collection of yard debris; and Gladstone with an on-going franchise collection service. Lake Oswego also tested a franchise collection services while West Linn and Troutdale tested a central collection site.

All the efforts for collection demonstrated an ability to collect yard debris but also discovered a lack of sufficient incentives for the public to significantly participate since the backyard burning ban was lifted shortly before the first demonstration activities were initiated. Without adequate incentive (such as a burn ban) for the public to participate in a curbside collection program, garbage collectors are reluctant to initiate a segregated yard debris collection service. Their ability to recover capital investment is questionable unless they know the option of backyard burning is either shut off or very restrictive.

Two on-going central collection/processing sites (yard debris recycling centers) aided by Metro grant money have been established, each charging $1/cu. yd. tipping fee. They are located at McFarlane's Bark, Inc. in Clackamas with a capacity of 68,000 cu. yds./yr. for yard debris and another in north Portland at Waste Bi-Products with a capacity of at least 50,000 cu. yds./yr. for demoliton and yard debris. Although these companies are competitors for yard debris material, both appear successful in their marketing of processed yard debris as either hog fuel or mulch. Grimm's Fuel of Lake Oswego would also like to begin to recycle yard debris as a mulch. They hope to be set up to do so by mid-August with a capacity to receive up to 150,000 cu. yds./yr. of demolition and yard debris.

With the two established sites, Grimm's proposed site, and two additional sites proposed by Waste Bi-Products, the metro area could well have a total of five central collection and processing sites within a six month period. Their combined total capacity for dealing with certain demolition and yard debris material would be nearly 400,000 cu. yds./yr., well above what is considered necessary to keep all presently burned yard debris from going to landfills. The DEQ Yard Debris Survey noted only 80,000-100,000 cu. yds. are now being burned by the homeowner. In essence, private industry has demonstrated and established a system to "recycle" yard debris which will keep the material out of the region's landfills. A secondary benefit is that certain demolition material and yard debris presently going to landfills will also be processed for market instead of filling up valuable landfill space. Yard debris presently going to landfills is estimated at about 900,000 yrds/yr. Systems similar to the one being developed in Portland are also being developed in other parts of the nation.

The mulch and hog fuel business has been dependent on wood waste from wood products industry as a resource material. However, with mill closures and the advent of new wood products made from wood waste, industry has had to

look elsewhere for material to sustain the mulch and hog fuel markets. These conditions of short supply and high demand have drawn the private sector into developing alternatives for yard disposal. Sustaining this current private sector interest in utilizing yard debris will be heavily dependent though on some incentive being provided for citizens to utilize these services.

The Metro Yard Debris Steering Committee, made up of local jurisdictions, met on June 15, 1982 and addressed the issue of whether alternative disposal methods are reasonably available to a substantial majority of the population in the metro area which is a requirement of SB 327. The Committee responded, "We are moving toward that goal and should reach it within six months."

As part of the proposed Metro garbage burner air permit a condition has been incorporated requiring Metro to provide an emission offset program to reduce backyard burning in the metropolitan Clackamas County area. A major element of this program would be to permanently subsidize collection of yard debris. Local governments in the affected area of Clackamas County have indicated a willingness to participate in such a program. Metro is committed also to seek legislation which could result in a more equitable fee system for yard debris collection. If no other future program for reducing backyard burning in the region is required by the EQC, the Metro offset program could still provide some reductions of backyard burning in the metropolitan portion of Clackamas County thru an incentive approach.

Alternative EQC Actions

It does not appear justified for the EQC to take any new action on the Portland area backyard burning issue until the final Metro report on alternative disposal methods is completed, acted upon by the Metro Council and reviewed by DEQ and documentation on the need to meet air quality standards is completed. There are at least 10 alternative actions the EQC might ultimately direct the Department to take in dealing with this issue. These actions are listed below.

Alternatives to Deal With Portland Backyard Burning

1. Extend present two season burn period to year round.
2. Maintain status quo at two season burns.
3. Conduct educational program to teach how to burn cleaner.
4. Promote voluntary reduction in burning.
5. Improve burn call forecasting accuracy.
6. Encourage local jurisdictions to ban backyard burning for use as offset to attract industry.
7. *Issue burn permits on seasonal burn period basis for fee.
8. *Issue burn permits for year round burning for fee.
9. Ban burning with hardship permit allowance.
10. Ban burning with no exceptions.

*These options could provide sufficient funds to accomplish 3, 4, and 5 and also provide an incentive to use alternative disposal methods.

Recognizing that backyard burning emissions should be reduced to the extent practicable in densely populated areas like Portland, alternatives 7, 8, 9 and 10 would appear to be the most effective to pursue. Alternatives 7 and 8 requiring burning permits with an associated fee would provide a means of greatly improving the smoke management program, especially enforcement aspects, while providing an incentive to use available alternative disposal methods which may be less costly than the permit. More Department and Fire District personnel would be needed to implement these programs which would have to be financed from the permit fees. Alternative 9, imposing a ban with a hardship permit allowance, would force use of currently available alternative disposal options and likely insure their continued availability as recently established private sector programs are counting on increased debris recycling in order to help sustain their new business. Work imposed on staff to administer the hardship permit would likely not be commensurate with fees charged. Fully identifying the costs and benefits of these options will take a few months to complete.

<u>Summation</u>

1. Backyard burning in the Portland area continues to cause complaints and contribute to particulate air quality standard violations.

2. There are some indications that non-compliance with burning rules and use of poor burning practices are increasing or will increase as DEQ enforcement actions regarding residential backyard burning in the Portland area has been substantially curtailed because of recent budget cuts.

3. Significant progress has been made by Metro and the private sector in developing yard debris utilization programs. Yard debris is now being converted to industrial fuel and soil amendments. Full evaluation of the availability of reasonably available alternative disposal methods can be made once Metro completes their yard debris demonstration project report later this summer.

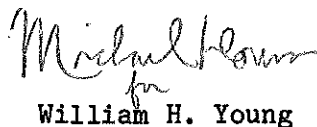
4. Current legislation now allows the EQC to fully regulate and ban backyard burning if needed to meet air quality standards and reasonable available alternatives are available to a substantial majority.

5. The next scheduled burn season will begin October 1.

6. There are at least 10 alternative actions the EQC can take on the Portland area backyard burning issue but at least a few months of further study is needed before the Department will be in a position to make a recommendation on which course of action the EQC should take.

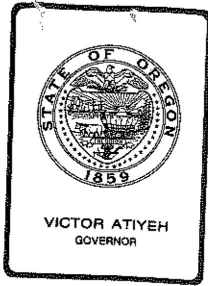
Director's Recommendation

It is recommended that the EQC take no action on the Portland backyard burning issue at this time. It is recommended that the EQC direct the Department to fully evaluate the Metro yard debris demonstration project report when it is completed and further evaluate the most promising alternative actions the EQC could take in the future. A recommendation should be presented to the EQC as soon as practicable on which alternative would appear to be the best choice to follow.



William H. Young

Attachments
J.F. Kowalczyk:a
229-6459
July 29, 1982
AA2374 (1)



Environmental Quality Commission

Mailing Address: BOX 1760, PORTLAND, OR 97207
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MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. K, August 27, 1982 EQC Meeting

Public Meeting: Oregon's Hazardous Substances Response Plan

Background

At the December 4, 1981 EQC meeting, a Hazardous Substance Response Plan was presented as an informational item to update the Commission and public as to the Department's progress to resolve concerns about Oregon's uncontrolled (abandoned) hazardous waste sites. Originally intended as an action item, the staff report was based on guidance provided by EPA through its Superfund program. Action to adopt a response plan was postponed at EPA's request, however, since neither the National Contingency Plan nor a National Hazard Ranking Model were finalized.

On July 13, 1982, DEQ received a revised Hazard Ranking Model and guidance for establishing Superfund's National Priorities List. The guidance contains a very tight time schedule for states to submit information on potential uncontrolled sites in apparent need of emergency removal or remedial action. Therefore, the purposes of this agenda item are three: (1) to bring the Commission up to date on DEQ's and EPA's ongoing effort to investigate and resolve, as necessary, any problems with uncontrolled (abandoned) hazardous waste disposal sites in Oregon, (2) to decide on an appropriate level of involvement in EPA's National Hazardous Substance Response Planning Program as mandated by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (commonly known as Superfund or CERCLA), and (3) to receive public comment on Oregon's Hazardous Substance Response Plan.

Since July 1979, DEQ and EPA-Region X have been conducting an "Uncontrolled Hazardous Waste Survey." The results of those efforts through July 1982 are more fully described in Attachment I. The survey's main objective is to identify any site with quantities of uncontrolled hazardous waste that may pose an existing or potential threat to public health or the environment.

As of July, the total number of sites under some form of investigation is 108. To date, the survey has not uncovered any quantities of uncontrolled hazardous wastes that present an immediate threat to public health or the environment. Twenty-six (26) sites have not been completely investigated so a final determination has not been made.

During the course of these surveys, Congress passed Superfund on December 3, 1980 (see Attachment II). Should an imminent hazard or environmental problem be identified as a result of ongoing investigations, Superfund may provide federal monies for pursuing emergency removal or planned remedial action where a responsible party capable of and willing to effect the cleanup cannot be identified. It is important to note that Superfund is not a grant program; rather, it is intended to be a cost recovery program. Even where Superfund monies are spent, EPA and the Department of Justice are to seek, through the courts if necessary, recovery of monies expended from somebody (i.e., recalcitrant responsible parties, landowners, generators, transporters, former operators, etc.).

To implement Superfund, EPA was required to modify (by June 11, 1981) the National Contingency Plan (NCP) to include a section to be known as the National Hazardous Substance Response Plan. The original NCP dealt only with EPA and state responses to oil spills. The NCP published on July 16, 1982, includes, among other provisions, criteria for determining priorities among releases or threatened releases of hazardous substances throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action, for the purpose of taking emergency removal action.

According to Superfund, states are to have primary responsibility for submitting candidate sites for emergency response or remedial action. EPA's recent guidance, however, gives discretion to EPA's Regional Administrator to add sites not forwarded by a state. From these candidate sites, EPA is to publish a National Priorities List (NPL) of the top 400 priority sites, with the top 100 containing each state's top-priority site, if practicable. The objectives of the NPL as stated in the most recent guidance are:

- -- Identify for the states and the public releases which appear to warrant remedial action.
- -- Prioritize sites for use of federal Superfund money to provide remedial action if a responsible party cannot be found or is recalcitrant.

EPA is proposing to update the list quarterly. It should be noted that previous guidance from EPA stressed that the primary purpose of the list was to identify those sites in need of federal funding, not the development of a master list of sites which appear to warrant remedial action.

When the actual National Priorities List of 400 is published (now scheduled for sometime in October) EPA has decided to present as a part of the List the status of any actions ongoing or planned by EPA and the states. Facilities will be classified according to the following categories (more than one may be appropriate):

- -- responsible party, privately funded cleanup
- -- response status
- -- prospective actions to be determined
- -- highest ranked release requiring federal funding

While EPA does encourage the states to actively involve the public in their development of their Hazardous Substance Response Plan, public meetings or

hearings are not mandatory. Because of the time constraints imposed by EPA's recent guidance, EPA's delay in publishing the NCP and National Hazard Ranking Model, and the lack of significant uncontrolled hazardous waste sites in Oregon, it was concluded that this public meeting would provide adequate opportunity for public comment on this issue.

Evaluation

To provide consistency and to facilitate ranking between states, EPA contracted with the Mitre Corp. to develop a degree-of-hazard ranking model now known as a "Hazard Ranking System" (HRS). This national HRS measures the relative risk or danger to public health and welfare or the environment. The HRS takes into account the population at risk, the toxicity of the hazardous substances at such facilities, the potential for contamination of drinking water supplies, the potential for direct human contact, the potential for destruction of sensitive ecosystems and other appropriate factors. A high score, the inability to identify a responsible party or the failure of enforcement action to effect cleanup will be the main criteria determining whether or not federal Superfund money will be spent.

In its simplest terms, the HRS is a mathematical model which scores five different routes of potential contamination: groundwater, surface water, air, fire and explosion, and direct contact (see Attachment III for examples of the worksheets used). The HRS uses a structured value analysis approach for each potential route of contamination, that is, the potential hazard is rated in terms of four general areas: actual or potential for release, waste characteristics, hazardous waste quantity, and targets (who or what stands to be affected).

Since, within a specific route of contamination, both multiplication and addition of values occur, a final score of 0 - 100 can be realized. For purposes of comparison between sites for remedial action, only the combined scores for groundwater, surface water and air contamination routes are used. The score for potential fire or explosion and direct contact are used to determine if emergency removal rather than remedial action is necessary at a site.

Using information from our Uncontrolled Hazardous Waste Disposal Site Survey, we have evaluated the seven sites presumed to present the greatest "apparent" risk plus Alkali Lake (see Table 1). Although no specific remedial action has been determined necessary for any of these sites, a final determination is pending receipt of information such as groundwater monitoring results. Although their selection occurred within the guidance for listing priorities as provided by EPA and with the input from Region X, Region X still reserves the right to independently list additional sites in Oregon.

Conclusions

On December 3, 1980, Congress created the opportunity for using federal funds to clean up abandoned hazardous waste disposal sites that pose an immediate or potential threat to public health and welfare or the environment. Unlike previous grant programs, Superfund is to be used only in those cases where a responsible party can't be identified and/or required through enforcement action to finance the cleanup.

Table I

	Site	Identified Responsible Party	Principal Business Activity	Groundwater, Surface Water & Air Relative Ranking Score	Fire & Explosion Relative Ranking Score	Direct Contact Relative Ranking Score	Current Status
1.	Gould, Inc. Portland	Gould, Inc.	Battery reprocessing plant, (lead)	31.58	0	0	WQ monitoring program in place. Soil and sludge sampling being proposed.
2.	Allied Plating Portland	Allied	Metal plating co. (Cn, Cu, Ni & Cr)	25.33	0	62.5	Site has been monitored, WPCF permit issued, and G.W. monitoring program proposed.
3.	Stauffer Chem. Co. Portland	Stauffer	Pesticide Mfg.	19.45	0	0	G.W. monitoring program in place & samples have been collected for analysis.No impact on beneficial use has been detected. Low priority, continued monitoring.
4.	Nu Way Oil	Nu Way	Used oil refining	14.21	0	50.	Samples being collected for analysis.
5.	St. Johns Landfill Portland	Metro	Municipal landfill (herbicides)	11.74	0	25	Currently permitted S.W. site, ongoing monitoring program by Metro.
6.	Rhone-Poulenc Portland	Rhone-Poulenc	Herbicide mfg.	9.95	0	25.	G.W. monitoring program in place and samples being collected for analysis.
7.	Umatilla Army Depot Umatilla	U.S. Army	Storage of munitions pesticides, solvents, & nerve gas.	9.12	0	0	Additional info being developed by the Army and their consultant.
8.	Alkali Lake Lakeview	Oregon DEQ	Closed pesticide mfg. waste site	3.46	0	0	Ongoing DEQ monitoring program Currently being studies by OGC.

Superfund places major responsibility on states to identify candidate sites in apparent need of remedial action or emergency removal, although EPA reserves the right to independently list sites of their own choosing. From this master list, sites needing federal funds will be selected if no responsible party is known or if enforcement action is not achieving the desired remedial action. Using data from an ongoing uncontrolled hazardous waste survey, eight Oregon sites have been evaluated using a relative degree-of-hazard mathematical model developed by an EPA contractor. On a relative ranking basis for remedial action, the maximum score any site received is 31.58 and the minimum score is 3.46. In all eight cases, monitoring programs are ongoing or proposed.

The relative ranking scores for "Fire & Explosion" and "Direct Contact" are used to gauge emergency conditions at a site and usually define situations generally addressed by removal actions rather than longer-term remedial action. Although no sites have been identified for removal action, Gould is currently working with the Department to identify the extent and significance of a lead dust problem. St. Johns Landfill scores relatively high under direct contact since people in a canoe or light boat can land on the landfill site. The two remaining sites that also received a positive score under direct contact can abate this concern by fencing their facilities to prohibit access. All the facilities ranked under "Direct Contact" are located in industrial areas and are usually not subject to public trespass.

In no case do we have a situation where a responsible party isn't known and, in fact, on six of the sites are active business operations, one is owned by the State of Oregon and one is owned by the federal government. Furthermore, we have no indication that any of the six industrial concerns would resist financing cleanup _if_ cleanup was judged necessary, considering the extent of cooperation to date. Working with the industries' technical staff, additional studies are underway to gather the information that's necessary for a final decision. So even though we don't have any sites in immediate need of Superfund monies, we are still being asked to submit candidate sites to satisfy the following broad objective:

> "The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which _appear to warrant remedial actions._ (Emphasis added) Inclusion of a facility or site on the list does not in itself reflect a judgement of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards. (Senate Report No. 96-848, July 13, 1980, p. 59)"

For purposes of responding to EPA on an initial Hazardous Substance Response Plan, the staff has considered at least three alternatives:

1. Send a letter to EPA simply stating that we are not submitting any site(s) for the National Priority List at this time. The likely result is that Region X would choose to list sites anyway.

2. Send a letter to EPA stating that efforts to date haven't identified a need for Superfund funding. Further, indicate we will continue to work on the Uncontrolled Hazardous Waste Site Survey and complete investigations where necessary and strive to resolve any identified environmental problems. Lastly, indicate we are prepared to quarterly review Oregon's Hazardous Substances Response Plan according to current guidance from the Superfund program. The likely result is that Region X would choose to list sites anyway.

3. Send a list of four sites to EPA as candidates for the National Priority List with no top priority listed, since no need for specific remedial action has been determined nor has any party been recalcitrant. The likely effect would be that none would show up on the National Priority List since the ranking scores are comparatively low. Those sites included on the state's list would be Allied Plating, Gould, Rhone-Poulenc and Umatilla Army Depot. The other four sites that were ranked wouldn't be submitted since Alkali Lake was ranked simply because of continuing public interest in that site, St. Johns because it's a currently operating licensed solid waste landfill, Stauffer because monitoring programs have addressed initial concerns and future monitoring will be incorporated into their Water Quality Permit and Nu-Way because of insufficient data to determine if the waste is hazardous. Although it is still possible for Region X to list additional sites, we consider it unlikely. We hope Region X will choose instead to respect the state's role as having major responsibility for listing sites. Further, quarterly updates are planned to take into account new information that may come to light.

Director's Recommendation

Based upon the Evaluation and Conclusions, it is recommended that the Commission concur with the Director's decision to submit a letter as outlined in option 3 of the Conclusions.

William H. Young

Attachments: I - Uncontrolled Hazardous Waste Survey Progress Report
II - Comprehensive Environmental Response, Compensation and Liability Act of 1980
III - Hazard Ranking System Data Sheets

Mark W. Hope:c
ZC599
229-5060
August 5, 1982

Attachment I
Agenda Item No. K
August 27, 1982 EQC Meeting

Uncontrolled (Abandoned) Hazardous Waste Disposal Site Survey

-- Progress Report #3 --
-- August 1, 1982 --

-- Oregon Department of Environmental Quality --

Preamble:

On February 15, 1980, March 1, 1981, and November 1, 1981, the Department issued progress reports describing its ongoing efforts, in concert with Region X of the Environmental Protection Agency (EPA), to identify, inspect and evaluate uncontrolled (abandoned) hazardous waste disposal sites in Oregon. Since our work will continue until all investigations are closed, future progress reports will follow. Some background information from the earlier reports is included here to lend continuity to our ongoing efforts. (NOTE: Since this is an ongoing study, occasional summaries will be quoted in other reports that will be different than reported herein. While we regret the potential confusion, the dynamic nature of these investigations will continue to create this type of problem.)

Background:

Over the last several years, a number of incidents have been reported across the U.S.A. of sites containing quantities of uncontrolled hazardous wastes (in drums, barrels, pits, ponds, lagoons, or landfills) posing threats to human health or the environment (Love Canal in New York, Valley of the Drums in Kentucky, Chemical Control Corporation in New Jersey, etc.). With the exception of Oregon's experience with the abandonment of pesticide manufacturing wastes at Alkali Lake (60 miles north of Lakeview) in the early 1970's, it has been assumed that no such sites exist in Oregon. This assumption is in large part due to Oregon's low level of industrialization; particularly in the petroleum and chemical industries. One also needs to recognize that prior to the late 1960's much industrial waste was discharged to Oregon's public waters, rather than handled in some other manner such as land disposal or treatment for reuse.

Study Outline:

During discussions with EPA Region X staff in July 1979, it was concluded that some effort should be devoted toward verifying the assumption that Oregon doesn't have sites containing unknown quantities of hazardous waste. Having to rely primarily on existing manpower to conduct such a study, the following efforts have been initiated:

1. Internal staff discussions designed to identify:

   a. defunct or existing industries likely to have generated, or which currently generate, hazardous wastes; and

b. closed or existing disposal sites likely to contain hazardous wastes.

2. Selection and evaluation of candidate companies within specific industrial categories based on raw materials used, manufacturing processes employed and likely wastes produced. (During these initial discussions, two major industrial categories were eliminated from further consideration--(1) sawmill and plywood plants and (2) pulp and paper plants--because of the Department's continuing program of routine air, water and/or solid waste compliance inspections.)

3. Mailing a questionnaire to each of Oregon's 36 county health departments soliciting information from their staff and/or files on uncontrolled (abandoned) hazardous waste disposal sites. Of the seven responses received, no new uncontrolled sites were brought to our attention.

4. Automatic followup on any information brought to our attention by the public. Three inspections (Parrott Mountain Disposal Site, 38th & Hilyard and Laurence David) were conducted as a result of information from the public.

5. Followup on most of the "process waste" disposal practices identified in a report published by the House Subcommittee on Oversight and Investigations chaired by Representative Bob Eckhardt (commonly referred to as the Eckhardt Report). (Copy available in DEQ files.)

6. Followup on most of the sites identified in a Battelle report entitled "Identification of Hazardous Waste Disposal Site and Management Practices in Region 10: 1940-1975." (Copy available in DEQ files.)

7. Followup on three of seventeen industrial waste impoundments (pits, ponds or lagoons) identified in a report published by the House Committee on Government Operations chaired by Representative Jack Brooks (Interim Report on Groundwater Contamination: EPA Oversight--commonly referred to as the Moffett Report). The other 14 sites are judged not to be handling hazardous wastes. (Copy available in DEQ files.)

8. Followup on notification responses as a result of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 PL 96-510 (commonly known as Superfund). The Act mandates in Section 103(c) that certain persons notify EPA by June 9, 1981, of the existence of sites where hazardous wastes from industries, businesses, governments, hospitals, and other sources are stored, treated, or disposed of (referred to as the "Superfund Notification Process" or SNP).

One final note of importance, this study concerned itself primarily with <u>chemical</u> waste disposal sites. ORS Chapter 587 requires the Oregon State Health Division and Oregon Department of Energy to adopt regulations for the proper management and disposal of certain low-level radioactive waste material disposed of prior to June 1981.

Results:

As a result of additional sites identified through the SNP and two additional sites brought to our attention by the public, the total of 108 site investigations have been or will be conducted. Appendix 1 contains updated information on these investigations including a description of the type of investigation conducted (i.e., file search, sites visit, sample collection). Please note when reviewing these appendices that information on quantities were included only when we could document said information.

As stated earlier, the purpose of this survey was to locate any quantities of uncontrolled hazardous wastes that may pose a threat to public health or to the environment. To date, the survey has not uncovered any quantities of uncontrolled hazardous wastes that present an immediate threat to public health or the environment. What the survey is providing us with, however, is an opportunity to review some existing and historical practices in light of today's knowledge of hazardous materials/wastes. As the survey and evaluations continue, the practical effect will be to improve current management/disposal practices to avoid any long term threat to public health or the environment that may otherwise have been allowed to occur.

In evaluating each of the 108 sites, EPA Region X and the Department considered things such as types and quantities of wastes; degree of hazard; degree of persistence; type of disposal method (i.e., disposal well, evaporative lagoons, disposal trench, landfill, etc.); soils and geology; surface and groundwater conditions; proximity to people and surrounding land uses (existing or potential). Based on the above criteria, the following conclusions have been reached (the apparent random listing of investigations resulted from the manner in which sites were identified and how quickly an investigation could be completed):

-- Appendix 1 Investigations --

Eighty-two (82) investigations have been closed. No imminent health hazard or environmental problem identified.

Dant and Russell, North Plains
Chevron Asphalt, Portland
Pacific Carbide and Alloy Co., Portland
Hercules, Inc., Portland
J. H. Baxter and Co., Eugene
L. D. MacFarland, Eugene
John C. Taylor Lumber Sales, Sheridan
J. H. Baxter and Co., The Dalles
Union Pacific Railroad, Hermiston
Koppers, Wauna (defunct plant)
McCormick and Baxter, Portland
American Timber and Trading Company, Portland (defunct plant)
Alkali Lake Disposal Site, Lakeview (closed site)
Liquid Air, Inc., Medford
Johnson Creek Blvd. and Crosswhite Street Landfill, Portland (closed site)
Lavelle (King Road) Landfill, Milwaukie (closed site)
A. B. Plating, Portland
Noslers Bullets, Bend
Parrott Mountain Landfill, Sherwood

Van Waters and Rogers, Portland
Miller Products Company, Portland (defunct plant)
Tektronix, Inc., Beaverton
Charles H. Lilly Co., Portland
Nurnberg Scientific Company, Portland (defunct warehouse)
Teledyne Wah Chang, Albany
Martin Marietta, The Dalles
Chempro of Oregon, Portland
Permapost Products Company, Hillsboro
Chevron Chemical Company, Milwaukie
Associated Chemists, Inc., Portland
Bethel-Danebo Landfill, Eugene (closed site)
Chem-Security Chemical Waste Landfill, Arlington
Borden Chemical Company, Springfield
Coffin Butte Landfill, Corvallis-Albany
Griffen Brothers, Inc., Portland
United Foam Corporation, Portland
Short Mountain Landfill, Eugene
Krishell Laboratories, Portland (defunct plant)
Monsanto, Eugene
Norris Paint and Varnish Company, Salem
OECO Corporation, Portland
Winter Products Company, Portland
Richhold Chemicals, Inc., St. Helens
Farmcraft, Inc., Tigard
Uranium Mill, Lakeview (defunct plant)
Wilbur-Ellis Company, Portland
Alexander Paper Stock, Portland
Oregon Technical Products, Grants Pass
Drum Recovery, Portland
Spe-de-way Paint Stain Company, Portland
Crosby and Overton, Portland
Widing Transportation, Portland
St. Johns Landfill, Portland
South Willamette Street Landfill, Eugene
Zehrung Corporation, Portland
Caron Chemical Corp., Monmouth
Anodizing, Inc., Portland
Rossman's Landfill, Oregon City
Brown's Island Landfill, Eugene
Globe Union, Canby
Airport Glue Waste Disposal Site, Grants Pass
Stauffer Chemical, Portland
Ace Galvanizing, Portland
Milwaukie Dumping Area, Milwaukie
Scappoose Dumping Area, Scappoose
Frontier Leather, Sherwood
Northwest Printed Circuits, Medford
Reynolds Metal Company, Troutdale
ICN/United Medical Lab, Portland
Day Island Landfill, Eugene (closed site)
American Can Co., Salem
Champion International, Lebanon
U.S. Railway Manufacturing, Springfield
Boise Cascade, Valsetz
Champion International, Hood River

N. Wasco Co. Landfill, The Dalles
International Paper Co., Gardiner
Ideal Basic Ind., Gold Hill
Boise Cascade, Elgin
38th & Hilyard, Eugene
Cascade Plating, Eugene
States Industries, Inc., Eugene

Nineteen (19) investigations are continuing. Insufficient information, including lack of existing monitoring data, preclude a final judgment being made.

Nu-Way Oil, Portland
Allied Plating, Portland
United Chrome Products, Inc., Corvallis
Bloomberg Road Landfill, Eugene (closed site)
Umatilla Army Depot, Hermiston
Whiteson Landfill, McMinnville
Frank's Sanitary Service, Sherwood
Georgia Pacific, Toledo (old burning site)
Georgia Pacific, Toledo (new solid waste site)
Georgia Pacific, Coos Bay
McCall Oil & Chemical Corp., Astoria
Martin Marietta Co., Portland
Owens Illinois, Inc., Portland
Shell Oil Co., Portland
Texaco Terminal, Portland
Union Pacific, Bridal Veil
Weyerhaeuser Co., North Bend
Southern Pacific, Eugene
Laurence David Co., Eugene

Seven (7) investigations are continuing as part of the Doane Lake Area Study to include:

Rhone-Poulenc, Portland
Pennwalt, Portland
Gould, Inc., Portland, formerly N L Industries
Koppers Company, Portland
Industrial Air Products, Portland
Gilmore Steel, Portland
Northwest Natural Gas, Portland

Superfund:

On December 3, 1980, Congress (House and Senate) passed the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (commonly called Superfund). Should, as a result of any completed or new investigations by DEQ and EPA Region X, an imminent hazard or environmental problem be identified, a mechanism now exists for pursuing timely remedial action through use of the Hazardous Substance Response Fund. Use of the fund presupposes that a responsible party capable of and willing to effect the cleanup cannot be identified.

Further, although the basic statutory legislation is now in place, the EPA is required to promulgate certain administrative rules in order to activate the Fund. One key rulemaking on July 16, 1982, was modification of the National Contingency Plan (NCP) to include a section to be known as the national hazardous substance response plan. (Refer to the March report for the minimum points the plan must address.)

Future Action:

As described, it can be seen that a good deal of effort has been put into surveying/studying Oregon industries and landfills over the past three years. Additional efforts either ongoing or being discussed by DEQ/EPA Region X are:

1. Complete final determination on twenty-six (26) sites identified as undergoing continuing evaluation as soon as possible.

2. Investigate any new information on potential sites brought to our attention by the public, public interest groups, industry or other governmental agency.

For further information regarding any aspects of this report, please contact Richard Reiter or Mark Hope at 229-5913 (or 1-800-452-7813 toll-free). If anyone has information on a site or site they believe the Department should be investigating, please contact Richard Reiter or Mark Hope at the numbers above or the Department of Environmental Quality, P.O. Box 1760, Portland, Oregon, 97207.

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Appendix I

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SC56

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Dant & Russell, Inc. 7755 W. Hillcrest North Plains, OR Wood Processing	on-site	sludge lagoon	pentachlorophenol; creosote	organic toxic materials	1. No accumulation of uncontrolled chemicals identified. 2. Sludge currently being hauled to Arlington	no imminent health hazard or environmental problems identified. Uncontrolled site investigation closed	File search; telephone contact
	off-site (St.Johns Landfill)	Municipal landfill	industrial sludge (10 truckloads)				
	off-site (Arlington Disposal Site)	chemical waste landfill	industrial sludge (periodic shipments as needed)				
Chevron Asphalt Co. Standard Oil of California 5501 NW Front Portland, OR asphalt manufacturer	off-site (St. Johns landfill)	municipal landfill	process sludge contaminated with oil	industrial sludge contaminated with oil	1. No accumulation of uncontrolled chemicals on-site 2. Process sludge disposed of at St. Johns landfill	No imminent health hazard of environmental problems identified. Uncontrolled site investigation closed	file search; telephone conversation

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Pacific Carbide & Alloys Co. 9901 N. Hurst Av. Portland, OR — Manufacturer of quicklime and calcium carbide	on-site	settling pond	calcium hydrate; calcium carbonate; carbon (10,000 cubic yards per year)	corrosive	1. No accumulation of uncontrolled chemicals on-site. 2. Waste lime sludges are marketed as agricultural soil conditioners.	no imminent health hazard or environmental problems identified. Uncontrolled site investigation closed	file search; site visit; sample collection
Hercules, Inc. 3366 NW Yeon Ave. Portland, OR — Manufacturer of coating agents for paper industry	off-site	contract with Crosby & Overton	settleable solids containing resins, fatty acids, wax, emulsifiers and starch	industrial sludge	1. No accumulation of uncontrolled chemicals on-site. 2. Industrial sludge disposed of off-site via contract with Crosby & Overton	1. No imminent health hazard or environmental problem identified on-site. 2. Uncontrolled site investigation closed. 3. Evaluation of Crosby and Overton facilities scheduled.	file search; telephone conversation

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
J.H. Baxter & Co. 85 Baxter Street Eugene, OR wood preserving	off-site Bethel-Danebo landfill off-site Arlington disposal site off-site	municipal landfill chemical waste landfill contract with Roto-Rooter or other pumper	pentachlorophenol; creosote (up to 25,000 gallons per year)	organic toxic materials	1. No accumulations of uncontrolled chemical on-site 2. Wastes currently disposed of at Arlington Disposal Site	1. No imminent health hazard or environmental problems identified on-site. 2. Uncontrolled site investigation closed. 3. Followup on Bethel-Danebo landfill and Roto-Rooter contract scheduled.	personal interview
L.D. McFarland Company Highway 99N Eugene, OR wood preserving	on-site	land spreading for dust control	pentachlorophenol contaminated sludge (3000 gallons per year)	organic toxic material	1. No accumulation of uncontrolled chemicals on-site. 2. Negligible levels of pentachlorophenol in soil and surface runoff water	1. No imminent hazard or environmental problems identified. 2. Uncontrolled site investigation closed.	personal interview; site visit; sample collection

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
John C. Taylor Lumber Sales, Inc. (dba Sheridan Pressure Treated Lumber) Rock Creek Rd. off of Business Hwy 18 Sheridan, OR wood preserving	on-site	storage in drums	pentachlorophenol; creosote; arsenic, copper and ammonium salts (15-55 gallon drums per year)	organic and inorganic toxic materials	1. No accumulation of uncontrolled chemicals on-site. 2. Drummed waste shipped to Arlington disposal site or firm in Kelso, Washington.	1. No imminent health hazard or environmental problems identified on-site. 2. Uncontrolled site investigation closed. 3. Reference to Kelso, Washington site referred to EPA.	file search; telephone conversation
	off-site Arlington disposal site	chemical waste landfill	same as above				
	off-site Kelso, Washington	unknown at this time	same as above				
J.H. Baxter & Co. East of City The Dalles, OR wood preserving	on-site	accidental spillage	pentachlorophenol; creosote	organic toxic materials	no accumulation of uncontrolled chemical on-site	No imminent health hazard or environmental problems identified. Uncontrolled site investigation closed.	file search; telephone conversation

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Union Pacific Railroad Hinkle Rail Yards Hermiston, OR railroad switching and maintenance yard	on-site	land spreading	waste oil (80,000 gallons per year)	industrial sludge	1. No accumulation of uncontrolled chemicals on-site. 2. Land spreading of waste oil discontinued in 1976.	No imminent health hazard or environmental problems identified. Uncontrolled site investigation closed	file search; site visit
Koppers, Wauna Wauna, OR wood preserving	on-site	liquid waste recycled	pentachlorophenol; creosote; copper, chrome, and arsenic salts	organic and inorganic toxic materials	1. Plant permanently closed in 1962. 2. Former site now part of Crown Zellerbach paper mill site.	1. No imminent health hazard or environmental problems identified. Uncontrolled site investigation closed.	telephone conversation

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
McCormick and Baxter 6900 N. Edgewater Street Portland, OR --------- wood preserving	off-site Arlington disposal site	chemical waste landfill	pentachlorophenol; creosote; copper, chrome and salts; boric acid; isopropyl ether liquid butane	organic and inorganic toxic materials	1. No accumulations of uncontrolled chemicals on-site. 2. Wastes currently hauled to Arlington disposal site.	No health hazard or environmental problem identified. Uncontrolled site investigation closed	file search; telephone conversation
American Timber & Trading Co. (Now Columbia Woodworking Co.) 6432 NE Columbia Blvd. Portland, OR --------- wood preserving	on-site	disposal wells	pentachlorophenol; creosote; copper, chrome and arsenic salts	organic and inorganic toxic materials	1. Plant operated from 1962-1970. 2. Plant disposed of liquid wastes into disposal wells. 3. Former plant site now under warehouse with an address of 6510 Columbia Blvd.	1. No imminent health hazard or environmental problems identified. Uncontrolled site investigation closed	telephone conversation; site visit; sample collection

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Alkali Lake 60 miles north of Lakeview, OR chemical waste landfill	on-site	shallow disposal trenches	residue from the manufacture of pesticides, primarily 2,4,D (23,500-55 gallon drums)	organic toxic materials	1. All drums were buried under state supervision in Nov-Dec. 1976. 2. Twice a year monitoring on and off-site is continuing by DEQ. 3. Site currently owned by State of Oregon. 4. This was a one time corrective disposal program.	1. Twice a year monitoring on and off-site continuing. 2. No imminen health hazard or environmental problem identified at this time. Uncontrolled site investigation closed.	file search
Liquid Air, Inc. 320 N. Pacific Hwy. Medford, OR acetylene manufacturer	on-site	surface impoundment	slaked lime (4 to 5 tons per month)	corrosive material	1. No accumulation of uncontrolled chemicals on-site. 2. Slaked lime has an agricultural use, however, Medford Valley's soils are already alkaline.	1. No imminent health hazard or environmental problem identified. 2. Uncontrolled site Investigation closed.	site visit

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Johnson Creek Blvd. and Crosswhite Street Landfill Johnson Creek Blvd. and Crosswhite Street Portland, OR Demolition Landfill	on-site	building demolition waste land clearing debris; and industrial wastes from Precision Castparts.	Sodium hydroxide potassium hydroxide, kolene and alcohol wastes.	flammable and corrosive wastes	1. No accumulation of uncontrolled chemicals on-site. 2. Landfill is filled to capacity and warehouse has been built on-site. 3. Relative to building demolition waste and land clearing debris, the waste from Precision Castparts was incidental in terms of volume.	1. No imminent health hazard or environmental problem identified. 2. Uncontrolled site Investigation closed.	site visit
Lavelle Landfill King Road Milwaukie, Oregon Demolition Landfill	on-site	building demolition waste; land clearing debris; and industrial waste from Precision Castparts	sodium hydroxide; potassium hydroxide; kolene and alcohol wastes	flammable and corrosive wastes	1. No accumulation of uncontrolled chemical on-site. 2. Landfill is filled to capacity and was covered with two (2) feet of dirt. 3. Relative to building demolition waste and land clearing debris, the waste from Precision Castparts was incidental in terms of volume.	1. No imminent health hazard or environmental problem identified. 2. Uncontrolled site Investigation closed.	site visit

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
A B Plating 6724 N.E. 46th Ave. Portland, OR Metal plating	on-site	Cesspool	sodium hydroxide; sodium hydroxide sludge; chromic acid and muriatic acid.	corrosive and toxic metal wastes	1. No accumulation of uncontrolled chemicals identified. 2. Small quantities of drippings and splashings are disposed of in cesspool. 3. No recorded wells within one mile of site. Groundwater estimated at 40 to 50 feet.	1. No imminent health hazard or environmental problems identified. 2. Current and future waste disposed practices will be evaluated under hazardous waste disposal requirements. 3. Uncontrolled site Investigation closed.	site visit
Noslers Bullets, Inc. 61396 Parrell Road Bend, Oregon Manufacturers of ammunition	on-site	shallow hand-dug disposal pits	formerly $Na_2Cr_2O_7$ (80 gallons per year); currently H_2SO_4 (200 gallons per year)	toxic and corrosive liquid wastes	1. No accumulation of uncontrolled chemicals on-site. 2. Small amount of spent acid disposed of in shallow pits (20 inches deep) 3. No visual evidence of environmental problem as a result of these practices.	1. No imminent health hazard or environmental problem identified. 2. Uncontrolled site Investigation closed.	site visit

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Parrott Mountain Landfill Parrott Mountain Road 2 miles southwest of Sherwood, OR ------------------ septic tank waste; industrial waste.	on-site	evaporation/ seepage surface impoundment lagoons	septic tank sludge; chemical toilet sludge; pesticide manufacturing residue.	organic and toxic organic sludges	1. No accumulation of uncontrolled chemicals identified on-site. 2. Pesticide manufacturing residues removed from site by court order. 3. Septic tank and chemical toilet sludge has dried up and is covered over.	1. No imminent health hazard or environmental problem identified. 2. Uncontrolled site Investigation closed.	file search; telephone contacts; site visit
Van Waters and Rogers 3950 N.W. Yeon Portland, OR ------------------ distributor of commercial and industrial chemicals and recycler of chlorinated solvents.	off-site (Arlington Disposal site)	chemical waste landfill	spilled products; spill contaminated soil; and still bottoms (sludges) from chlorinated solvent recovery process.	organic and inorganic toxic material	1. No accumulation of uncontrolled chemicals identified. 2. Spill cleanup and chlorinated solvent still bottom sludges shipped to Arlington.	1. No imminent health hazard or environmental problem identified. 2. Site to be licensed by state of Oregon as hazardous waste treatment facility. 3. Uncontrolled site Investigation closed.	file search; site visit

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Miller Products Company Foot of S.W. Caruthers Portland, OR Defunct manufacturer of lime-sulfur and formulator of pesticides	on-site	settling pond	lime-sulfur sludge	corrosive industrial sludge	1. No accumulation of uncontrolled chemicals on-site. 2. Plant closed in 1960 at this location. 3. Land where plant was located is now part of freeway system.	1. No imminent health hazard or environmental problem identified. 2. Uncontrolled site Investigation closed.	file search; site visit
Tektronix, Inc. N.W. Miliken Way Beaverton, OR electronics manufacturing	on-site off-site (Grabhorn Mountain Landfill) off-site (Arlington Disposal Site)	evaporation pond/ landfill demolition landfill chemical waste landfill	zinc; cadmium; nickel; copper; chrome; (56,000 gallons of sludge per year)	inorganic toxic materials	1. No accumulation of uncontrolled chemicals on-site. 2. Three sites have been used for landfilling of industrial sludge containing heavy metals. 3. Sludge is pretreated prior to landfilling to reduce heavy metals to environmentally safe level.	1. No imminent health hazard or environmental problem identified. 2. Uncontrolled site Investigation closed.	file search; site visit; sample collection.

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Charles H. Lilly Co. (Miller Products Co.) 7737 N.E. Killingsworth Portland, OR formulator of commercial fertilizer and pesticide products	on-site	concrete pit with approximate dimensions of 150' by 6' by 5' deep	DDT powder (2000 lbs) DDT liquid (200 gallons) miscellaneous quantities of chlordane, lindane, kelthane, etc. as they may have been mixed with DDT product	organic toxic materials	1. One time disposal as a result of the ban on DDT. 2. Department of Agriculture and Department of Environmental Quality had reviewed burial site in 1977. 3. Current pesticide contaminated wastes are hauled to Arlington disposal site.	1. Permanent record of one time disposal needs to be created. 2. No imminent health hazard or environmental problems identified. 3. Uncontrolled site investigation closed.	file search; telephone conversation
	off-site Arlington disposal site	chemical waste landfill	miscellaneous discontinued pesticide products (50,000 pounds)				
Nurnberg Scientific Company 3237 N. Williams Portland, OR Defunct distributor of laboratory chemicals	on-site	filled in basement	fire damaged laboratory chemicals (unknown quantity of chemicals not salvageable)	miscellaneous acids; bases; oxidizers; flammables; cyanide	following major fire (1967) attempts were made to salvage as many chemicals as possible. Remainder of chemicals were buried in basement along with charred remains of building. Debris leveled & covered with dirt.	1. Permanent record of this information needs to be created. 2. No imminent health hazard or environmental problems identified. Uncontrolled site investigation closed.	file search; telephone conversation; site visit

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Teledyne Wah Chang Teledyne Industries, Inc. 1600 Old Salem, Road Albany, OR manufacturer of non-ferrous metals	off-site Coffin Butte landfill off-site Roche Road landfill off-site Albany landfill off-site Arlington disposal site	municipal landfill demolition landfill municipal landfill (now closed) chemical waste landfill	stainless steel liners and furnace shield with adhering masses of zirconium and magnesium; zirconium fines; metal chlorides, chlorinator residues, filter residues and used carbo-column materials; flammable liquids	pyrophoric materials; reactive materials; flammable materials; low level radioactive wastes	1. No accumulation of uncontrolled chemicals on-site. 2. Pyrophoric, reactive and flammable material disposed of in several area landfills. 3. Excavation of previously disposed of material could result in spontaneous combustion or explosion.	1. Permanent record of off-site disposal information needs to be created. 2. No imminent health hazard or environmental problems identified. Uncontrolled site investigation closed. 3. Oregon State Health Division studying radioactive waste disposal sites.	file search
Martin Marietta Aluminum Co. 3313 West 2nd The Dalles, OR manufacturer of aluminum	on-site	industrial landfill	potliners; carbon blocks; sludge from air scrubbers	industrial sludge	no accumulation of uncontrolled chemicals on-site	1. No health hazard or environmental problem identified on-site. 2. Uncontrolled site investigation closed. 3. The aluminum industry as an industrial category may receive a further evaluation by EPA	file search; telephone conversation

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Chempro 11535 N. Force St Portland, OR	on-site	sludge lagoon	process sludge contaminated with oil	industrial sludge contaminated with oil	1. No accumulation of uncontrolled chemicals on-site 2. Oily sludge currently being hauled to Arlington disposal site 3. Samples were taken 4/2/81 from run-off pond and underneath tanks. Results show no contamination.	1. No imminent health hazard or environmental problems identified. 2. Reference to Pasco, Washington site referred to EPA for followup. 3. Uncontrolled site investigation closed. 4. The chemical reprocessing industry as an industrial category may receive further EPA review.	-file search; telephone conversation -sample collection
Reprocessor of waste oil	off-site (Pasco, Washington)	chemical waste landfill	oily sludge				
	off-site (Arlington disposal site)	chemical waste landfill	oily sludge				
Permapost Products Company 25600 SW Tualatin Valley Hwy Hillsboro, OR	on-site	short-term holding/recirculation lagoon and long-term storage/evaporation lagoon	pentachlorophenol; creosote; copper, chrome and arsenic salts	organic and inorganic toxic materials	1. No accumulation of uncontrolled chemicals identified 2. Violations of state water pollution control facilities permit occurring.	1. No imminent health hazard or environmental problems identified. Uncontrolled site investigation closed. 2. Enforcement action being initiated to correct permit violations. 3. Reference to Vancouver, WA container recycling firm referred to EPA for followup	file search; telephone conversation; site visit; sample collection
wood preserving	off-site (Vancouver, Washington)	metal container recycling firm	metal containers that contained copper, chrome and arsenic salts				

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Allied Plating 8135 NE Union Portland, OR metal plating	on-site	evaporative/ seepage lagoon	cyanide; copper nickel; chrome; (up to 150 gallons per minute)	inorganic toxic materials	1. No accumulation of uncontrolled chemicals on-site. 2. Because of expanding production capacity lagoon becoming inadequate. 3. State Water Pollution Control Facility Permit applied for. 4. Wastewater analysis indicates concentration of Cu, NI, Cr, Cy, and pH below levels for HW classification.	1. No imminent health hazard or environmental problems identified. Uncontrolled site investigation continuing. 2. State WPCF permit being drafted. Groundwater monitoring program will be required.	-file search; telephone conversation; site visit -wastewater sample taken

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Chevron Chemical Company 2300 S.E. Harvester Drive Milwaukie, Oregon ------------------ Blend and package dry (powder) pesticide mixtures.	off-site (landfill near Yakima, Washington.)	industrial landfill.	spilled pesticide product; damaged containers.	organic and inorganic toxic materials.	1. No accumulation of uncontrolled chemicals identified. 2. Plant cleanup wastes shipped to landfill near Yakima, Washington.	1. No imminent health hazard or environmental problem identified. 2. Uncontrolled site Investigation closed. 3. Reference to Yakima, Washington landfill referred to EPA for followup.	telephone conversation; site visit.
Associated Chemists, Inc. 4401 S.E. Johnson Creek Blvd. Portland, OR ------------------ Formulating and packaging cleaning compounds, paints, solvents and fungicides.	off-site (Arlington disposal site)	chemical waste landfill	paint sludge (2-3, 55 gallon drums per month)	industrial sludge	1. No accumulation of uncontrolled chemicals identified. 2. Sludge currently being hauled to Arlington.	1. No imminent health hazard or environmental problems identified. 2. Uncontrolled site Investigation closed.	site visit

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Bethel-Danebo Landfill West 11th and Beltline Road Eugene, Oregon ---------------- former municipal/ industrial landfill.	on-site	Municipal/industrial disposal site that is filled to capacity.	Domestic garbage; building demolition waste; land clearing debris; wood waste; miscellaneous industrial/ commercial waste	organic and inorganic mixed wastes.	1. Former gravel pit filled with municipal and industrial wastes. 2. Potential exists for local groundwater contamination due to degradation of municipal/ industrial wastes. 3. No evidence of hazardous wastes having been disposed of. 4. No accumulation of uncontrolled chemicals identified.	1. No imminent health hazard or environmental problems identified. 2. Uncontrolled site investigation closed.	file search; site visit.

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Chem-Security Systems Inc. Star Route Arlington, Oregon --- chemical waste landfill known as Arlington Disposal Site	on-site	Disposal trenches for sludges and solids; evaporation ponds for liquids; land treatment facility for oily wastes and covered storage for liquid PCBs.	Ignitable, corrosive, reactive and toxic waste according to Oregon's hazardous waste definitions. (approximately 1,000,000 cubic feet per year)	organic and inorganic toxic wastes.	1. No accumulation of uncontrolled chemical on site. 2. Site approved and licensed by state of Oregon. 3. Site in compliance with license conditions.	1. No imminent health hazards or environmental problem identified. 2. Uncontrolled site investigation closed.	file search; site visit.
Borden Chemical Co. 470 South Second St. Springfield, Oregon --- Manufacturer of urea and phenol formaldehyde resins for wood products industry.	off-site (prior to 1976 Lane County landfills) --- (since 1976 Arlington Disposal Site)	Municipal Landfill --- chemical waste landfill	industrial sludge from pretreatment holding ponds.	industrial organic sludge.	1. No accumulation of uncontrolled chemicals identified. 2. Industrial sludge from pretreatment holding basins formerly hauled to local municipal landfills. 3. Industrial sludge now hauled to Arlington Disposal site.	1. No imminent health hazards or environmental problem identified. 2. Uncontrolled site Investigation closed.	site visit

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Coffin Butte landfill Albany, Oregon	on-site	municipal/ industrial disposal site	domestic garbage; land clearing debris; miscellaneous industrial/ commercial wastes	organic and inorganic mixed wastes; previously pyrophoric wastes; previously low level radioactive wastes	1. No accumulations of uncontrolled chemicals on-site. 2. Potential exists for local groundwater contamination due to degradation of municipal/industrial wastes. 3. Pyrophoric wastes from Teledyne Wah Chang, Albany are no longer accepted (Wah Chang now manages these wastes on-site). 4. Low level radioactive wastes are no longer accepted. These wastes are hauled by Wah Chang to the Hanford Disposal Site in Washington.	1. Site licensed by state of Oregon. Periodic inspections conducted. 2. No imminent health hazard or environmental problems identified. 3. Uncontrolled site Investigation closed. 4. Permanent record (i.e., deed restriction, restrictive covenant, etc.) regarding disposal of pyrophoric and low level radioactive materials needed.	file search; site visit

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Griffin Brothers, Inc. 1806 S.E. Holgate Portland, Oregon ------------------ Formulator of sanitary maintenance products including: liquid detergents, bacteriacides, floor waxes, floor finishes and janitorial supplies.	off-site (St. Johns Landfill)	municipal waste landfill	General office and business refuse (no industrial or hazardous wastes.)	none	1. No accummulation of uncontrolled chemicals identified.	1. No imminent health hazard or environmental problem identified. 2. Uncontrolled site investigation closed.	site visit
United Foam Corp. 3900 N.E. 158th Portland, Oregon ------------------ manufacturer of polyurethane foam	off-site (Arlington Disposal Site)	chemical waste landfill	Methylene chloride; glycol; toluene disocyanate	toxic organic materials	1. No accumulation of uncontrolled chemicals identified. 2. Manufacturing wastes placed in 55 gallon metal drums prior to shipment to Arlington.	1. No imminent health hazard or environmental problem identified. 2. Uncontrolled site investigation closed.	site visit

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Short Mountain Landfill Goshen, Oregon (operated by Lane County) ------------------ Municipal/ industrial landfill	on-site	Municipal/ industrial landfill	domestic garbage building demolition wastes; land clearing debris; commercial and general business refuse	organic and inorganic mixed wastes	1. No accumulation of uncontrolled chemicals identified. 2. Active site operating under permit from state of Oregon. 3. Leachate control system installed to prevent contamination of local ground and surface waters.	1. No imminent health hazard or environmental problem identified. 2. Uncontrolled site Investigation closed.	file search; site visit
Krishell Laboratories 1735 S.E. Powell Portland, Oregon ------------------ Defunct pesticide formulator	off-site (St. John's Landfill)	Municipal/ Industrial disposal site	general office and commercial manufacturing refuse (No known disposal of hazardous waste)	None	1. No accumulation of uncontrolled chemical identified on site of former plant. 2. Plant was demolished and new commercial warehouse constructed.	1. No imminent health hazard or environmental problems identified. 2. Uncontrolled site Investigation closed.	file search; telephone contact; site visit

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Monsanto 855 South Seneca Eugene, Oregon 97402 Manufacturer of urea and phenol formaldehyde glue resins for wood products industry.	on-site	pretreatment lagoons to remove solids prior to discharge to Eugene Sanitary Sewer	industrial sludge	organic industrial sludge	1. No accumulation of uncontrolled chemicals identified 2. Industrial sludge being disposed of at state permitted municipal landfills.	1. No imminent health hazard or environmental problem identified. 2. Uncontrolled site Investigation closed.	site visit
	off-site (Lane County landfills, such as Day Island, Bethel Danebo and Short Mountain)	Municipal disposal site.	dewatered sludge from pretreatment lagoons				
Norris Paint and Varnish Co. 1675 Commercial Street, N.E. Salem, Oregon formulator of paints and varnishes.	off-site (Brown's Island Disposal Site)	Municipal Disposal site.	Industrial sludge containing residual amounts of organic solvent (500 lbs. per month); Industrial sludge containing latex paint solids (5000 gallons per year); paint pigment bags (100-300 per day).	Industrial sludge or waste paper bags.	1. No accumulation of uncontrolled chemicals identified. 2. Industrial sludges and general waste hauled to Brown's Island Landfill.	1. No imminent health hazard or environmental problem identified. 2. Uncontrolled site Investigation closed.	site visit

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
OECO Corporation 712 S.E. Hawthorne Portland, Oregon	on-site	Recovery and reuse	cleaning solvents	Non-hazardous general manufacturing refuse	1. No accumulations of uncontrolled chemicals identified. 2. Cleaning solvents are recovered for reuse. 3. General manufacturing refuse hauled to St. Johns Landfill.	1. No imminent health hazard or environmental problems identified. 2. Uncontrolled site Investigations closed.	site visit
Manufactures transformers and power supplies for missles and aircraft	off-site (St. Johns Landfill)	Municipal waste landfill	epoxy resins, non-solvent liquid waste solutions				
Winter Products Company 3604 S.W. Macadam Avenue Portland, Oregon	off-site (St. Johns Landfill)	Municipal/ industrial disposal site	Contaminated acid cleaner and plating rinse-water sludge (2000 gallons per year); brass plating bath solution sludge (4000 gallons per year).	Inorganic toxic materials	1. No accumulation of uncontrolled chemicals identified. 2. Prior to 1976 contaminated sludges were disposed of at St. Johns landfill. 3. Currently, contaminated sludges are hauled to Arlington.	1. No imminent health hazard or environmental problem identified. 2. Uncontrolled site Investigation closed.	telephone conversation; site visit
Manufacture furniture hardware	off-site (Arlington Disposal Site)	chemical waste landfill					

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Reichhold Chemicals, Inc. North Columbia River Highway Box 810 St. Helens, Oregon Manufacturer of anhydrous ammonia, prilled urea, and liquid fertilizers.	on-site	above ground storage	spent catalysts, spent silica gel and activated carbon	None- inert materials	1. No accumulation of uncontrolled chemicals identified. 2. Inert materials stored on-site are not considered potential problem. 3. Organic sludges are hauled to Arlington. 4. Waste oils are sent to Chem-Pro for recovery and reuse.	1. No imminent health hazard or environmental problems identified. 2. Uncontrolled site investigation closed.	site visit
	off-site (Arlington Disposal Site)	chemical waste landfill	sludges accumulated during manufacturing process (1500 gallons per year)	toxic organic sludge			
	off-site (Chem-Pro)	Recovery of useable oil	Waste oils	organic waste			
Farmcraft, Inc. 8900 S.W. Commercial Street Tigard, Oregon formulator of agricultural fertilizers and pesticides.	none	Decontaminated empty containers are reused/ recycled.	Not applicable.	Not applicable	1. No accumulation of uncontrolled chemicals identified. 2. Empty containers are reused/ recycled.	1. No imminent health hazard or environmental problem identified. 2. Uncontrolled site investigation closed.	Site visit.

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Uranium Mill Lakeview, Oregon former uranium smelter	on-site	piles and surface lagoons	tailings left over from uranium recovery process	low level radioactivity; fine dust	1. No accumulation of uncontrolled chemicals identified. 2. The tailings and some lagoons were stabilized with earth cover. 3. Some lagoons are still uncovered and occasionally cause localized dust problems. 4. Oregon Health Division continues to monitor site and wells by sampling groundwater.	1. No imminent health hazard or environmental problem identified. 2. Uncontrolled site investigation closed.	file search

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Wilbur-Ellis Company 1220 N.W. Marshall Portland, OR ------------------ Warehouse and distribution center for farm chemical and fertilizer products.	off-site (St. Johns Landfill) ---------------- off-site (Arlington Disposal Site)	Municipal/ industrial disposal site ---------------- chemical waste landfill	In-plant spills	Organic and inorganic toxic materials	1. No accumulation of uncontrolled chemicals identified. 2. Prior to 1976 spilled materials were disposed of with general plant refuse at St. Johns Landfill. 3. Currently spilled materials are picked up, packed in drums and sent to Arlington.	1. No imminent health hazard or environmental problems identified. 2. Uncontrolled site Investigation closed.	site visit

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Alexander Paper Stock (formerly Resource Recovery By-products) 701 North Hunt Portland, Oregon Recycling paper products	off-site (St. Johns landfill)	municipal disposal site	miscellaneous contaminants coming in with waste paper	none	1. No accumulation of uncontrolled chemicals identified. 2. Facility designed to recover materials such as wood or paper for their reuse or energy value.	1. No imminent health hazard or environmental problems identified. 2. Uncontrolled site investigation closed.	file search; site visit.
Oregon Technical Products 1636 N.W. Washington Blvd. Grants Pass, Oregon Assembly of airborne electronic radar ports.	off-site (Grants Pass Fire Department) off-site (Grants Pass Highway Department) off-site (Airport Glue Waste Disposal Site)	used for training fire fighters used for equipment cleaning purposes industrial sludge lagoon	solvents (14 gallons per month) solvents (14 gallons per month) paint sludge from spray booth (350 gallons per month)	organic flammable materials organic flammable materials industrial sludge	1. No accumulation of uncontrolled chemicals identified. 2. flammable solvents reused by Grants Pass Fire or Highway Departments. 3. Paint sludges disposed of at Josephine County Airport glue waste lagoon.	1. No imminent health hazard or environmental problem identified. 2. EPA conducting separate investigation of Josephine County Airport glue waste lagoon 3. Uncontrolled site investigation closed.	site visit

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Drum Recovery 112th & Holman Portland, OR ---------------- 1. Transporter of hazardous wastes (registered with Oregon PUC and EPA) 2. Proposed operator of hazardous waste collection site. 3. Proposed operator of hazardous waste treatment facility.	off-site (Arlington disposal site) (Wes-Con disposal site)	chemical waste landfill chemical waste landfill	miscellaneous inorganic/ organic liquids and solids	ignitable; corrosive; and toxic industrial inorganic and organic chemicals.	1. New company leasing office facilities from ICN/UML at 112th & Holman. 2. Primary business at this time is registered transporter of hazardous waste. 3. Proposed operator of hazardous waste collection site at 112th & Holman. 4. Proposed operator of hazardous waste treatment facilities at 112th & Holman.	1. No imminent health hazard or environmental problems identified. 2. Transportation business and proposed facilities currently regulated by state and federal hazardous waste management regulations. 3. Uncontrolled site investigation closed.	Site visit

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Spe-de-way Paint Stain Co. & Sol-Pro 8000 NE 14th Pl. Portland, OR ----------------- Spe-de-way manufactures paints and lacquers. Sol-Pro is a reprocessor of chlorinated and non-chlorinated waste solvents.	off-site (Arlington disposal site) (Wes-Con disposal site)	chemical waste landfill chemical waste landfill	miscellaneous organic liquids and solids	ignitable and toxic organic chemicals	1. No accumulation of uncontrolled chemicals on site. 2. Company receives waste solvents from other businesses for treatment. Following treatment, chemicals are returned to businesses for reuse. 3. Wastes removed during treatment are drummed and shipped to Arlington or Wes-Con disposal sites.	1. No imminent health hazard or environmental problems identified. 2. Treatment facilities are regulated by both federal and state hazardous waste management regulations. 3. Uncontrolled site Investigation closed.	file search; site visit

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Crosby and Overton 5420 N. Lagoon Av. Portland, OR industrial tank cleaning and servicing	on-site	temporary storage in steel tanks	ship bilge water (oil-water mixture)	organic and inorganic toxic materials; liquids and sludges contaminated with oil; industrial sludges	1. No accumulation of uncontrolled chemicals on site. 2. Temporary storage of oil-water mixtures at Time Oil is practiced. 3. Direct hauling to recycle facilities or authorized disposal sites is practiced for most customer-derived wastes.	1. No imminent health hazard or environmental problems identified. 2. Uncontrolled site Investigation closed.	site visit
	off-site recycle plants	recycling	varies by customer				
	off-site Arlington disposal site	chemical waste landfill	varies by customer				
	off-site St. Johns Landfill	municipal landfill	varies by customer				

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Nuway Oil 7039 NE 46th Portland, OR refiner of used motor oil	on-site	settling lagoon	1. Clay sludge contaminated with oil (up to 70 tons per year) 2. acid sludge contaminated with oil (up to 90,000 gallons per year)	1. Industrial sludge contaminated with oil. 2. Corrosive material	1. No accumulation of uncontrolled chemicals on-site. 2. Clay sludge being disposed of on-site. 3. Acid sludge used for road base in Eastern Oregon and Washington. 4. Clay & acid sludges disposed of at St. Johns landfill. 5. Lead is material of concern and leach tests show <3 mg/l.	1. Waste confined to disposal site. 2. Uncontrolled site investigation continuing	file search; telephone conversation; site visit; sample collection, additional sampling necessary.
	off-site (St. Johns landfill)	municipal landfill	clay and acid sludges				
	off-site (miscellaneous holes-North Portland)	filling in of depressions in North Portland	clay sludge				
	off-site (Eastern Oregon and Washington)	Used for road base material	acid sludge				

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Widing Transportation Co., Inc 10145 N. Portland Road Portland, OR transporter of commodities including hazardous materials and hazardous wastes	on-site	6-cell aeration/ gravity settling basin and 4-acre settling pond	liquids and sludges from cleaning inside of bulk carrier transport trucks (50,000 gallons of water contaminated with urea and phenol formaldehyde glue resins, surfactants, oil, black liquor, & defoamer)	1. Organic and inorganic toxic materials 2. Sludges contaminated with oil. 3. Corrosive.	1. No accumulation of uncontrolled chemicals on-site. 2. Following pretreatment some contaminated sludge stored on-site. 3. Following pretreatment some contaminated sludges hauled to Arlington disposal site.	1. Evaluation of water and sediments in 4-acre settling pond continuing to determine chemical contaminants. 2. The facility is now under a State license to operate. Ability to evaluate and regulate the site has been established. 3. Uncontrolled site investigation closed.	file search; telephone conversation; site visit; sample collection
	off-site (Arlington disposal site)	chemical waste landfill	liquids and sludges as described above (periodic shipments as needed)				

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Stauffer Chemical Corp. 4429 N. Suttle Rd. Portland, OR	On-site	Settling pond	alum sludge (900 tons/yr.)	Corrosive, organic, toxic material.	1. Shallow ground water contamination detected in on-site monitoring wells adjacent to oxidation lagoon; quantities are small. 2. Pesticide contaminated wastes currently hauled to Wes-Con disposal site, ID. 3. Alum sludge currently hauled to St. John's landfill. 4. No good record exist relative to on-site chemical waste landfill. 5. No connection between shallow aquifer & deeper aquifer, the aquifer of concern demonstrated. All water users in the area supplied by municipal water system	1. Uncontrolled site investigation closed. 2. Sampling has indicated there are some h.w. on site but in low levels. 3. Impact does not affect beneficial uses.	File search, sample collections, site visit.
Mfg. of aluminum sulfate & formulator of commerical pesticide products.	On-site	Oxidation lagoon	Pesticide contaminated wash water (2300 lbs/yr.)				
	On-site	Chemical waste landfill	Pesticide contaminated liquid & solid (100-200 tons)				
	Off-site St. John's landfill	Municipal landfill	Alum sludge				
	Off-site Wes-Con Idaho disposal site.	Chemical waste landfill (20-30 tons/yr.)	Pesticide contaminated waste.				

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Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
United Chrome Products, Inc. Corvallis Airport Industrial Park Corvallis, OR metal plating	on-site	dry well	sludge containing chrome (1000 gallons per year)	inorganic toxic material	1. No accumulation of uncontrolled chemicals on-site. 2. Negligible amounts of chrome in surface run-off waters. 3. Sludge now hauled to Coffin Butte landfill. 4. Unknown quantity of process waste-water and sludge disposed of down dry well.	1. No imminent health hazard or environmental problems identified on or off site. 2. Soils and groundwater information in the area of dry well needed for evaluation. 3. Geologist report will be furnished by EPA. 4. Uncontrolled site investigation continuing.	file search; telephone conversation.
	off-site Coffin Butte Landfill	municipal landfill	same as above				

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
St. Johns Landfill 9393 N. Columbia Blvd. Portland, Oregon Municipal/ industrial disposal site	on-site	municipal/ industrial landfill	5000 55-gallon drums of pesticide manufacturing residue Miscellaneous industrial solid waste, industrial sludges, and oily waste	organic and inorganic toxic materials	1. No accumulation of uncontrolled chemicals on-site. 2. Besides household and commercial refuse, site has received miscellaneous industrial solid waste and industrial sludges over the years. 3. First set of monitoring results from wells near pesticide disposal area showed no pesticide contamination. 4. Second set of monitoring results from perimeter wells showed no pesticide contamination.	1. Evaluation of historical and recent monitoring data being undertaken. 2. No imminent health hazard or environmental problem suspected at this time. 3. Uncontrolled site investigations closed.	Industrial file searches; telephone contact; site visit; sample collection

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Pacific States alias Ace Galvanizing 805 NW 15th Portland, OR metal plating	on-site off-site farm land in WA.	disposal well/ city sewer land spreading	Liquid waste high in zinc & iron. Sludge containing zinc.	Inorganic toxic material.	1. No accumulation of uncontrolled chemicals on-site 2. Disposal well may have been used for disposal of waste water. 3. Land in WA. may have been used for land spreading of sludge containing zinc.	Evaluation of disposal well indicated sump was lined. No identification of lands in WA. Uncontrolled site investigation closed.	File search; site visit. Telephone contacts could be made.
Globe Union, Inc. 800 NW Third Canby, OR 97013 Manufacturer of batteries	On-site	Evaporation/ seepage surface impoundment	In-plant spills containing lead sulfate and lead hydroxide (5000 gallons per spill maximum)	Inorganic toxic material	1. No accumulation of uncontrolled chemicals identified. 2. Unlined evaporation/ seepage pond used to contain in-plant spills. 3. All wells sampled showed no detectable levels of lead.	1. No imminent health hazard or environmental problem identified. 2. Impact of seepage on local groundwater table has been evaluated. 3. Uncontrolled site investigation closed.	Site visit samples taken

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Milwaukie Dumping area	Various locations none pinpointed.	Landspreading, landfilling, open pits, etc.	Industrial waste from McCormick and Baxter	Sludge and general manufacturing refuse	1. Contact with alleged generator (McCormick and Baxter) and transporter (The Schultz Company) did not pinpoint this site. 2. Records related to septic tank sludge show they were hauled to Columbia Blvd. sewage treatment plant. 3. Records related to general solid waste show they were hauled to either the St. Johns or Rossman's municipal landfill. 4. A specific site could not be pinpointed. Likely, no one site was used more than once.	1. No imminent health hazard or environmental problem identified. 2. Further evaluation of records to try & pinpoint all possible disposal sites has been done. 3. Uncontrolled site investigation closed.	telephone contacts EPA field investgation team tried to track down a specific site.

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Scappoose dumping area	Various locations none pinpointed.	Landspreading landfill, open pits, etc.	Industrial waste from McCormick and Baxter	Sludge and general manufacturing refuse	1. Contact with alleged generator (McCormick and Baxter, Portland) and transporter (The Schultz Company) did not pinpoint this site. 2. Records related to septic tank sludge show they were hauled to Columbia Blvd. sewage treatment plant. 3. Records related to general solid waste show they were hauled to either the St. Johns or Rossman's municipal landfills. 4. A Specific site could not be pinpointed. Likely no one site was used more than once.	1. No imminent health hazard or environmental problem identified. 2. Further evaluation of records to try to pinpoint all possible disposal sites needed. 3. Uncontrolled site investigation closed.	telephone contacts EPA field investigation team tried to track down a specific site.

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Airport Glue Waste Disposal Site Josephine County Airport Merlin, Oregon -------------- Industrial Disposal Lagoon	on-site	four shallow evaporation/ seepage ponds.	phenolic glue waste solids; septic tank pumpings; chemical toilet pumpings; paint and ink sludges and oils.	industrial and domestic sewage sludges.	1. Unsealed ponds, potential exists for surface and groundwater contamination. 2. All waste sludge delivered to site in bulk. (i.e. no drum disposal.) 3. Visual evidence exists of previous surface overflows into roadside ditches 4. Initial sampling of drinking water wells in the area showed no contamination. 5. Further sampling of drinking water wells in the area showed no contamination.	1. No imminent health hazard or environmental problem identified. 2.Samples of adjacent deep, drinking water wells showed no contamination. 3.Identified companies and their waste. 4.The site is permanently closed and covered.Waste material has been land farmed for disposal. 5.Uncontrolled site investigation closed.	file search; site visit; sample collection and analysis. -domestic wells sampled for cyanide

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
FRONTIER LEATHER 1210 E. Pacific Sherwood, OR	On-site	Landspreading, burial in shallow trenches or above ground storage in piles.	Beamhouse clarifier sludge containing sodium sulfide, lime & sodium sulfhydrate (800 lbs. per day); primary clarifier sludge containing trivalent chrome (1200 lbs. per day); leather splits and flushings and trimmings solvents?	Organic and inorganic industrial sludges	1. No accumulation of uncontrolled chemicals identified. 2. Beamhouse sludge disposed of on-site by landspreading. 3. Primary clarifier sludge disposed of at Rossman's. 4. Leather splits are being stored on-site. 5. Flushings and trimmings are being picked up by a rendering plant.	1. No imminent health hazard or environmental problems identified. 2. Analysis of contaminants in beamhouse and primary clarifier sludge done. 3. EPA has exempted tanning industry since original material is Cr t3. 4. Uncontrolled site investigation closed.	File search; site visit, samples taken.
Leather tanner	off-site (Newberg land-fill, Newberg)	Municipal disposal site					
	(Rossman's land-fill, OR. City)	Municipal disposal site					

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
South Willamette Street Landfill 52nd and Willamette Street Eugene, Oregon ------------------ Former municipal/ industrial disposal site	on-site	Municipal/ industrial landfill	domestic garbage; building demolition waste; land clearing debris; commercial and general business refuse	organic and inorganic mixed waste	1. Former landfill where open burning was normal operating practice. 2. Landfill only being used for land clearing debris at this time. 3. Some drums containing unknown materials on-site.	1. No imminent health hazard or environmental problems identified. 2. Samples collected and contents of drums determined. Lane County ensures proper disposal. 3. Uncontrolled site Investigation closed.	site visit samples taken

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Zehrung Corporation 2201 N.W. 20th Portland, Oregon	on-site	underground storage tanks	paint mix tank wash water and solvent alcohol.	industrial sludge and flammable organic material	1. No accumulation of uncontrolled chemicals on-site. 2. Unknown (but presumed small) quantity of insecticide dust has accumulated beneath warehouse floor during packaging operations. 3. Spill clean-up debris hauled to St. Johns Landfill. 4. Outlet to wastewater sump determined to be city sewer.	1. No imminent health hazard or environmental problem identified. 2. Uncontrolled site investigation closed.	site visit
Formulator of shellacs, solvent alcohols, primers and wood preservatives.		Incidental Insecticide dust accumulation beneath warehouse floor	Insecticide dusts (rotenone B and 2,4,D	organic toxic material			
	off-site (St. Johns Landfill)	municipal/ industrial disposal site	pentachlorophenol and/or shellac spill cleanup	organic toxic material			

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Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Northwest Printed Circuits 2655 SE Pacific Highway Medford, OR manufacturer of printed circuit boards for electronic industry	off-site (Arlington disposal site)	chemical waste landfill	nitric acid (24 drums/yr) sodium persulfate (12 drums/yr)	corrosive sludge containing copper	1. No accumulation of uncontrolled chemicals on site. 2. Some drummed corrosive wastes currently being shipped to Arlington disposal site. 3. Organic solvents being returned to vendors for reuse, recycling or subsequent resale. 4. Certain treated industrial wastewaters discharged to Medford sewage treatment plant.	1. No imminent health hazard or environmental problems identified. 2. Uncontrolled site Investigation closed.	site visit
	off-site (various suppliers such as Van Waters & Rogers, Great Western Chemical Island Chemical, etc.)	Return to vendor for reuse, recycling or resale for secondary use	Various solvents such as trichloroethylene, methylene chloride and etylene glycol (700 drums/yr)	flammable or toxic organic solvents			
	off-site (Medford sewage treatment plant)	municipal wastewater treatment plant	Various etchant liquid industrial wastes (alkaline etchant, electroless copper and sodium persulfate)	corrosive industrial wastewater			

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Reynolds Metals Company Sundial Road Troutdale, Oregon	off-site (Reynolds Metal, Longview)	recovery of cryolite, land disposal of residual product	potliner (430 tons/month)	low level of cyanide may be present in potliner	1. No accumulation of uncontrolled chemicals on site. 2. Potliner used to be stored on-site. Accumulation of potliner transported to Longview when cryolite recovery process installed. 3. Organic sludges from air control systems put in drums and hauled to Arlington disposal site.	1. No imminent health hazard or environmental problem identified. 2. Ground water samples in vicinity of Sundial Road plant were checked & found no detectable levels of cyanide. Uncontrolled site Investigation	site investigation samples taken.
primary aluminum reduction plant	off-site (Arlington	chemical waste landfill	sludge containing coal for pitch from wet electrostatic precipitator (20 drums/day)	organic industrial sludge			

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Caron Chemical Corp. 8600 Suver Road Monmouth, Oregon ---------------- 1. Reprocessor of chlorinated/ nonchlorinated solvents (indefinitely closed at this time). 2. Hazardous waste collection site (license temporarily suspended for non-compliance at this time).	off-site (Arlington disposal site)	chemical waste landfill	still bottoms from reprocessing of waste solvents ---------------- miscellaneous chemicals, including PCB solids, received through collection site.	ignitable ---------------- ignitable, corrosive or toxic inorganic and organic chemicals.	1. Treatment and collection facilities are both inactive at this time. 2. Approximately 2000 drums of mixed inorganic/ organic chemicals were on-site. 3. sufficient funds did not exist in the business to remove all chemicals to a secure disposal site. 4. Company working with original generators did secure their assistance in removing existing accumulation of chemical wastes.	1. No imminent health hazard or environmental problems identified. 2. Sold reprocessing equipment. 3. Efforts completed to secure generator assistance in removing accumulated wastes. 4. Accumulated waste removed and disposed of properly. 5. Uncontrolled site investigation closed.	file search; site visit

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
ICN/United Medical Lab 222 N. Vincent Covina, CA (Plant Site: 11104 NE Holman Portland, OR) - - - - - - - - - - defunct clinical lab	historical disposal practices included some cyanide on site and other material off-site.	Dry well and haul to municipal landfill.	Laboratory chemicals including low level radioactive wastes. Small quantities.	Ignitable; corrosive; toxic; radioactive	1. Facility purchased in 1978 by ICN and closed shortly thereafter. 2. State Health Division investigated disposal of low level radioactive materials subsequent to closure and have found no problems. 3. 50 drums of unknown chemicals were stored behind one of the clinical lab buildings.	1. No imminent health hazard or environmental problems identified. 2. Identification and proper disposal of 50 drums of chemicals has been done. 3. EPA contractor finished investigation of the site. 4. Uncontrolled site investigation closed.	Site visit, samples taken.

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Anodizing, Inc. 2005 NE Columbia Blvd. Portland, Oregon ---------------- aluminum anodizing	on-site	surface impoundment	industrial wastewater treatment system sludge	Industrial sludge (primarily aluminum sulfate)	1. No accumulation of uncontrolled chemicals on site. 2. Industrial wastewater treatment system closed down in early 1980 - wastewater discharged to Portland sewer system. 3. Surface impoundments no longer in use - accumulated sludge from treatment still remains in impoundment.	1. No imminent health hazard or environmental problems identified. 2. Samples of accumulated sludge taken for analysis and show no high levels of contamination. 3.Uncontrolled site investigation closed.	file search; site visit; sample collection

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Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Rossman Landfill Holcomb & Washington Sts. Oregon City, OR ---------------- municipal waste landfill	on-site	municipal waste landfill	residential, commercial, business and industrial garbage and refuse.	potential groundwater contamination; potential odor problems; potential off-site methane gas escapage.	1. No accumulation of uncontrolled chemicals on site. 2. Leachate collection and treatment system being installed to minimize water pollution. 3. Methane gas collection and treatment system being installed to minimize odors and potential explosions. 4. Effort made to operate site as sanitary landfill including daily cover, weather permitting.	1. No imminent health hazard or environmental problem identified. 2. Site currently operates under state solid waste permit. 3. Thorough review has been made of existing monitoring data and inspections scheduled on leachate and methane gas collection and treatment systems. 4. Uncontrolled site. Investigation closed.	file search; site visit

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Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Bloomberg Road Landfill Bloomburg Road Lane County, Oregon --- former municipal/ industrial landfill.	on-site	municipal/ industrial disposal site that is filled to capacity.	Domestic garbage; land clearing debris; miscellaneous industrial/ commercial waste	organic and inorganic mixed wastes.	1. Potential exists for local ground-water contamination due to degradation of municipal/ industrial wastes 2. No evidence of hazardous wastes having been disposed of. 3. No accumulation of uncontrolled chemicals identified.	1. No imminent health hazard or environmental problems identified. 2. Groundwater samples from local wells may be collected. 3. Uncontrolled site Investigation continuing	file search; site visit.

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Day Island Landfill Day Island Road Eugene, Oregon ---------------- former municipal/ industrial landfill	on-site	municipal/ industrial disposal site that is filled to capacity.	Domestic garbage; building demolition waste; land clearing debris; wood waste; miscellaneous industrial/commercial waste.	organic and inorganic mixed wastes.	1. Potential exists for local groundwater contamination due to degradation of municipal/industrial wastes. 2. No evidence of hazardous wastes having been disposed of. 3. No accumulation of uncontrolled chemicals identified.	1. No imminent health hazard or environmental problems identified. 2. Uncontrolled site investigation closed.	file search; site visit Evaluation of historical and recent monitoring data.

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Brown's Island Sanitary Landfill Marion County Salem, Oregon municipal/ industrial disposal site	On-site	Municipal/ industrial disposal site	Domestic garbage; building demolition waste; land clearing debris; miscelldneous commercial and industrial waste.	Organic and inorganic waste materials.	1. No accumulation of uncontrolled chemicals identified. 2. Potential for pollution of local groundwater due to biodegradation of organic materials. 3. Monitoring wells have been installed and monitoring of shallow groundwater table is occurring.	1. Permitted site by State of Oregon. Periodic inspections are conducted. 2. No imminent health hazard or environmental problems identified. 3. Evaluation of historical and recent monitoring data completed. 4. Uncontrolled site Investigation closed.	File search; site visit.

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Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Rhone-Poulenc (formerly Rhoddia or Chipman Chemical) 6200 NW St. Helens Road Portland, OR	on-site	Doane Lake	liquid wastes	organic toxic materials	1. No accumulation of uncontrolled chemicals on site. 2. One municipal landfill and three chemical waste landfill, have been disposal of manufacturing residues.	1. Evaluation continuing as part of Doane Lake area study. 2. Evaluation of St. Johns landfill scheduled. 3. Pasco, Washington reference referred to EPA for followup. 4. Twice a year monitoring of Alkali Lake con- continuing by DEQ	file search; personal interview; site visit; sample collection.
	off-site St. Johns landfill	municipal landfill	manufacturing residues (5000-55 gallon drums)				
manufacturer and formulator of pesticides	off-site Alkali Lake landfill	chemical waste landfill	manufacturing residues (23,500-55 gallon drums)				
	off-site Pasco, Washington	chemical waste landfill	manufacturing residues				
	off-site Arlington disposal	chemical waste landfill	manufacturing residues (200 tons per year)				

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Pennwalt Chemical 6400 NW Front Av. Portland, OR	on-site	lagoons/landfill	brine purification sludge (1310 pounds per day)	inorganic toxic materials	1. No accumulation of uncontrolled chemical on-site 2. Some industrial sludge disposed of on-site. 3. Some industrial chemicals disposed of at Arlington disposal site.	Evaluation continuing as part of Doane Lake area study	file search; site visit; sample collection
manufacturer of industrial chemicals - principally chlorine	off-site Arlington disposal site	chemical waste landfill	sodium arsenite; miscellaneous cleaning chemicals				
NL Industries 5909 NW 61st Av. Portland, OR	on-site	landfill	lead; zinc	inorganic toxic material	No accumulation of uncontrolled chemicals on-site	Evaluation continuing as part of Doane Lake area study	file search; site visit; sample collection
Secondary re-refining of lead and zinc							

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Koppers Company 7540 NW St. Helens Road Portland, OR manufacturer of pitch and electrobinding products	on-site	landfill	creosote residuals; pitch; phenols; oil and grease	industrial solid waste and sludge	1. No accumulation of uncontrolled chemicals on-site	Evaluation continuing as part of Doane Lake study area	file search; telephone conversation
Industrial Air Products (Division of Liquid Air Inc.) 6501 NW Front Av. Portland, OR manufacturer of acetylene	on-site	landfill	10% lime slurry	corrosive	1. No accumulation of uncontrolled chemicals on-site. 2. Lime slurry currently held in temporary holding pond and reused.	Evaluation continuing as part of Doane Lake area study	file search; site visit; sample collection

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Gilmore Steel 6161 NW 61st Av. Portland, OR — steel fabrication coating and engraving	on-site	landfill	rolling mill scale; melt furnace slag (7500 tons per year)	industrial solid waste	no accumulation of uncontrolled chemicals on-site	evaluation continuing as part of Doane Lake area study	file search; site visit; sample collection
Northwest Natural Gas St. Helens Road Portland, OR — manufacturer of oil and gas from petroleum	on-site	landfill	tar bottoms; napthalenes	industrial sludges	1. Gasification plant ceased operation in early 1950's 2. No accumulation of uncontrolled chemicals on-site	Evaluation continuing as part of Doane Lake area study	personal interview; site vist; sample collection

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Oregon City Gravel Pit (Believed to be Rossman's Landfill, Oregon City)	Not applicable	Not applicable	Not applicable	Not applicable	1. Galvanizers disposed of 12,000 gallons of iron and zinc hydroxide sludge in 1976. 2. Crosby and Overton hauled sludge to Rossman's landfill in Oregon City. 3. DEQ approved disposal in Rossman's landfill.	1. No imminent health hazard or environmental problems identified. 2. Uncontrolled site Investigation closed.	telephone contacts

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Lakeview, Oregon dumpsite (determined to be Alkali Lake disposal site)	---	---	---	---	1. Jantzen, Inc. disposed of dry cleaning solvents thru Chem-Waste, Inc. 2. Chem-Waste, Inc. developed and operated Alkali Lake disposal site.	1. See discussion under Alkali Lake disposal site. 2. Uncontrolled site investigation closed.	File search; telephone contacts.

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Umatilla Army Depot Hermiston, Oregon - - - - - - - - - - Army munitions and nerve gas repository	on-site	Long-term storage of pesticides and solvents; washwater from decontaminating munitions plant was piped to 2-cell unlined lagoon, plant inactive for over 10 years.	Total estimate 9,000 lbs.--pesticides, solvents, NaCN and NaCl, caustic brine.	Explosives and toxic organic waste contamination.	1.Outdated or nonusable munitions are detonated in an incinerator or open air depending on size. 2.Pesticides and solvents in storage.	1. No imminent health hazard or environmental problem identified to date. 2.Uncontrolled site investigation will continue pending groundwater investigation and further info. to be provided by the Army concerning washwater disposal from decontaminating munitions plant.	File search

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
American Can CO. 3334 Industrial Way N.E. Salem, OR	off-site	recycle	solder dross (lead) waste solvents (MIBK, MEK & cycloheranone) 40,000 lbs/yr.	Toxic-heavy metals & organic solvents	1. Drum storage area for solder dross and waste solvents 2. Company has filed as a generator and TSD facility. 3. Company filed SNP to be safe.	No imminent hazard or environmental problems identified. Uncontrolled site investigation closed.	File search, on site inspection.
Can mfg. facility							
Cascade Plating Co. 125 Waite St. Eugene, OR	off-site		Electroplating sludge - 3 drums over a 7 year period.	Toxic- heavy metals	1. Dates of waste handling 1980-present. 2. Material is collected & stored in drums. 3. Stored material is shipped to Arlington for disposal.	Preliminary investigation has been initiated. Uncontrolled site investigation continuing.	File search, telephone contact.
Electroplating facility	Arlington h.w. disposal facility	landfill					
States Industries Inc. Enid Rd & Hwy. 99N Eugene, OR 97402	off-site unknown	municipal landfill	spent solvents	Toxic-ignitable	1. Material is stored on site in drums.	Preliminary investigation has been initiated and uncontrolled site investigation continuing	File search.
prefinish plant							

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Boise Cascade Valsetz, OR - - - - - - - - - plywood mfg.	on-site	landfill	10 cu/yds. of asbestos insulation.	Toxic-asbestos if air borne, could be inhaled then is considered a carcinogen.	1. Company allowed asbestos from old schools to be landfilled. 2. Material has been covered & thus is not a hazardous waste.	1. No imminent hazard or environmental problems identified. 2. Uncontrolled site investigation closed.	File search, telephone contact, site inspection.
FRANK's SANITARY LANDFILL Rt. 4 Box 405 Sherwood, OR - - - - - - - - - municipal landfill	On-site	municipal landfill	A variety of waste and in unknown quantities.	Unknown	1. Facility operated from 1963-1976.	Preliminary investigation has been initiated and uncontrolled site investigation continuing.	File search.
Georgia Pacific Corp. Butler Bridge Rd. Toledo, OR - - - - - - - - - paper plant	On-site	landfill	3000 cu/yds. of mixed waste from the mill generation. Exact quantities of specific wastes unknown.	Toxic-small quantities of heavy metals, solvents, oil and other mill wastes.	1. Some slimeacides and other hazardous materials during the operation of the plant. 2. Surrounded on three sides by water treatment ponds. 3. Sampling of the ponds show no contamination.	1No imminent hazard or environmental problems identified. 2Uncontrolled site investigation continuing.	File search, on-site visit, sampling conducted.

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
McCall Oil & Chemical Corp. 585 Hamburg St. Astoria, OR - - - - - - - - - Oil storage	On-site	Open pits	Tank bottoms & oil storage slop quantity unknown.	Toxic	1. Pits have been used in the past for spill material and tank sludge disposal.	Preliminary investigation has been initiated. Uncontrolled site investigation continuing.	Initial telephone contact made.
Martin Marietta CO 2700 S. Ankeny St. Portland, OR - - - - - - - - - Producer of printing ink.	Unknown	Unknown	Unknown - printing inks/ solvents. Quantities unknown at this time.	Toxic	1. Facility ceased operation in 1971.	Preliminary investigation made. Uncontrolled site investigation continuing.	File review.
Owens Illinois Inc. 5850 N.E. 92nd Dr. Portland, OR - - - - - - - - - Glass Mfg. plant	On-site	Landfill	Chromium-quantities unknown at this time.	Toxic.	1. Buried refractory bricks that have chrome in them until 1980. 2. Material has been covered.	Preliminary investigation made. Uncontrolled site investigation continuing.	File review.

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Shell Oil Co. 5880 N.W. St. Helens Rd. Portland, OR.	On-site	Land treatment and landfill	Pesticides, organics, unknown quantity disposed of on-site, a maximum of 60-70 bbls. off-site.	Toxic	Pending	Preliminary investigation made. Uncontrolled site investigation continuing.	Initial file search.
Petroleum Bulk Terminal activity	Off-site at St. John's landfill				See St. John's landfill info.		
Texaco Terminal 3800 N.W. St. Helens Rd. Portland, OR	On-site	Landfill	Lead-Unknown quantities.	Toxic-heavy metals	1. In 1969 Texaco said drained settling from oil/water seperator onto a sandy area of the tank farm. Alleged to be essentially water & sand.	Preliminary investigation made. Uncontrolled site investigation continuing.	Initial file search.
Bulk Terminal Activity							
Union Pacific Bridal Veil	Near railroad tracks between Bridal Veil and Multnomah Falls	Landfill	Paint & related products. Unknown quantities.	Toxic and/or ignitable.	1. Material was placed here as a result of a train derailment.	Preliminary investigation made. Uncontrolled site investigation continuing.	Initial file search.
Transportation							

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Champion Intern'tl P.O. Box 1329 Lebanon, OR - - - - - - - - - - Plywood mfg.	Off-site Abandoned gravel pit Liquids training site for the City of Lebanon Fire Dept.	Open burning.	Halogenated and non-halogenated solvents - 6,000 gals/yr.	Toxic & ignitable solvent waste.	1. Spent solvent given to City Fire Dept. A plastic lined pit was filled w/water & solvent in surface then ignited. Dept. would practice fighting fires. 2. Spent solvent is now shipped off-site for disposal according to EPA requirements.	No imminent hazard or environmental problems identified. Uncontrolled site investigation closed.	File search, telephone contact.
United States Railway Mfg. 303-2 S. Fifth St. Springfield, OR - - - - - - - - - - Railcar Mfg.	Off-site (Lane Co. landfill)	Municipal landfill.	5-five gallon barrels of paint pigments.	Flammable	1. Waste consists of small quantities of paint residue. 2. No accumulation of uncontrolled chemicals on-site. 3. Small quantity is disposed of at co. municipal landfill, i.e., small quantity exclusion.	No imminent hazard or environmental problems identified. Uncontrolled site investigation closed.	On-site inspection.

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Whiteson Landfill Rt. 1 Box 211 McMinnville, OR - - - - - - - - - - Municipal landfill	On-site	Municipal landfill.	Cascade Steel Rolling Mill baghouse dust, 2,000 tons/yr.	Toxic - heavy metal, lead & cadmium	1. Landfill accepted dust from 1973-1981. 2. Dust was deposited throughout the landfill.	1. Monitoring wells for ground water quality are being placed. 2. Investigation continuing.	File search, on-site inspection telephone contact, sampling.
Champion Intern'tl 4780 Dee Highway Hood River, OR - - - - - - - - - - Plywood mfg.	On-site	Industrial waste landfill.	1. Waste paint solvent 2. Exact quantity unknown. Volumes were spread over the wood waste to evaporate.	Toxic.	1. Site normally used for disposal of waste water treatment plant sludge and boiler fly ash. 2. Waste paint solvent was dumped over waste from 1967-1976. Intent was to evaporate material. 3. Co. has switched to water based paint and no longer generate waste solvents. 4. Site has a regular State SW permit.	No imminent hazard or environmental problems identified. Uncontrolled site investigation closed.	File search, on-site inspection, telephone contact.

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
North Wasco Co. Landfill Rt. 1, Box 136 A The Dalles, OR - - - - - - - - - - - Municipal landfill	On-site	Municipal landfill	Empty pesticide containers, unknown quantities.	Toxic.	1. All known pesticide containers that went into the landfill were triple rinsed. 2. Site has a regular State SW Permit.	No imminent hazard or environmental problems identified. Uncontrolled site investigation closed.	File search, on-site inspection.
International Paper Co. Hwy. 101 Gardiner, OR - - - - - - - - - - - Paper Mfg.	On-site.	Landfill	Pulp sludge, wood fiber, lime dregs & demolition material. Exact quantity unknown, size of fill is 15 acres.	Non-hazardous, organic (TOC, BOD, etc) loading of nearby river.	1. Located near the Umpqua River and Pacific Ocean. 2. Site is level & consists of diked trenches 3. No known hazardous waste has entered the site. 4. Site has a regular State S.W. Permit.	No imminent hazard or environmental problems identified. Uncontrolled site investigation closed.	File search, on-site inspection, telephone contact.

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Ideal Basic Ind. Gold Hill, OR - - - - - - - - - - Defunct Cement plant	On-site	Landfill	Cement kiln Burning Zone Refractories. Approx. 13,000 cu. ft.	Toxic-Bricks have cr content.	1. Waste material consisting mainly of rock, dirt and sand is spread over large area. 2. Plant & site are inactive. 3. Area is served by community water system. 4. Cr content is not classified as hazardous waste.	No imminent hazard or environmental problems identified. Uncontrolled site investigation closed.	File search, on-site inspection, samples taken.
Georgia Pacific Chemical Plant Chamberlain St. Coos Bay, OR - - - - - - - - - - Wood products chemical plant	On-site	Landfill	700 cu. ft. of paraformaldehyde.	Toxic - aquatic life, recreational use of the bay.	1. Material was buried over a nine year period from 1963 to 1972.	Evaluation is continuing	File search, on-site inspection, sampling

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Weyerhaeuser Co. McDaniel St. North Bend, OR - - - - - - - - - - Wood products plant	Weyerhaeuser property on Mettman Ridge.	Landfill.	One dumpster of penta dip-tank sludge.	Toxic - chlorinated phenol.	1. Landfill is used for waste wood residues & log pond dredgings only. 2. Penta dip-tank sludge entered landfill by accident on Dec. 1980. 3. Site is a regularly permited S.W. site. 4. Site has a trench around it to catch run-off.	Evaluation is continuing.	File search, on-site inspection.
Southern Pacific Transportation Co. Bethel Drive Eugene, OR - - - - - - - - - - Industrial & municipal landfill	On-site	Landfill	Unknown	Unknown	1. Old barrow pit at east end of dumpsite. 2. Public at one time used this dump site which is now fenced off.	1. Evaluation of this site is continuing.	File search, on-site inspection, telephone contact.

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Boise Cascade Elgin, OR Sawmill	On-site	Landfill	27 c. ft. of asbestos.	Toxic, if airborne, would be inhaled, then is considered a carcinogen.	1. Site is a regularly operated wood waste site accepting log deck clean-up and baghouse dust. 2. Asbestos has been covered and thus any hazard has been alleviated.	No imminent hazard or environmental problems were identified.	File search, on-site inspection.
38th & Hilyard Eugene, OR Closed municipal landfill	On-site	Landfill - open burning dump	Demolition, municipal, industrial, & other typical waste brought to a landfill during that time.	Waste leachate	1. The site has been closed for 30 yrs. 2. The site was an open burning dump which left mainly ash residual. The site was covered and has grass growing on it. 3. No detectable amount of contaminants were measured going into an adjacent stream. 4. No methane gas was being generated at the site.	No hazards or environmental problems were identified. Uncontrolled site investigation closed.	On-site inspection, sampling for methane leachate indicators EP toxicity, & aquatic toxicity.

UNCONTROLLED (ABANDONED) HAZARDOUS WASTE DISPOSAL SITE SURVEY

Name/ Business Type	Disposal Site Location	Type of Disposal	Waste Type/ Waste Quantity	Type of Hazard(s)	Finding(s)	Current Status	Type of Investigation
Laurence David Co. 1400 S. Bertelson Rd Eugene, OR	On-site	Open pit	Unknown	Unknown	Pending	Investigation continuing	On-site inspection, telephone contact, sampling.

Attachment II
Agenda Item No. K
8/27/82 EQC Meeting

Public Law 96-510
96th Congress

An Act

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

Dec. 11, 1980
[H.R. 7020]

Be it enacted by the Senate and House of Representatives of the United States of American in Congress assembled, That this Act may be cited as the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980".

Comprehensive Environmental Response, Compensation, and Liability Act of 1980
42 USC 9601 note

TITLE I—HAZARDOUS SUBSTANCES RELEASES, LIABILITY, COMPENSATION

DEFINITIONS

SEC. 101. For purpose of this title, the term—

42 USC 9601.

(1) "act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight;

(2) "Administrator" means the Administrator of the United States Environmental Protection Agency;

(3) "barrel" means forty-two United States gallons at sixty degrees Fahrenheit;

(4) "claim" means a demand in writing for a sum certain;

(5) "claimant" means any person who presents a claim for compensation under this Act;

(6) "damages" means damages for injury or loss of natural resources as set forth in section 107(a) or 111(b) of this Act;

(7) "drinking water supply" means any raw or finished water source that is or may be used by a public water system (as defined in the Safe Drinking Water Act) or as drinking water by one or more individuals;

42 USC 201 note.

(8) "environment" means (A) the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Fishery Conservation and Management Act of 1976, and (B) any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States;

16 USC 1801 note.

(9) "facility" means (A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel;

79-139 (350) O - 81

(10) "federally permitted release" means (A) discharges in compliance with a permit under section 402 of the Federal Water Pollution Control Act, (B) discharges resulting from circumstances identified and reviewed and made part of the public record with respect to a permit issued or modified under section 402 of the Federal Water Pollution Control Act and subject to a condition of such permit, (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Federal Water Pollution Control Act, which are caused by events occurring within the scope of relevant operating or treatment systems, (D) discharges in compliance with a legally enforceable permit under section 404 of the Federal Water Pollution Control Act, (E) releases in compliance with a legally enforceable final permit issued pursuant to section 3005 (a) through (d) of the Solid Waste Disposal Act from a hazardous waste treatment, storage, or disposal facility when such permit specifically identifies the hazardous substances and makes such substances subject to a standard of practice, control procedure or bioassay limitation or condition, or other control on the hazardous substances in such releases, (F) any release in compliance with a legally enforceable permit issued under section 102 of section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972, (G) any injection of fluids authorized under Federal underground injection control programs or State programs submitted for Federal approval (and not disapproved by the Administrator of the Environmental Protection Agency) pursuant to part C of the Safe Drinking Water Act, (H) any emission into the air subject to a permit or control regulation under section 111, section 112, title I part C, title I part D, or State implementation plans submitted in accordance with section 110 of the Clean Air Act (and not disapproved by the Administrator of the Environmental Protection Agency), including any schedule or waiver granted, promulgated, or approved under these sections, (I) any injection of fluids or other materials authorized under applicable State law (i) for the purpose of stimulating or treating wells for the production of crude oil, natural gas, or water, (ii) for the purpose of secondary, tertiary, or other enhanced recovery of crude oil or natural gas, or (iii) which are brought to the surface in conjunction with the production of crude oil or natural gas and which are reinjected, (J) the introduction of any pollutant into a publicly owned treatment works when such pollutant is specified in and in compliance with applicable pretreatment standards of section 307 (b) or (c) of the Clean Water Act and enforceable requirements in a pretreatment program submitted by a State or municipality for Federal approval under section 402 of such Act, and (K) any release of source, special nuclear, or byproduct material, as those terms are defined in the Atomic Energy Act of 1954, in compliance with a legally enforceable license, permit, regulation, or order issued pursuant to the Atomic Energy Act of 1954;

33 USC 1342.
33 USC 1344.
42 USC 6925.
33 USC 1412, 1413.
42 USC 300.
42 USC 7411, 7412, 7470, 7501.
42 USC 7410.
33 USC 1317.
33 USC 1342.
42 USC 2014.

(11) "Fund" or "Trust Fund" means the Hazardous Substance Response Fund established by section 221 of this Act or, in the case of a hazardous waste disposal facility for which liability has been transferred under section 107(k) of this Act, the Post-closure Liability Fund established by section 232 of this Act;

Post, p. 2801.
Post, p. 2804.

(12) "ground water" means water in a saturated zone or stratum beneath the surface of land or water;

(13) "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this Act;

(14) "hazardous substance" means (A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of this Act, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act, (E) any hazardous air pollutant listed under section 112 of the Clean Air Act, and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas);

33 USC 1321.

42 USC 6921.

42 USC 7412.

15 USC 2606.

(15) "navigable waters" or "navigable waters of the United States" means the waters of the United States, including the territorial seas;

(16) "natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, or any foreign government;

16 USC 1801 note.

(17) "offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;

(18) "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land or nonnavigable waters within the United States;

(19) "otherwise subject to the jurisdiction of the United States" means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided by international agreement to which the United States is a party;

(20)(A) "owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, (ii) in the case of an onshore facility or an offshore facility, any person owning or operating such facility, and (iii) in the case of any abandoned facility, any person who owned, operated, or otherwise controlled activities at such facility immediately prior to such abandonment. Such term does not include a person, who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect his security interest in the vessel or facility;

(B) in the case of a hazardous substance which has been accepted for transportation by a common or contract carrier and except as provided in section 107(a) (3) or (4) of this Act, (i) the term "owner or operator" shall mean such common carrier or other bona fide for hire carrier acting as an independent contractor during such transportation, (ii) the shipper of such hazardous substance shall not be considered to have caused or contributed to any release during such transportation which resulted solely from circumstances or conditions beyond his control;

(C) in the case of a hazardous substance which has been delivered by a common or contract carrier to a disposal or treatment facility and except as provided in section 107(a) (3) or (4) (i) the term "owner or operator" shall not include such common or contract carrier, and (ii) such common or contract carrier shall not be considered to have caused or contributed to any release at such disposal or treatment facility resulting from circumstances or conditions beyond its control;

(21) "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body;

(22) "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, but excludes (A) any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons, (B) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine, (C) release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such Act, or, for the purposes of section 104 of this title or any other response action, any release of source byproduct, or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978, and (D) the normal application of fertilizer;

42 USC 2011 note.

42 USC 2210.

42 USC 7912, 7942.

(23) "remove" or "removal" means the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under section 104(b) of this Act, and any emergency assistance which may be provided under the Disaster Relief Act of 1974;

42 USC 5121 note.

(24) "remedy" or "remedial action" means those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of

a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment. The term includes the costs of permanent relocation of residents and businesses and community facilities where the President determines that, alone or in combination with other measures, such relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances, or may otherwise be necessary to protect the public health or welfare. The term does not include offsite transport of hazardous substances, or the storage, treatment, destruction, or secure disposition offsite of such hazardous substances or contaminated materials unless the President determines that such actions (A) are more cost-effective than other remedial actions, (B) will create new capacity to manage, in compliance with subtitle C of the Solid Waste Disposal Act, hazardous substances in addition to those located at the affected facility, or (C) are necessary to protect public health or welfare or the environment from a present or potential risk which may be created by further exposure to the continued presence of such substances or materials;

(25) "respond" or "response" means remove, removal, remedy, and remedial action;

(26) "transport" or "transportation" means the movement of a hazardous substance by any mode, including pipeline (as defined in the Pipeline Safety Act), and in the case of a hazardous substance which has been accepted for transportation by a common or contract carrier, the term "transport" or "transportation" shall include any stoppage in transit which is temporary, incidental to the transportation movement, and at the ordinary operating convenience of a common or contract carrier, and any such stoppage shall be considered as a continuity of movement and not as the storage of a hazardous substance;

49 USC 1671 note.

(27) "United States" and "State" include the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction;

(28) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water;

(29) "disposal", "hazardous waste", and "treatment" shall have the meaning provided in section 1004 of the Solid Waste Disposal Act;

42 USC 6903.

(30) "territorial sea" and "contiguous zone" shall have the meaning provided in section 502 of the Federal Water Pollution Control Act.

33 USC 1362.

(31) "national contingency plan" means the national contingency plan published under section 311(c) of the Federal Water Pollution Control Act or revised pursuant to section 105 of this Act; and

33 USC 1321.

(32) "liable" or "liability" under this title shall be construed to be the standard of liability which obtains under section 311 of the Federal Water Pollution Control Act.

REPORTABLE QUANTITIES AND ADDITIONAL DESIGNATIONS

Regulations. 42 USC 9602.

SEC. 102. (a) The Administrator shall promulgate and revise as may be appropriate, regulations designating as hazardous substances, in addition to those referred to in section 101(14) of this title, such elements, compounds, mixtures, solutions, and substances which, when released into the environment may present substantial danger to the public health or welfare or the environment, and shall promulgate regulations establishing that quantity of any hazardous substance the release of which shall be reported pursuant to section 103 of this title. The Administrator may determine that one single quantity shall be the reportable quantity for any hazardous substance, regardless of the medium into which the hazardous substance is released.

(b) Unless and until superseded by regulations establishing a reportable quantity under subsection (a) of this section for any hazardous substance as defined in section 101(14) of this title, (1) a quantity of one pound, or (2) for those hazardous substances for which reportable quantities have been established pursuant to section 311(b)(4) of the Federal Water Pollution Control Act, such reportable quantity, shall be deemed that quantity, the release of which requires notification pursuant to section 103 (a) or (b) of this title.

33 USC 1321.

NOTICES, PENALTIES

42 USC 9603.

SEC. 103. (a) Any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such vessel or facility in quantities equal to or greater than those determined pursuant to section 102 of this title, immediately notify the National Response Center established under the Clean Water Act of such release. The National Response Center shall convey the notification expeditiously to all appropriate Government agencies, including the Governor of any affected State.

33 USC 1251 note.

(b) Any person—

(1) in charge of a vessel from which a hazardous substance is released, other than a federally permitted release, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or

(2) in charge of a vessel from which a hazardous substance is released, other than a federally permitted release, which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), and who is otherwise subject to the jurisdiction of the United States at the time of the release, or

16 USC 1801 note.

(3) in charge of a facility from which a hazardous substance is released, other than a federally permitted release, in a quantity equal to or greater than that determined pursuant to section 102 of this title who fails to notify immediately the appropriate agency of the United States Government as soon as he has knowledge of such release shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than one year, or both. Notification received pursuant to this paragraph or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(c) Within one hundred and eighty days after the enactment of this Act, any person who owns or operates or who at the time of disposal owned or operated, or who accepted hazardous substances for transport and selected, a facility at which hazardous substances (as defined in section 101(14)(C) of this title) are or have been stored, treated, or disposed of shall, unless such facility has a permit issued under, or has been accorded interim status under, subtitle C of the Solid Waste Disposal Act, notify the Administrator of the Environmental Protection Agency of the existence of such facility, specifying the amount and type of any hazardous substance to be found there, and any known, suspected, or likely releases of such substances from such facility. The Administrator may prescribe in greater detail the manner and form of the notice and the information included. The Administrator shall notify the affected State agency, or any department designated by the Governor to receive such notice, of the existence of such facility. Any person who knowingly fails to notify the Administrator of the existence of any such facility shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. In addition, any such person who knowingly fails to provide the notice required by this subsection shall not be entitled to any limitation of liability or to any defenses to liability set out in section 107 of this Act: *Provided, however*, That notification under this subsection is not required for any facility which would be reportable hereunder solely as a result of any stoppage in transit which is temporary, incidental to the transportation movement, or at the ordinary operating convenience of a common or contract carrier, and such stoppage shall be considered as a continuity of movement and not as the storage of a hazardous substance. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

42 USC 6921.

(d)(1) The Administrator of the Environmental Protection Agency is authorized to promulgate rules and regulations specifying, with respect to—

Rules and regulations.

(A) the location, title, or condition of a facility, and

(B) the identity, characteristics, quantity, origin, or condition (including containerization and previous treatment) of any hazardous substances contained or deposited in a facility;

the records which shall be retained by any person required to provide the notification of a facility set out in subsection (c) of this section. Such specification shall be in accordance with the provisions of this subsection.

(2) Beginning with the date of enactment of this Act, for fifty years thereafter or for fifty years after the date of establishment of a record (whichever is later), or at any such earlier time as a waiver if obtained under paragraph (3) of this subsection, it shall be unlawful for any

such person knowingly to destroy, mutilate, erase, dispose of, conceal, or otherwise render unavailable or unreadable or falsify any records identified in paragraph (1) of this subsection. Any person who violates this paragraph shall, upon conviction, be fined not more than $20,000, or imprisoned for not more than one year, or both.

(3) At any time prior to the date which occurs fifty years after the date of enactment of this Act, any person identified under paragraph (1) of this subsection may apply to the Administrator of the Environmental Protection Agency for a waiver of the provisions of the first sentence of paragraph (2) of this subsection. The Administrator is authorized to grant such waiver if, in his discretion, such waiver would not unreasonably interfere with the attainment of the purposes and provisions of this Act. The Administrator shall promulgate rules and regulations regarding such a waiver so as to inform parties of the proper application procedure and conditions for approval of such a waiver.

Rules and regulations.

(4) Notwithstanding the provisions of this subsection, the Administrator of the Environmental Protection Agency may in his discretion require any such person to retain any record identified pursuant to paragraph (1) of this subsection for such a time period in excess of the period specified in paragraph (2) of this subsection as the Administrator determines to be necessary to protect the public health or welfare.

(e) This section shall not apply to the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act or to the handling and storage of such a pesticide product by an agricultural producer.

7 USC 136 note.

(f) No notification shall be required under subsection (a) or (b) of this section for any release of a hazardous substance—

(1) which is required to be reported (or specifically exempted from a requirement for reporting) under subtitle C of the Solid Waste Disposal Act or regulations thereunder and which has been reported to the National Response Center, or

(2) which is a continuous release, stable in quantity and rate, and is—

(A) from a facility for which notification has been given under subsection (c) of this section, or

(B) a release of which notification has been given under subsections (a) and (b) of this section for a period sufficient to establish the continuity, quantity, and regularity of such release:

Provided, That notification in accordance with subsections (a) and (b) of this paragraph shall be given for releases subject to this paragraph annually, or at such time as there is any statistically significant increase in the quantity of any hazardous substance or constituent thereof released, above that previously reported or occurring.

RESPONSE AUTHORITIES

42 USC 9604.

SEC. 104. (a)(1) Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contami-

nated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment, unless the President determines that such removal and remedial action will be done properly by the owner or operator of the vessel or facility from which the release or threat of release emanates, or by any other responsible party.

(2) For the purposes of this section, "pollutant or contaminant" shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring. The term does not include petroleum, including crude oil and any fraction thereof which is not otherwise specifically listed or designated as hazardous substances under section 101(14) (A) through (F) of this title, nor does it include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).

"Pollutant or contaminant."

(b) Whenever the President is authorized to act pursuant to subsection (a) of this section, or whenever the President has reason to believe that a release has occurred or is about to occur, or that illness, disease, or complaints thereof may be attributable to exposure to a hazardous substance, pollutant, or contaminant and that a release may have occurred or be occurring, he may undertake such investigations, monitoring, surveys, testing, and other information gathering as he may deem necessary or appropriate to identify the existence and extent of the release or threat thereof, the source and nature of the hazardous substances, pollutants or contaminants involved, and the extent of danger to the public health or welfare or to the environment. In addition, the President may undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as he may deem necessary or appropriate to plan and direct response actions, to recover the costs thereof, and to enforce the provisions of this Act.

(c)(1) Unless (A) the President finds that (i) continued response actions are immediately required to prevent, limit, or mitigate an emergency, (ii) there is an immediate risk to public health or welfare or the environment, and (iii) such assistance will not otherwise be provided on a timely basis, or (B) the President has determined the appropriate remedial actions pursuant to paragraph (2) of this subsection and the State or States in which the source of the release is located have complied with the requirements of paragraph (3) of this subsection, obligations from the Fund, other than those authorized by subsection (b) of this section, shall not continue after $1,000,000 has been obligated for response actions or six months has elapsed from the date of initial response to a release or threatened release of hazardous substances.

(2) The President shall consult with the affected State or States before determining any appropriate remedial action to be taken pursuant to the authority granted under subsection (a) of this section.

(3) The President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that (A) the State

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will assure all future maintenance of the removal and remedial actions provided for the expected life of such actions as determined by the President; (B) the State will assure the availability of a hazardous waste disposal facility acceptable to the President and in compliance with the requirements of subtitle C of the Solid Waste Disposal Act for any necessary offsite storage, destruction, treatment, or secure disposition of the hazardous substances; and (C) the State will pay or assure payment of (i) 10 per centum of the costs of the remedial action, including all future maintenance, or (ii) at least 50 per centum or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the State or political subdivision, of any sums expended in response to a release at a facility that was owned at the time of any disposal of hazardous substances therein by the State or a political subdivision thereof. The President shall grant the State a credit against the share of the costs for which it is responsible under this paragraph for any documented direct out-of-pocket non-Federal funds expended or obligated by the State or a political subdivision thereof after January 1, 1978, and before the date of enactment of this Act for cost-eligible response actions and claims for damages compensable under section 111 of this title relating to the specific release in question: *Provided, however,* That in no event shall the amount of the credit granted exceed the total response costs relating to the release.

42 USC 6921.

(4) The President shall select appropriate remedial actions determined to be necessary to carry out this section which are to the extent practicable in accordance with the national contingency plan and which provide for that cost-effective response which provides a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund established under title II of this Act to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the need for immediate action.

Post, p. 2796.

(d)(1) Where the President determines that a State or political subdivision thereof has the capability to carry out any or all of the actions authorized in this section, the President may, in his discretion, enter into a contract or cooperative agreement with such State or political subdivision to take such actions in accordance with criteria and priorities established pursuant to section 105(8) of this title and to be reimbursed for the reasonable response costs thereof from the Fund. Any contract made hereunder shall be subject to the cost-sharing provisions of subsection (c) of this section.

(2) If the President enters into a cost-sharing agreement pursuant to subsection (c) of this section or a contract or cooperative agreement pursuant to this subsection, and the State or political subdivision thereof fails to comply with any requirements of the contract, the President may, after providing sixty days notice, seek in the appropriate Federal district court to enforce the contract or to recover any funds advanced or any costs incurred because of the breach of the contract by the State or political subdivision.

(3) Where a State or a political subdivision thereof is acting in behalf of the President, the President is authorized to provide technical and legal assistance in the administration and enforcement of any contract or subcontract in connection with response actions assisted under this title, and to intervene in any civil action involving the enforcement of such contract or subcontract.

(4) Where two or more noncontiguous facilities are reasonably related on the basis of geography, or on the basis of the threat, or

potential threat to the public health or welfare or the environment, the President may, in his discretion, treat these related facilities as one for purposes of this section.

(e)(1) For purposes of assisting in determining the need for response to a release under this title or enforcing the provisions of this title, any person who stores, treats, or disposes of, or, where necessary to ascertain facts not available at the facility where such hazardous substances are located, who generates, transports, or otherwise handles or has handled, hazardous substances shall, upon request of any officer, employee, or representative of the President, duly designated by the President, or upon request of any duly designated officer, employee, or representative of a State, where appropriate, furnish information relating to such substances and permit such person at all reasonable times to have access to, and to copy all records relating to such substances. For the purposes specified in the preceding sentence, such officers, employees, or representatives are authorized—

(A) to enter at reasonable times any establishment or other place where such hazardous substances are or have been generated, stored, treated, or disposed of, or transported from;

(B) to inspect and obtain samples from any person of any such substance and samples of any containers or labeling for such substances. Each such inspection shall be commenced and completed with reasonable promptness. If the officer, employee, or representative obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or person in charge a receipt describing the sample obtained and if requested a portion of each such sample equal in volume of weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or person in charge.

(2)(A) Any records, reports, or information obtained from any person under this section (including records, reports, or information obtained by representatives of the President) shall be available to the public, except that upon a showing satisfactory to the President (or the State, as the case may be) by any person that records, reports, or information, or particular part thereof (other than health or safety effects data), to which the President (or the State, as the case may be) or any officer, employee, or representative has access under this section if made public would divulge information entitled to protection under section 1905 of title 18 of the United States Code, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act, or when relevant in any proceeding under this Act.

(B) Any person not subject to the provisions of section 1905 of title 18 of the United States Code who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than $5,000 or to imprisonment not to exceed one year, or both.

(C) In submitting data under this Act, a person required to provide such data may (i) designate the data which such person believes is entitled to protection under this subsection and (ii) submit such designated data separately from other data submitted under this Act. A designation under this paragraph shall be made in writing and in such manner as the President may prescribe by regulation.

(D) Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the President (or any representative of the President) under this Act shall be made available, upon written request of any duly authorized committee of the Congress, to such committee.

(f) In awarding contracts to any person engaged in response actions, the President or the State, in any case where it is awarding contracts pursuant to a contract entered into under subsection (d) of this section, shall require compliance with Federal health and safety standards established under section 301(f) of this Act by contractors and subcontractors as a condition of such contracts.

Post, p. 2805.

(g)(1) All laborers and mechanics employed by contractors or subcontractors in the performance of construction, repair, or alteration work funded in whole or in part under this section shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. The President shall not approve any such funding without first obtaining adequate assurance that required labor standards will be maintained upon the construction work.

40 USC 276a note.

(2) The Secretary of Labor shall have, with respect to the labor standards specified in paragraph (1), the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 276c of title 40 of the United States Code.

5 USC app.

(h) Notwithstanding any other provision of law, subject to the provisions of section 111 of this Act, the President may authorize the use of such emergency procurement powers as he deems necessary to effect the purpose of this Act. Upon determination that such procedures are necessary, the President shall promulgate regulations prescribing the circumstances under which such authority shall be used and the procedures governing the use of such authority.

Agency for Toxic Substances and Disease Registry. Establishment.

(i) There is hereby established within the Public Health Service an agency, to be known as the Agency for Toxic Substances and Disease Registry, which shall report directly to the Surgeon General of the United States. The Administrator of said Agency shall, with the cooperation of the Administrator of the Environmental Protection Agency, the Commissioner of the Food and Drug Administration, the Directors of the National Institute of Medicine, National Institute of Environmental Health Sciences, National Institute of Occupational Safety and Health, Centers for Disease Control, the Administrator of the Occupational Safety and Health Administration, and the Administrator of the Social Security Administration, effectuate and implement the health related authorities of this Act. In addition, said Administrator shall—

(1) in cooperation with the States, establish and maintain a national registry of serious diseases and illnesses and a national registry of persons exposed to toxic substances;

(2) establish and maintain inventory of literature, research, and studies on the health effects of toxic substances;

(3) in cooperation with the States, and other agencies of the Federal Government, establish and maintain a complete listing of areas closed to the public or otherwise restricted in use because of toxic substance contamination;

(4) in cases of public health emergencies caused or believed to be caused by exposure to toxic substances, provide medical care and testing to exposed individuals, including but not limited to tissue sampling, chromosomal testing, epidemiological studies,

or any other assistance appropriate under the circumstances; and

(5) either independently or as part of other health status survey, conduct periodic survey and screening programs to determine relationships between exposure to toxic substances and illness. In cases of public health emergencies, exposed persons shall be eligible for admission to hospitals and other facilities and services operated or provided by the Public Health Service.

NATIONAL CONTINGENCY PLAN

SEC. 105. Within one hundred and eighty days after the enactment of this Act, the President shall, after notice and opportunity for public comments, revise and republish the national contingency plan for the removal of oil and hazardous substances, originally prepared and published pursuant to section 311 of the Federal Water Pollution Control Act, to reflect and effectuate the responsibilities and powers created by this Act, in addition to those matters specified in section 311(c)(2). Such revision shall include a section of the plan to be known as the national hazardous substance response plan which shall establish procedures and standards for responding to releases of hazardous substances, pollutants, and contaminants, which shall include at a minimum:

42 USC 9605.

33 USC 1321.

(1) methods for discovering and investigating facilities at which hazardous substances have been disposed of or otherwise come to be located;

(2) methods for evaluating, including analyses of relative cost, and remedying any releases or threats of releases from facilities which pose substantial danger to the public health or the environment;

(3) methods and criteria for determining the appropriate extent of removal, remedy, and other measures authorized by this Act;

(4) appropriate roles and responsibilities for the Federal, State, and local governments and for interstate and nongovernmental entities in effectuating the plan;

(5) provision for identification, procurement, maintenance, and storage of response equipment and supplies;

(6) a method for and assignment of responsibility for reporting the existence of such facilities which may be located on federally owned or controlled properties and any releases of hazardous substances from such facilities;

(7) means of assuring that remedial action measures are cost-effective over the period of potential exposure to the hazardous substances or contaminated materials;

(8)(A) criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action. Criteria and priorities under this paragraph shall be based upon relative risk or danger to public health or welfare or the environment, in the judgment of the President, taking into account to the extent possible the population at risk, the hazard potential of the hazardous substances at such facilities, the potential for contamination of drinking water supplies, the potential for direct human contact, the potential for destruction of sensitive ecosystems, State pre-

paredness to assume State costs and responsibilities, and other appropriate factors;

(B) based upon the criteria set forth in subparagraph (A) of this paragraph, the President shall list as part of the plan national priorities among the known releases or threatened releases throughout the United States and shall revise the list no less often than annually. Within one year after the date of enactment of this Act, and annually thereafter, each State shall establish and submit for consideration by the President priorities for remedial action among known releases and potential releases in that State based upon the criteria set forth in subparagraph (A) of this paragraph. In assembling or revising the national list, the President shall consider any priorities established by the States. To the extent practicable, at least four hundred of the highest priority facilities shall be designated individually and shall be referred to as the "top priority among known response targets", and, to the extent practicable, shall include among the one hundred highest priority facilities at least one such facility from each State which shall be the facility designated by the State as presenting the greatest danger to public health or welfare or the environment among the known facilities in such State. Other priority facilities or incidents may be listed singly or grouped for response priority purposes; and

(9) specified roles for private organizations and entities in preparation for response and in responding to releases of hazardous substances, including identification of appropriate qualifications and capacity therefor.

The plan shall specify procedures, techniques, materials, equipment, and methods to be employed in identifying, removing, or remedying releases of hazardous substances comparable to those required under section 311(c)(2) (F) and (G) and (j)(1) of the Federal Water Pollution Control Act. Following publication of the revised national contingency plan, the response to and actions to minimize damage from hazardous substances releases shall, to the greatest extent possible, be in accordance with the provisions of the plan. The President may, from time to time, revise and republish the national contingency plan.

33 USC 1321.

Revision and Republication.

ABATEMENT ACTION

42 USC 9606.

SEC. 106. (a) In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require. The President may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and welfare and the environment.

Notice.

(b) Any person who willfully violates, or fails or refuses to comply with, any order of the President under subsection (a) may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than $5,000 for each day in which such violation occurs or such failure to comply continues.

Guidelines.

(c) Within one hundred and eighty days after enactment of this Act, the Administrator of the Environmental Protection Agency shall, after consultation with the Attorney General, establish and publish guidelines for using the imminent hazard, enforcement, and emergency response authorities of this section and other existing statutes administered by the Administrator of the Environmental Protection Agency to effectuate the responsibilities and powers created by this Act. Such guidelines shall to the extent practicable be consistent with the national hazardous substance response plan, and shall include, at a minimum, the assignment of responsibility for coordinating response actions with the issuance of administrative orders, enforcement of standards and permits, the gathering of information, and other imminent hazard and emergency powers authorized by (1) sections 311(c)(2), 308, 309, and 504(a) of the Federal Water Pollution Control Act, (2) sections 3007, 3008, 3013, and 7003 of the Solid Waste Disposal Act, (3) sections 1445 and 1431 of the Safe Drinking Water Act, (4) sections 113, 114, and 303 of the Clean Air Act, and (5) section 7 of the Toxic Substances Control Act.

33 USC 1321, 1318, 1319, 1364.
42 USC 6927, 6928; *Ante*, p. 2344; 42 USC 6973.
42 USC 300j–4, 300i.
42 USC 7413, 7414, 7603
15 USC 2606.
42 USC 9607.

LIABILITY

SEC. 107. (a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section—

(1) the owner and operator of a vessel (otherwise subject to the jurisdiction of the United States) or a facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility owned or operated by another party or entity and containing such hazardous substances, and

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for—

(A) all costs of removal or remedial action incurred by the United States Government or a State not inconsistent with the national contingency plan;

(B) any other necessary costs of response incurred by any other person consistent with the national contingency plan; and

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release.

(b) There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by—

(1) an act of God;

(2) an act of war;

(3) an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing

directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (a) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (b) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or

(4) any combination of the foregoing paragraphs.

(c)(1) Except as provided in paragraph (2) of this subsection, the liability under this section of an owner or operator or other responsible person for each release of a hazardous substance or incident involving release of a hazardous substance shall not exceed—

(A) for any vessel which carries any hazardous substance as cargo or residue, $300 per gross ton, or $5,000,000, whichever is greater;

(B) for any other vessel, $300 per gross ton, or $500,000, whichever is greater;

49 USC 2001 note.

(C) for any motor vehicle, aircraft, pipeline (as defined in the Hazardous Liquid Pipeline Safety Act of 1979), or rolling stock, $50,000,000 or such lesser amount as the President shall establish by regulation, but in no event less than $5,000,000 (or, for releases of hazardous substances as defined in section 101(14)(A) of this title into the navigable waters, $8,000,000). Such regulations shall take into account the size, type, location, storage, and handling capacity and other matters relating to the likelihood of release in each such class and to the economic impact of such limits on each such class; or

(D) for any facility other than those specified in subparagraph (C) of this paragraph, the total of all costs of response plus $50,000,000 for any damages under this title.

(2) Notwithstanding the limitations in paragraph (1) of this subsection, the liability of an owner or operator or other responsible person under this section shall be the full and total costs of response and damages, if (A)(i) the release or threat of release of a hazardous substance was the result of willful misconduct or willful negligence within the privity or knowledge of such person, or (ii) the primary cause of the release was a violation (within the privity or knowledge of such person) of applicable safety, construction, or operating standards or regulations; or (B) such person fails or refuses to provide all reasonable cooperation and assistance requested by a responsible public official in connection with response activities under the national contingency plan with respect to regulated carriers subject to the provisions of title 49 of the United States Code or vessels subject to the provisions of title 33 or 46 of the United States Code, subparagraph (A)(ii) of this paragraph shall be deemed to refer to Federal standards or regulations.

(3) If any person who is liable for a release or threat of release of a hazardous substance fails without sufficient cause to properly provide removal or remedial action upon order of the President pursuant to section 104 or 106 of this Act, such person may be liable to the United States for punitive damages in an amount at least equal to, and not more than three times, the amount of any costs incurred by the Fund as a result of such failure to take proper action. The President is authorized to commence a civil action against any such person to recover the punitive damages, which shall be in addition to

any costs recovered from such person pursuant to section 112(c) of this Act. Any moneys received by the United States pursuant to this subsection shall be deposited in the Fund.

(d) No person shall be liable under this title for damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the national contingency plan or at the direction of an onscene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any release of a hazardous substance or the threat thereof. This subsection shall not preclude liability for damages as the result of gross negligence or intentional misconduct on the part of such person. For the purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

(e)(1) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any vessel or facility or from any person who may be liable for a release or threat of release under this section, to any other person the liability imposed under this section. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(2) Nothing in this title, including the provisions of paragraph (1) of this subsection, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(f) In the case of an injury to, destruction of, or loss of natural resources under subparagraph (C) of subsection (a) liability shall be to the United States Government and to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State: *Provided, however,* That no liability to the United States or State shall be imposed under subparagraph (C) of subsection (a), where the party sought to be charged has demonstrated that the damages to natural resources complained of were specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement, or other comparable environment analysis, and the decision to grant a permit or license authorizes such commitment of natural resources, and the facility or project was otherwise operating within the terms of its permit or license. The President, or the authorized representative of any State, shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State government, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources. There shall be no recovery under the authority of subparagraph (C) of subsection (a) where such damages and the release of a hazardous substance from which such damages resulted have occurred wholly before the enactment of this Act.

(g) Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government shall be subject to, and comply with, this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under this section.

(h) The owner or operator of a vessel shall be liable in accordance with this section and as provided under section 114 of this Act

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notwithstanding any provision of the Act of March 3, 1851 (46 U.S.C. 183ff).

(i) No person (including the United States or any State) may recover under the authority of this section for any response costs or damages resulting from the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance.

7 USC 136 note.

(j) Recovery by any person (including the United States or any State) for response costs or damages resulting from a federally permitted release shall be pursuant to existing law in lieu of this section. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance. In addition, costs of response incurred by the Federal Government in connection with a discharge specified in section 101(10)(B) or (C) shall be recoverable in an action brought under section 309(b) of the Clean Water Act.

33 USC 1319.

(k)(1) The liability established by this section or any other law for the owner or operator of a hazardous waste disposal facility which has received a permit under subtitle C of the Solid Waste Disposal Act, shall be transferred to and assumed by the Post-closure Liability Fund established by section 232 of this Act when—

Post, p. 2804.

(A) such facility and the owner and operator thereof has complied with the requirements of subtitle C of the Solid Waste Disposal Act and regulations issued thereunder, which may affect the performance of such facility after closure; and

(B) such facility has been closed in accordance with such regulations and the conditions of such permit, and such facility and the surrounding area have been monitored as required by such regulations and permit conditions for a period not to exceed five years after closure to demonstrate that there is no substantial likelihood that any migration offsite or release from confinement of any hazardous substance or other risk to public health or welfare will occur.

(2) Such transfer of liability shall be effective ninety days after the owner or operator of such facility notifies the Administrator of the Environmental Protection Agency (and the State where it has an authorized program under section 3006(b) of the Solid Waste Disposal Act) that the conditions imposed by this subsection have been satisfied. If within such ninety-day period the Administrator of the Environmental Protection Agency or such State determines that any such facility has not complied with all the conditions imposed by this subsection or that insufficient information has been provided to demonstrate such compliance, the Administrator or such State shall so notify the owner and operator of such facility and the administrator of the Fund established by section 232 of this Act, and the owner and operator of such facility shall continue to be liable with respect to such facility under this section and other law until such time as the Administrator and such State determines that such facility has complied with all conditions imposed by this subsection. A determination by the Administrator or such State that a facility has not

42 USC 6926.

complied with all conditions imposed by this subsection or that insufficient information has been supplied to demonstrate compliance, shall be a final administrative action for purposes of judicial review. A request for additional information shall state in specific terms the data required.

(3) In addition to the assumption of liability of owners and operators under paragraph (1) of this subsection, the Post-closure Liability Fund established by section 232 of this Act may be used to pay costs of monitoring and care and maintenance of a site incurred by other persons after the period of monitoring required by regulations under subtitle C of the Solid Waste Disposal Act for hazardous waste disposal facilities meeting the conditions of paragraph (1) of this subsection.

42 USC 6921.

(4)(A) Not later than one year after the date of enactment of this Act, the Secretary of the Treasury shall conduct a study and shall submit a report thereon to the Congress on the feasibility of establishing or qualifying an optional system of private insurance for postclosure financial responsibility for hazardous waste disposal facilities to which this subsection applies. Such study shall include a specification of adequate and realistic minimum standards to assure that any such privately placed insurance will carry out the purposes of this subsection in a reliable, enforceable, and practical manner. Such a study shall include an examination of the public and private incentives, programs, and actions necessary to make privately placed insurance a practical and effective option to the financing system for the Post-closure Liability Fund provided in title II of this Act.

(B) Not later than eighteen months after the date of enactment of this Act and after a public hearing, the President shall by rule determine whether or not it is feasible to establish or qualify an optional system of private insurance for postclosure financial responsibility for hazardous waste disposal facilities to which this subsection applies. If the President determines the establishment or qualification of such a system would be infeasible, he shall promptly publish an explanation of the reasons for such a determination. If the President determines the establishment or qualification of such a system would be feasible, he shall promptly publish notice of such determination. Not later than six months after an affirmative determination under the preceding sentence and after a public hearing, the President shall by rule promulgate adequate and realistic minimum standards which must be met by any such privately placed insurance, taking into account the purposes of this Act and this subsection. Such rules shall also specify reasonably expeditious procedures by which privately placed insurance plans can qualify as meeting such minimum standards.

(C) In the event any privately placed insurance plan qualifies under subparagraph (B), any person enrolled in, and complying with the terms of, such plan shall be excluded from the provisions of paragraphs (1), (2), and (3) of this subsection and exempt from the requirements to pay any tax or fee to the Post-closure Liability Fund under title II of this Act.

(D) The President may issue such rules and take such other actions as are necessary to effectuate the purposes of this paragraph.

Rules.

FINANCIAL RESPONSIBILITY

SEC. 108. (a)(1) The owner or operator of each vessel (except a non-self-propelled barge that does not carry hazardous substances as cargo) over three hundred gross tons that uses any port or place in the

42 USC 9608.

United States or the navigable waters or any offshore facility, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility of $300 per gross ton (or for a vessel carrying hazardous substances as cargo, or $5,000,000, whichever is greater). Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In cases where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

46 USC 91.

(2) The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel subject to this subsection that does not have certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(3) The Secretary of Transportation, in accordance with regulations issued by him, shall (A) deny entry to any port or place in the United States or navigable waters to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection that, upon request, does not produce certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

42 USC 6921.

Publication in Federal Register

(b)(1) Beginning not earlier than five years after the date of enactment of this Act, the President shall promulgate requirements (for facilities in addition to those under subtitle C of the Solid Waste Disposal Act and other Federal law) that classes of facilities establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. Not later than three years after the date of enactment of the Act, the President shall identify those classes for which requirements will be first developed and publish notice of such identification in the Federal Register. Priority in the development of such requirements shall be accorded to those classes of facilities, owners, and operators which the President determines present the highest level of risk of injury.

(2) The level of financial responsibility shall be initially established, and, when necessary, adjusted to protect against the level of risk which the President in his discretion believes is appropriate based on the payment experience of the Fund, commercial insurers, courts settlements and judgments, and voluntary claims satisfaction. To the maximum extent practicable, the President shall cooperate with and seek the advice of the commercial insurance industry in developing financial responsibility requirements.

(3) Regulations promulgated under this subsection shall incrementally impose financial responsibility requirements over a period of not less than three and no more than six years after the date of promulgation. Where possible, the level of financial responsibility which the President believes appropriate as a final requirement shall be achieved through incremental, annual increases in the requirements.

(4) Where a facility is owned or operated by more than one person, evidence of financial responsibility covering the facility may be

established and maintained by one of the owners or operators, or, in consolidated form, by or on behalf of two or more owners or operators. When evidence of financial responsibility is established in a consolidated form, the proportional share of each participant shall be shown. The evidence shall be accompanied by a statement authorizing the applicant to act for and in behalf of each participant in submitting and maintaining the evidence of financial responsibility.

(5) The requirements for evidence of financial responsibility for motor carriers covered by this Act shall be determined under section 30 of the Motor Carrier Act of 1980, Public Law 96-296.

Ante, p. 820.

(c) Any claim authorized by section 107 or 111 may be asserted directly against any guarantor providing evidence of financial responsibility as required under this section. In defending such a claim, the guarantor may invoke all rights and defenses which would be available to the owner or operator under this title. The guarantor may also invoke the defense that the incident was caused by the willful misconduct of the owner or operator, but such guarantor may not invoke any other defense that such guarantor might have been entitled to invoke in a proceeding brought by the owner or operator against him.

(d) Any guarantor acting in good faith against which claims under this Act are asserted as a guarantor shall be liable under section 107 or section 112(c) of this title only up to the monetary limits of the policy of insurance or indemnity contract such guarantor has undertaken or of the guaranty of other evidence of financial responsibility furnished under section 108 of this Act, and only to the extent that liability is not excluded by restrictive endorsement: *Provided*, That this subsection shall not alter the liability of any person under section 107 of this Act.

PENALTY

42 USC 9609.

SEC. 109. Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 108, the regulations issued thereunder, or with any denial or detention order shall be liable to the United States for a civil penalty, not to exceed $10,000 for each day of violation.

EMPLOYEE PROTECTION

42 USC 9610.

SEC. 110. (a) No person shall fire or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has provided information to a State or to the Federal Government, filed, instituted, or caused to be filed or instituted any proceeding under this Act, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act.

(b) Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person, who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to

present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5, United States Code. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions are subject to judicial review under this Act.

(c) Whenever an order is issued under this section to abate such violation, at the request of the applicant a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) determined by the Secretary of Labor to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

(d) This section shall have no application to any employee who acting without discretion from his employer (or his agent) deliberately violates any requirement of this Act.

(e) The President shall conduct continuing evaluations of potential loss of shifts of employment which may result from the administration or enforcement of the provisions of this Act, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement. Any employee who is discharged, or laid off, threatened with discharge or layoff, or otherwise discriminated against by any person because of the alleged results of such administration or enforcement, or any representative of such employee, may request the President to conduct a full investigation of the matter and, at the request of any party, shall hold public hearings, require the parties, including the employer involved, to present information relating to the actual or potential effect of such administration or enforcement on employment and any alleged discharge, layoff, or other discrimination, and the detailed reasons or justification therefore. Any such hearing shall be of record and shall be subject to section 554 of title 5, United States Code. Upon receiving the report of such investigation, the President shall make findings of fact as to the effect of such administration or enforcement on employment and on the alleged discharge, layoff, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the President or any State to modify or withdraw any action, standard, limitation, or any other requirement of this Act.

USES OF FUND

42 USC 9611.

SEC. 111. (a) The President shall use the money in the Fund for the following purposes:

(1) payment of governmental response costs incurred pursuant to section 104 of this title, including costs incurred pursuant to the Intervention on the High Seas Act;

33 USC 1471 note.

(2) payment of any claim for necessary response costs incurred by any other person as a result of carrying out the national contingency plan established under section 311(c) of the Clean Water Act and amended by section 105 of this title: *Provided, however,* That such costs must be approved under said plan and certified by the responsible Federal official;

33 USC 1321.

(3) payment of any claim authorized by subsection (b) of this section and finally decided pursuant to section 112 of this title, including those costs set out in subsection 112(c)(3) of this title; and

(4) payment of costs specified under subsection (c) of this section.

The President shall not pay for any administrative costs or expenses out of the Fund unless such costs and expenses are reasonably necessary for and incidental to the implementation of this title.

(b) Claims asserted and compensable but unsatisfied under provisions of section 311 of the Clean Water Act, which are modified by section 304 of this Act may be asserted against the Fund under this title; and other claims resulting from a release or threat of release of a hazardous substance from a vessel or a facility may be asserted against the Fund under this title for injury to, or destruction or loss of, natural resources, including cost for damage assessment: *Provided, however,* That any such claim may be asserted only by the President, as trustee, for natural resources over which the United States has sovereign rights, or natural resources within the territory or the fishery conservation zone of the United States to the extent they are managed or protected by the United States, or by any State for natural resources within the boundary of that State belonging to, managed by, controlled by, or appertaining to the State.

Post, p. 2809.

(c) Uses of the Fund under subsection (a) of this section include—

(1) the costs of assessing both short-term and long-term injury to, destruction of, or loss of any natural resources resulting from a release of a hazardous substance;

(2) the costs of Federal or State efforts in the restoration, rehabilitation, or replacement or acquiring the equivalent of any natural resources injured, destroyed, or lost as a result of a release of a hazardous substance;

(3) subject to such amounts as are provided in appropriation Acts, the costs of a program to identify, investigate, and take enforcement and abatement action against releases of hazardous substances;

(4) the costs of epidemiologic studies, development and maintenance of a registry of persons exposed to hazardous substances to allow long-term health effect studies, and diagnostic services not otherwise available to determine whether persons in populations exposed to hazardous substances in connection with a release or a suspected release are suffering from long-latency diseases;

(5) subject to such amounts as are provided in appropriation Acts, the costs of providing equipment and similar overhead, related to the purposes of this Act and section 311 of the Clean Water Act, and needed to supplement equipment and services available through contractors or other non-Federal entities, and of establishing and maintaining damage assessment capability, for any Federal agency involved in strike forces, emergency task

forces, or other response teams under the national contingency plan; and

(6) subject to such amounts as are provided in appropriation Acts, the costs of a program to protect the health and safety of employees involved in response to hazardous substance releases. Such program shall be developed jointly by the Environmental Protection Agency, the Occupational Safety and Health Administration, and the National Institute for Occupational Safety and Health and shall include, but not be limited to, measures for identifying and assessing hazards to which persons engaged in removal, remedy, or other response to hazardous substances may be exposed, methods to protect workers from such hazards, and necessary regulatory and enforcement measures to assure adequate protection of such employees.

(d)(1) No money in the Fund may be used under subsection (c) (1) and (2) of this section, nor for the payment of any claim under subsection (b) of this section, where the injury, destruction, or loss of natural resources and the release of a hazardous substance from which such damages resulted have occurred wholly before the enactment of this Act.

(2) No money in the Fund may be used for the payment of any claim under subsection (b) of this section where such expenses are associated with injury or loss resulting from long-term exposure to ambient concentrations of air pollutants from multiple or diffuse sources.

(e)(1) Claims against or presented to the Fund shall not be valid or paid in excess of the total money in the Fund at any one time. Such claims become valid only when additional money is collected, appropriated, or otherwise added to the Fund. Should the total claims outstanding at any time exceed the current balance of the Fund, the President shall pay such claims, to the extent authorized under this section, in full in the order in which they were finally determined.

(2) In any fiscal year, 85 percent of the money credited to the Fund under title II of this Act shall be available only for the purposes specified in paragraphs (1), (2), and (4) of subsection (a) of this section.

(3) No money in the Fund shall be available for remedial action, other than actions specified in subsection (c) of this section, with respect to federally owned facilities.

(4) Paragraphs (1) and (4) of subsection (a) of this section shall in the aggregate be subject to such amounts as are provided in appropriation Acts.

Regulations.

(f) The President is authorized to promulgate regulations designating one or more Federal officials who may obligate money in the Fund in accordance with this section or portions thereof. The President is also authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a State operating under a contract or cooperative agreement with the Federal Government pursuant to section 104(d) of this title.

(g) The President shall provide for the promulgation of rules and regulations with respect to the notice to be provided to potential injured parties by an owner and operator of any vessel, or facility from which a hazardous substance has been released. Such rules and regulations shall consider the scope and form of the notice which would be appropriate to carry out the purposes of this title. Upon promulgation of such rules and regulations, the owner and operator of any vessel or facility from which a hazardous substance has been released shall provide notice in accordance with such rules and regulations. With respect to releases from public vessels, the President shall provide such notification as is appropriate to potential

injured parties. Until the promulgation of such rules and regulations, the owner and operator of any vessel or facility from which a hazardous substance has been released shall provide reasonable notice to potential injured parties by publication in local newspapers serving the affected area.

(h)(1) In accordance with regulations promulgated under section 301(c) of this Act, damages for injury to, destruction of, or loss of natural resources resulting from a release of a hazardous substance, for the purposes of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act, shall be assessed by Federal officials designated by the President under the national contingency plan published under section 105 of the Act, and such officials shall act for the President as trustee under this section and section 311(f)(5) of the Federal Water Pollution Control Act.

33 USC 1321.

(2) Any determination or assessment of damages for injury to, destruction of, or loss of natural resources for the purposes of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act shall have the force and effect of a rebuttable presumption on behalf of any claimant (including a trustee under section 107 of this Act or a Federal agency) in any judicial or adjudicatory administrative proceeding under this Act or section 311 of the Federal Water Pollution Control Act.

(i) Except in a situation requiring action to avoid an irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action, funds may not be used under this Act for the restoration, rehabilitation, or replacement or acquisition of the equivalent of any natural resources until a plan for the use of such funds for such purposes has been developed and adopted by affected Federal agencies and the Governor or Governors of any State having sustained damage to natural resources within its borders, belonging to, managed by or appertaining to such State, after adequate public notice and opportunity for hearing and consideration of all public comment.

(j) The President shall use the money in the Post-closure Liability Fund for any of the purposes specified in subsection (a) of this section with respect to a hazardous waste disposal facility for which liability has transferred to such fund under section 107(k) of this Act, and, in addition, for payment of any claim or appropriate request for costs of response, damages, or other compensation for injury or loss under section 107 of this Act or any other State or Federal law, resulting from a release of a hazardous substance from such a facility.

(k) The Inspector General of each department or agency to which responsibility to obligate money in the Fund is delegated shall provide an audit review team to audit all payments, obligations, reimbursements, or other uses of the Fund, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. Each such Inspector General shall submit to the Congress an interim report one year after the establishment of the Fund and a final report two years after the establishment of the Fund. Each such Inspector General shall thereafter provide such auditing of the Fund as is appropriate. Each Federal agency shall cooperate with the Inspector General in carrying out this subsection.

Report to Congress.

(l) To the extent that the provisions of this Act permit, a foreign claimant may assert a claim to the same extent that a United States claimant may assert a claim if—

(1) the release of a hazardous substance occurred (A) in the navigable waters or (B) in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident;

(2) the claimant is not otherwise compensated for his loss;

(3) the hazardous substance was released from a facility or from a vessel located adjacent to or within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 et seq.); and

(4) recovery is authorized by a treaty or an executive agreement between the United States and foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants.

CLAIMS PROCEDURE

42 USC 9612.

SEC. 112. (a) All claims which may be asserted against the Fund pursuant to section 111 of this title shall be presented in the first instance to the owner, operator, or guarantor of the vessel or facility from which a hazardous substance has been released, if known to the claimant, and to any other person known to the claimant who may be liable under section 107 of this title. In any case where the claim has not been satisfied within sixty days of presentation in accordance with this subsection, the claimant may elect to commence an action in court against such owner, operator, guarantor, or other person or to present the claim to the Fund for payment.

(b)(1) The President shall prescribe appropriate forms and procedures for claims filed hereunder, which shall include a provision requiring the claimant to make a sworn verification of the claim to the best of his knowledge. Any person who knowingly gives or causes to be given any false information as a part of any such claim shall, upon conviction, be fined up to $5,000 or imprisoned for not more than one year, or both.

(2)(A) Upon receipt of any claim, the President shall as soon as practicable inform any known affected parties of the claim and shall attempt to promote and arrange a settlement between the claimant and any person who may be liable. If the claimant and alleged liable party or parties can agree upon a settlement, it shall be final and binding upon the parties thereto, who will be deemed to have waived all recourse against the Fund.

(B) Where a liable party is unknown or cannot be determined, the claimant and the President shall attempt to arrange settlement of any claim against the Fund. The President is authorized to award and make payment of such a settlement, subject to such proof and procedures as he may promulgate by regulation.

(C) Except as provided in subparagraph (D) of this paragraph, the President shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in implementing this subsection and may contract to pay compensation for those facilities and services. Any contract made under the provisions of this paragraph may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), upon a showing by the President that advertising is not reasonably practicable. When the services of a State agency are used hereunder, no payment may be made on a claim asserted on behalf of that State or

any of its agencies or subdivisions unless the payment has been approved by the President.

(D) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the President may use Federal personnel to implement this subsection.

(3) If no settlement is reached within forty-five days of filing of a claim through negotiation pursuant to this section, the President may, if he is satisfied that the information developed during the processing of the claim warrants it, make and pay an award of the claim. If the claimant is dissatisfied with the award, he may appeal it in the manner provided for in subparagraph (G) of paragraph (4) of this subsection. If the President declines to make an award, he shall submit the claim for decision to a member of the Board of Arbitrators established pursuant to paragraph (4).

(4)(A) Within ninety days of the enactment of this Act, the President shall establish a Board of Arbitrators to implement this subsection. The Board shall consist of as many members as the President may determine will be necessary to implement this subsection expeditiously, and he *may* increase or decrease the size of the Board at any time in his discretion in order to enable it to respond to the demands of such implementation. Each member of the Board shall be selected through utilization of the procedures of the American Arbitration Association: *Provided, however*, That no regular employee of the President or any of the Federal departments, administrations, or agencies to whom he delegated responsibilities under this Act shall act as a member of the Board.

(B) Hearings conducted hereunder shall be public and shall be held in such place as may be agreed upon by the parties thereto, or, in the absence of such agreement, in such place as the President determines, in his discretion, will be most convenient for the parties thereto.

(C) Hearings before a member of the Board shall be informal, and the rules of evidence prevailing in judicial proceedings need not be required. Each member of the Board shall have the power to administer oaths and to subpena the attendance and testimony of witnesses and the production of books, records, and other evidence relative or pertinent to the issues presented to him for decision. Testimony may be taken by interrogatory or deposition. Each person appearing before a member of the Board shall have the right to counsel. Subpenas shall be issued and enforced in accordance with procedures in subsection (d) of section 555 of title 5, United States Code, and rules promulgated by the President. If a person fails or refuses to obey a subpena, the President may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

(D) In any proceeding before a member of the Board, the claimant shall bear the burden of proving his claim. Should a member of the Board determine that further investigations, monitoring, surveys, testing, or other information gathering would be useful and necessary in deciding the claim, he may request the President in writing to undertake such activities pursuant to section 104(b) of this title. The President shall dispose of such a request in his sole discretion, taking into account various competing demands and the availability of the technical and financial capacity to conduct such studies, monitoring, and investigations. Should the President decide to undertake the

requested actions, all time requirements for the processing and deciding of claims hereunder shall be suspended until the President reports the results thereof to the member of the Board.

(E) All costs and expenses approved by the President attributable to the employment of any member of the Board shall be payable from the Fund, including fees and mileage expenses for witnesses summoned by such members on the same basis and to the same extent as if such witnesses were summoned before a district court of the United States.

(F) All decisions rendered by members of the Board shall be in writing, with notification to all appropriate parties, and shall be rendered within ninety days of submission of a claim to a member, unless all the parties to the claim agree in writing to an extension or unless the President extends the time limit pursuant to subparagraph (I) of this subsection.

(G) All decisions rendered by members of the Board shall be final, and any party to the proceeding may appeal such a decision within thirty days of notification of the award or decision. Any such appeal shall be made to the Federal district court for the district where the arbitral hearing took place. In any such appeal, the award or decision of the member of the Board shall be considered binding and conclusive, and shall not be overturned except for arbitrary or capricious abuse of the member's discretion: *Provided, however,* That no such award or decision shall be admissible as evidence of any issue of fact or law in any proceeding brought under any other provision of this Act or under any other provision of law. Nor shall any prearbitral settlement reached pursuant to subsection (b)(2)(A) of this section be admissible as evidence in any such proceeding.

(H) Within twenty days of the expiration of the appeal period for any arbitral award or decision, or within twenty days of the final judicial determination of any appeal taken pursuant to this subsection, the President shall pay any such award from the Fund. The President shall determine the method, terms, and time of payment.

(I) If at any time the President determines that, because of a large number of claims arising from any incident or set of incidents, it is in the best interests of the parties concerned, he may extend the time for prearbitral negotiation or for rendering an arbitral decision pursuant to this subsection by a period not to exceed sixty days. He may also group such claims for submission to a member of the Board of Arbitrators.

(c)(1) Payment of any claim by the Fund under this section shall be subject to the United States Government acquiring by subrogation the rights of the claimant to recover those costs of removal or damages for which it has compensated the claimant from the person responsible or liable for such release.

(2) Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for damages or costs resulting from a release of a hazardous substance shall be subrogated to all rights, claims, and causes of action for such damages and costs of removal that the claimant has under this Act or any other law.

(3) Upon request of the President, the Attorney General shall commence an action on behalf of the Fund to recover any compensation paid by the Fund to any claimant pursuant to this title, and, without regard to any limitation of liability, all interest, administrative and adjudicative costs, and attorney's fees incurred by the Fund by reason of the claim. Such an action may be commenced against any owner, operator, or guarantor, or against any other person who is

liable, pursuant to any law, to the compensated claimant or to the Fund, for the damages or costs for which compensation was paid.

(d) No claim may be presented, nor may an action be commenced for damages under this title, unless that claim is presented or action commenced within three years from the date of the discovery of the loss or the date of enactment of this Act, whichever is later: *Provided, however,* That the time limitations contained herein shall not begin to run against a minor until he reaches eighteen years of age or a legal representative is duly appointed for him, nor against an incompetent person until his incompetency ends or a legal representative is duly appointed for him.

(e) Regardless of any State statutory or common law to the contrary, no person who asserts a claim against the Fund pursuant to this title shall be deemed or held to have waived any other claim not covered or assertable against the Fund under this title arising from the same incident, transaction, or set of circumstances, nor to have split a cause of action. Further, no person asserting a claim against the Fund pursuant to this title shall as a result of any determination of a question of fact or law made in connection with that claim be deemed or held to be collaterally estopped from raising such question in connection with any other claim not covered or assertable against the Fund under this title arising from the same incident, transaction, or set of circumstances.

LITIGATION, JURISDICTION AND VENUE

SEC. 113. (a) Review of any regulation promulgated under this Act may be had upon application by any interested person only in the Circuit Court of Appeals of the United States for the District of Columbia. Any such application shall be made within ninety days from the date of promulgation of such regulations. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs.

42 USC 9613.

(b) Except as provided in subsection (a) of this section, the United States district courts shall have exclusive original jurisdiction over all controversies arising under this Act, without regard to the citizenship of the parties or the amount in controversy. Venue shall lie in any district in which the release or damages occurred, or in which the defendant resides, may be found, or has his principal office. For the purposes of this section, the Fund shall reside in the District of Columbia.

(c) The provisions of subsections (a) and (b) of this section shall not apply to any controversy or other matter resulting from the assessment of collection of any tax, as provided by title II of this Act, or to the review of any regulation promulgated under the Internal Revenue Code of 1954.

26 USC 1 *et seq.*

(d) No provision of this Act shall be deemed or held to moot any litigation concerning any release of any hazardous substance, or any damages associated therewith, commenced prior to enactment of this Act.

RELATIONSHIP TO OTHER LAW

SEC. 114. (a) Nothing in this Act shall be construed or interpreted as preempting any State from imposing any additional liability or

42 USC 9614.

requirements with respect to the release of hazardous substances within such State.

(b) Any person who receives compensation for removal costs or damages or claims pursuant to this Act shall be precluded from recovering compensation for the same removal costs or damages or claims pursuant to any other State or Federal law. Any person who receives compensation for removal costs or damages or claims pursuant to any other Federal or State law shall be precluded from receiving compensation for the same removal costs or damages or claims as provided in this Act.

(c) Except as provided in this Act, no person may be required to contribute to any fund, the purpose of which is to pay compensation for claims for any costs of response or damages or claims which may be compensated under this title. Nothing in this section shall preclude any State from using general revenues for such a fund, or from imposing a tax or fee upon any person or upon any substance in order to finance the purchase or prepositioning of hazardous substance response equipment or other preparations for the response to a release of hazardous substances which affects such State.

(d) Except as provided in this title, no owner or operator of a vessel or facility who establishes and maintains evidence of financial responsibility in accordance with this title shall be required under any State or local law, rule, or regulation to establish or maintain any other evidence of financial responsibility in connection with liability for the release of a hazardous substance from such vessel or facility. Evidence of compliance with the financial responsibility requirements of this title shall be accepted by a State in lieu of any other requirement of financial responsibility imposed by such State in connection with liability for the release of a hazardous substance from such vessel or facility.

AUTHORITY TO DELEGATE, ISSUE REGULATIONS

42 USC 9615.

SEC. 115. The President is authorized to delegate and assign any duties or powers imposed upon or assigned to him and to promulgate any regulations necessary to carry out the provisions of this title.

Hazardous Substance Response Revenue Act of 1980.

TITLE II—HAZARDOUS SUBSTANCE RESPONSE REVENUE ACT OF 1980

26 USC 1 note.

SEC. 201. SHORT TITLE; AMENDMENT OF 1954 CODE.

(a) SHORT TITLE.—This title may be cited as the "Hazardous Substance Response Revenue Act of 1980".

26 USC 1 et seq.

(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

Subtitle A—Imposition of Taxes on Petroleum and Certain Chemicals

SEC. 211. IMPOSITION OF TAXES.

(a) GENERAL RULE.—Subtitle D (relating to miscellaneous excise taxes) is amended by inserting after chapter 37 the following new chapter:

"CHAPTER 38—ENVIRONMENTAL TAXES

"SUBCHAPTER A. Tax on petroleum.
"SUBCHAPTER B. Tax on certain chemicals.

"Subchapter A—Tax on Petroleum

"Sec. 4611. Imposition of tax.
"Sec. 4612. Definitions and special rules.

"SEC. 4611. IMPOSITION OF TAX.

26 USC 4611.

"(a) GENERAL RULE.—There is hereby imposed a tax of 0.79 cent a barrel on—

"(1) crude oil received at a United States refinery, and

"(2) petroleum products entered into the United States for consumption, use, or warehousing.

"(b) TAX ON CERTAIN USES AND EXPORTATION.—

"(1) IN GENERAL.—If—

"(A) any domestic crude oil is used in or exported from the United States, and

"(B) before such use or exportation, no tax was imposed on such crude oil under subsection (a),

then a tax of 0.79 cent a barrel is hereby imposed on such crude oil.

"(2) EXCEPTION FOR USE ON PREMISES WHERE PRODUCED.—Paragraph (1) shall not apply to any use of crude oil for extracting oil or natural gas on the premises where such crude oil was produced.

"(c) PERSONS LIABLE FOR TAX.—

"(1) CRUDE OIL RECEIVED AT REFINERY.—The tax imposed by subsection (a)(1) shall be paid by the operator of the United States refinery.

"(2) IMPORTED PETROLEUM PRODUCT.—The tax imposed by subsection (a)(2) shall be paid by the person entering the product for consumption, use, or warehousing.

"(3) TAX ON CERTAIN USES OR EXPORTS.—The tax imposed by subsection (b) shall be paid by the person using or exporting the crude oil, as the case may be.

"(d) TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1985, except that if on September 30, 1983, or September 30, 1984—

"(1) the unobligated balance in the Hazardous Substance Response Trust Fund as of such date exceeds $900,000,000, and

"(2) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that such unobligated balance will exceed $500,000,000 on September 30 of the following year if no tax is imposed under section 4611 or 4661 during the calendar year following the date referred to above,

Post, p. 2798.

then no tax shall be imposed by this section during the first calendar year beginning after the date referred to in paragraph (1).

26 USC 4612.

"SEC. 4612. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) CRUDE OIL.—The term 'crude oil' includes crude oil condensates and natural gasoline.

"(2) DOMESTIC CRUDE OIL.—The term 'domestic crude oil' means any crude oil produced from a well located in the United States.

"(3) PETROLEUM PRODUCT.—The term 'petroleum product' includes crude oil.

"(4) UNITED STATES.—

"(A) IN GENERAL.—The term 'United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

26 USC 638.

"(B) UNITED STATES INCLUDES CONTINENTAL SHELF AREAS.—The principles of section 638 shall apply for purposes of the term 'United States'.

"(C) UNITED STATES INCLUDES FOREIGN TRADE ZONES.—The term 'United States' includes any foreign trade zone of the United States.

"(5) UNITED STATES REFINERY.—The term 'United States refinery' means any facility in the United States at which crude oil is refined.

"(6) REFINERIES WHICH PRODUCE NATURAL GASOLINE.—In the case of any United States refinery which produces natural gasoline from natural gas, the gasoline so produced shall be treated as received at such refinery at the time so produced.

"(7) PREMISES.—The term 'premises' has the same meaning as when used for purposes of determining gross income from the property under section 613.

"(8) BARREL.—The term 'barrel' means 42 United States gallons.

"(9) FRACTIONAL PART OF BARREL.—In the case of a fraction of a barrel, the tax imposed by section 4611 shall be the same fraction of the amount of such tax imposed on a whole barrel.

Ante, p. 2797.

"(b) ONLY 1 TAX IMPOSED WITH RESPECT TO ANY PRODUCT.—No tax shall be imposed by section 4611 with respect to any petroleum product if the person who would be liable for such tax establishes that a prior tax imposed by such section has been imposed with respect to such product.

"(c) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4611.

"Subchapter B—Tax on Certain Chemicals

"Sec. 4661. Imposition of tax.
"Sec. 4662. Definitions and special rules.

26 USC 4661.

"SEC. 4661. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on any taxable chemical sold by the manufacturer, producer, or importer thereof.

"(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

"In the case of:	The tax is the following amount per ton
Acetylene	$4.87
Benzene	4.87
Butane	4.87
Butylene	4.87
Butadiene	4.87
Ethylene	4.87
Methane	3.44
Naphthalene	4.87
Propylene	4.87
Toluene	4.87
Xylene	4.87
Ammonia	2.64
Antimony	4.45
Antimony trioxide	3.75
Arsenic	4.45
Arsenic trioxide	3.41
Barium sulfide	2.30
Bromine	4.45
Cadmium	4.45
Chlorine	2.70
Chromium	4.45
Chromite	1.52
Potassium dichromate	1.69
Sodium dichromate	1.87
Cobalt	4.45
Cupric sulfate	1.87
Cupric oxide	3.59
Cuprous oxide	3.97
Hydrochloric acid	0.29
Hydrogen fluoride	4.23
Lead oxide	4.14
Mercury	4.45
Nickel	4.45
Phosphorus	4.45
Stannous chloride	2.85
Stannic chloride	2.12
Zinc chloride	2.22
Zinc sulfate	1.90
Potassium hydroxide	0.22
Sodium hydroxide	0.28
Sulfuric acid	0.26
Nitric acid	0.24

"(c) TERMINATION.—No tax shall be imposed under this section during any period during which no tax is imposed under section 4611(a).

"SEC. 4662. DEFINITIONS AND SPECIAL RULES.

26 USC 4662.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) TAXABLE CHEMICAL.—Except as provided in subsection (b), the term 'taxable chemical' means any substance—

"(A) which is listed in the table under section 4661(b), and

Ante, p. 2798.

"(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

"(2) UNITED STATES.—The term 'United States' has the meaning given such term by section 4612(a)(4).

Ante, p. 2798.

"(3) IMPORTER.—The term 'importer' means the person entering the taxable chemical for consumption, use, or warehousing.

"(4) TON.—The term 'ton' means 2,000 pounds. In the case of any taxable chemical which is a gas, the term 'ton' means the amount of such gas in cubic feet which is the equivalent of 2,000 pounds on a molecular weight basis.

Ante, p. 2798.

"(6) FRACTIONAL PART OF TON.—In the case of a fraction of a ton, the tax imposed by section 4661 shall be the same fraction of the amount of such tax imposed on a whole ton.

"(b) EXCEPTIONS; OTHER SPECIAL RULES.—For purposes of this subchapter—

"(1) METHANE OR BUTANE USED AS A FUEL.—Under regulations prescribed by the Secretary, methane or butane shall be treated as a taxable chemical only if it is used otherwise than as a fuel (and, for purposes of section 4661(a), the person so using it shall be treated as the manufacturer thereof).

"(2) SUBSTANCES USED IN THE PRODUCTION OF FERTILIZER.—

"(A) IN GENERAL.—In the case of nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia which is a qualified substance, no tax shall be imposed under section 4661(a).

"(B) QUALIFIED SUBSTANCE.—For purposes of this section, the term 'qualified substance' means any substance—

"(i) used in a qualified use by the manufacturer, producer, or importer,

"(ii) sold for use by the purchaser in a qualified use, or

"(iii) sold for resale by the purchaser to a second purchaser for use by such second purchaser in a qualified use.

"(C) QUALIFIED USE.—For purposes of this subsection, the term 'qualified use' means any use in the manufacture or production of a fertilizer.

"(3) SULFURIC ACID PRODUCED AS A BYPRODUCT OF AIR POLLUTION CONTROL.—In the case of sulfuric acid produced solely as a byproduct of and on the same site as air pollution control equipment, no tax shall be imposed under section 4661.

"(4) SUBSTANCES DERIVED FROM COAL.—For purposes of this subchapter, the term 'taxable chemical' shall not include any substance to the extent derived from coal.

"(c) USE BY MANUFACTURER, ETC., CONSIDERED SALE.—If any person manufactures, produces, or imports a taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.

"(d) REFUND OR CREDIT FOR CERTAIN USES.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to any taxable chemical, and

"(B) such chemical was used by any person in the manufacture or production of any other substance the sale of which by such person would be taxable under such section,

then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by such section. In any case to which this paragraph applies, the amount of any such credit or refund shall not exceed the amount of tax imposed by such section on the other substance manufactured or produced.

"(2) USE AS FERTILIZER.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to make ammonia without regard to subsection (b)(2), and

"(B) any person uses such substance, or sells such substance for use, as a qualified substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(2) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

"(e) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4661.".

26 USC 7652.

(b) CLERICAL AMENDMENT.—The table of chapters for subtitle D is amended by inserting after the item relating to chapter 37 the following new item:

Ante, p. 2798.

"CHAPTER 38. Environmental taxes.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on April 1, 1981.

26 USC 4611 note.

Subtitle B—Establishment of Hazardous Substance Response Trust Fund

SEC. 221. ESTABLISHMENT OF HAZARDOUS SUBSTANCE RESPONSE TRUST FUND.

42 USC 9631.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Hazardous Substance Response Trust Fund" (hereinafter in this subtitle referred to as the "Response Trust Fund"), consisting of such amounts as may be appropriated or transferred to such Trust Fund as provided in this section.

(b) TRANSFERS TO RESPONSE TRUST FUND.—

(1) AMOUNTS EQUIVALENT TO CERTAIN TAXES, ETC.—There are hereby appropriated, out of any money in the Treasury not otherwise appropriated, to the Response Trust Fund amounts determined by the Secretary of the Treasury (hereinafter in this subtitle referred to as the "Secretary") to be equivalent to—

(A) the amounts received in the Treasury under section 4611 or 4661 of the Internal Revenue Code of 1954,

Ante, pp. 2797, 2798.

(B) the amounts recovered on behalf of the Response Trust Fund under this Act,

(C) all moneys recovered or collected under section 311(b)(6)(B) of the Clean Water Act,

33 USC 1321.

(D) penalties assessed under title I of this Act, and

(E) punitive damages under section 107(c)(3) of this Act.

(2) AUTHORIZATION FOR APPROPRIATIONS.—There is authorized to be appropriated to the Emergency Response Trust Fund for fiscal year—

(A) 1981, $44,000,000,

(B) 1982, $44,000,000,

(C) 1983, $44,000,000,

(D) 1984, $44,000,000, and

(E) 1985, $44,000,000, plus an amount equal to so much of the aggregate amount authorized to be appropriated under subparagraphs (A), (B), (C), and (D) as has not been appropriated before October 1, 1984.

(3) TRANSFER OF FUNDS.—There shall be transferred to the Response Trust Fund—

(A) one-half of the unobligated balance remaining before the date of the enactment of this Act under the Fund in section 311 of the Clean Water Act, and

33 USC 1321.

(B) the amounts appropriated under section 504(b) of the Clean Water Act during any fiscal year.

(c) EXPENDITURES FROM RESPONSE TRUST FUND.—

(1) IN GENERAL.—Amounts in the Response Trust Fund shall be available in connection with releases or threats of releases of hazardous substances into the environment only for purposes of making expenditures which are described in section 111 (other than subsection (j) thereof) of this Act, as in effect on the date of the enactment of this Act, including—

(A) response costs,

(B) claims asserted and compensable but unsatisfied under section 311 of the Clean Water Act,

(C) claims for injury to, or destruction or loss of, natural resources, and

(D) related costs described in section 111(c) of this Act.

(2) LIMITATIONS ON EXPENDITURES.—At least 85 percent of the amounts appropriated to the Response Trust Fund under subsection (b)(1)(A) and (2) shall be reserved—

(A) for the purposes specified in paragraphs (1), (2), and (4) of section 111(a) of this Act, and

(B) for the repayment of advances made under section 223(c), other than advances subject to the limitation of section 223(c)(2)(C).

42 USC 9632.

SEC. 222. LIABILITY OF UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.

(a) GENERAL RULE.—Any claim filed against the Response Trust Fund may be paid only out of such Trust Fund. Nothing in this Act (or in any amendment made by this Act) shall authorize the payment by the United States Government of any additional amount with respect to any such claim out of any source other than the Response Trust Fund.

(b) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Response Trust Fund is unable (by reason of subsection (a) or the limitation of section 221(c)(2)) to pay all of the claims payable out of such Trust Fund at such time, such claims shall, to the extent permitted under subsection (a), be paid in full in the order in which they were finally determined.

42 USC 9633.

SEC. 223. ADMINISTRATIVE PROVISIONS.

(a) METHOD OF TRANSFER.—The amounts appropriated by section 221(b)(1) shall be transferred at least monthly from the general fund of the Treasury to the Response Trust Fund on the basis of estimates made by the Secretary of the amounts referred to in such section. Proper adjustments shall be made in the amount subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(b) MANAGEMENT OF TRUST FUND.—

(1) REPORT.—The Secretary shall be the trustee of the Response Trust Fund, and shall report to the Congress for each fiscal year ending on or after September 30, 1981, on the financial condition and the results of the operations of such Trust Fund during such fiscal year and on its expected condition and operations during the next 5 fiscal years. Such report shall be printed as a House

document of the session of the Congress to which the report is made.

(2) INVESTMENT.—It shall be the duty of the Secretary to invest such portion of such Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable for the needs of such Trust Fund and bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The income on such investments shall be credited to and form a part of such Trust Fund.

(c) AUTHORITY TO BORROW.—

(1) IN GENERAL.—There are authorized to be appropriated to the Response Trust Fund, as repayable advances, such sums as may be necessary to carry out the purposes of such Trust Fund.

Appropriation authorization.

(2) LIMITATIONS ON ADVANCES TO RESPONSE TRUST FUND.—

(A) AGGREGATE ADVANCES.—The maximum aggregate amount of repayable advances to the Response Trust Fund which is outstanding at any one time shall not exceed an amount which the Secretary estimates will be equal to the sum of the amounts which will be appropriated or transferred to such Trust Fund under paragraph (1)(A) of section 221(b) of this Act for the following 12 months, and

(B) ADVANCES FOR PAYMENT OF RESPONSE COSTS.—No amount may be advanced after March 31, 1983, to the Response Trust Fund for the purpose of paying response costs described in section 111(a) (1), (2), or (4), unless such costs are incurred incident to any spill the effects of which the Secretary determines to be catastrophic.

(C) ADVANCES FOR OTHER COSTS.—The maximum aggregate amount advanced to the Response Trust Fund which is outstanding at any one time for the purpose of paying costs other than costs described in section 111(a) (1), (2), or (4) shall not exceed one-third of the amount of the estimate made under subparagraph (A).

(D) FINAL REPAYMENT.—No advance shall be made to the Response Trust Fund after September 30, 1985, and all advances to such Fund shall be repaid on or before such date.

(3) REPAYMENT OF ADVANCES.—Advances made pursuant to this subsection shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Trust Fund to which the advance was made. Such interest shall be at rates computed in the same manner as provided in subsection (b) and shall be compounded annually.

Subtitle C—Post-Closure Tax and Trust Fund

SEC. 231. IMPOSITION OF TAX.

(a) IN GENERAL.—Chapter 38, as added by section 211, is amended by adding at the end thereof the following new subchapter:

"Subchapter C—Tax on Hazardous Wastes

"Sec. 4681. Imposition of tax.
"Sec. 4682. Definitions and special rules.

26 USC 4681.

"SEC. 4681. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on the receipt of hazardous waste at a qualified hazardous waste disposal facility.

"(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) shall be equal to $2.13 per dry weight ton of hazardous waste.

26 USC 4682.

"SEC. 4682. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) HAZARDOUS WASTE.—The term 'hazardous waste' means any waste—

42 USC 6921.

"(A) having the characteristics identified under section 3001 of the Solid Waste Disposal Act, as in effect on the date of the enactment of this Act (other than waste the regulation of which under such Act has been suspended by Act of Congress on that date), or

42 USC 6922, 6924.

"(B) subject to the reporting or recordkeeping requirements of sections 3002 and 3004 of such Act, as so in effect.

"(2) QUALIFIED HAZARDOUS WASTE DISPOSAL FACILITY.—The term 'qualified hazardous waste disposal facility' means any facility which has received a permit or is accorded interim status under section 3005 of the Solid Waste Disposal Act.

42 USC 6925.

"(b) TAX IMPOSED ON OWNER OR OPERATOR.—The tax imposed by section 4681 shall be imposed on the owner or operator of the qualified hazardous waste disposal facility.

"(c) TAX NOT TO APPLY TO CERTAIN WASTES.—The tax imposed by section 4681 shall not apply to any hazardous waste which will not remain at the qualified hazardous waste disposal facility after the facility is closed.

"(d) APPLICABILITY OF SECTION.—The tax imposed by section 4681 shall apply to the receipt of hazardous waste after September 30, 1983, except that if, as of September 30 of any subsequent calendar year, the unobligated balance of the Post-closure Liability Trust Fund exceeds $200,000,000, no tax shall be imposed under such section during the following calendar year.".

(b) CONFORMING AMENDMENT.—The table of subchapters for chapter 38 is amended by adding at the end thereof the following new item:

"SUBCHAPTER C—Tax on Hazardous Wastes.".

42 USC 9641.

SEC. 232. POST-CLOSURE LIABILITY TRUST FUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Post-closure Liability Trust Fund", consisting of such amounts as may be appropriated, credited, or transferred to such Trust Fund.

(b) EXPENDITURES FROM POST-CLOSURE LIABILITY TRUST FUND.—Amounts in the Post-closure Liability Trust Fund shall be available only for the purposes described in sections 107(k) and 111(j) of this Act (as in effect on the date of the enactment of this Act).

(c) ADMINISTRATIVE PROVISIONS.—The provisions of sections 222 and 223 of this Act shall apply with respect to the Trust Fund established under this section, except that the amount of any repayable advances outstanding at any one time shall not exceed $200,000,000.

TITLE III—MISCELLANEOUS PROVISIONS

REPORTS AND STUDIES

SEC. 301. (a)(1) The President shall submit to the Congress, within four years after enactment of this Act, a comprehensive report on experience with the implementation of this Act, including, but not limited to—

42 USC 9651

(A) the extent to which the Act and Fund are effective in enabling Government to respond to and mitigate the effects of releases of hazardous substances;

(B) a summary of past receipts and disbursements from the Fund;

(C) a projection of any future funding needs remaining after the expiration of authority to collect taxes, and of the threat to public health, welfare, and the environment posed by the projected releases which create any such needs;

(D) the record and experience of the Fund in recovering Fund disbursements from liable parties;

(E) the record of State participation in the system of response, liability, and compensation established by this Act;

(F) the impact of the taxes imposed by title II of this Act on the Nation's balance of trade with other countries;

(G) an assessment of the feasibility and desirability of a schedule of taxes which would take into account one or more of the following: the likelihood of a release of a hazardous substance, the degree of hazard and risk of harm to public health, welfare, and the environment resulting from any such release, incentives to proper handling, recycling, incineration, and neutralization of hazardous wastes, and disincentives to improper or illegal handling or disposal of hazardous materials, administrative and reporting burdens on Government and industry, and the extent to which the tax burden falls on the substances and parties which create the problems addressed by this Act. In preparing the report, the President shall consult with appropriate Federal, State, and local agencies, affected industries and claimants, and such other interested parties as he may find useful. Based upon the analyses and consultation required by this subsection, the President shall also include in the report any recommendations for legislative changes he may deem necessary for the better effectuation of the purposes of this Act, including but not limited to recommendations concerning authorization levels, taxes, State participation, liability and liability limits, and financial responsibility provisions for the Response Trust Fund and the Post-closure Liability Trust Fund;

(H) an exemption from or an increase in the substances or the amount of taxes imposed by section 4661 of the Internal Revenue Code of 1954 for copper, lead, and zinc oxide, and for feedstocks when used in the manufacture and production of fertilizers, based upon the expenditure experience of the Response Trust Fund;

Ante, p. 2798.

(I) the economic impact of taxing coal-derived substances and recycled metals.

(2) The Administrator of the Environmental Protection Agency (in consultation with the Secretary of the Treasury) shall submit to the Congress (i) within four years after enactment of this Act, a report identifying additional wastes designated by rule as hazardous after the effective date of this Act and pursuant to section 3001 of the Solid

42 USC 6921.

Waste Disposal Act and recommendations on appropriate tax rates for such wastes for the Post-closure Liability Trust Fund. The report shall, in addition, recommend a tax rate, considering the quantity and potential danger to human health and the environment posed by the disposal of any wastes which the Administrator, pursuant to subsection 3001(b)(2)(B) and subsection 3001(b)(3)(A) of the Solid Waste Disposal Act of 1980, has determined should be subject to regulation under subtitle C of such Act, (ii) within three years after enactment of this Act, a report on the necessity for and the adequacy of the revenue raised, in relation to estimated future requirements, of the Post-closure Liability Trust Fund.

Ante, p. 2336.

(b) The President shall conduct a study to determine (1) whether adequate private insurance protection is available on reasonable terms and conditions to the owners and operators of vessels and facilities subject to liability under section 107 of this Act, and (2) whether the market for such insurance is sufficiently competitive to assure purchasers of features such as a reasonable range of deductibles, coinsurance provisions, and exclusions. The President shall submit the results of his study, together with his recommendations, within two years of the date of enactment of this Act, and shall submit an interim report on his study within one year of the date of enactment of this Act.

Ante, p. 2781.

Regulations.

(c)(1) The President, acting through Federal officials designated by the National Contingency Plan published under section 105 of this Act, shall study and, not later than two years after the enactment of this Act, shall promulgate regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a release of oil or a hazardous substance for the purposes of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act.

Ante, p. 2779.

33 USC 1321.

(2) Such regulations shall specify (A) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or release or units of affected area, and (B) alternative protocols for conducting assessments in individual cases to determine the type and extent of short- and long-term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss and shall take into consideration factors including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.

Review and revision.

(3) Such regulations shall be reviewed and revised as appropriate every two years.

(d) The Administrator of the Environmental Protection Agency shall, in consultation with other Federal agencies and appropriate representatives of State and local governments and nongovernmental agencies, conduct a study and report to the Congress within two years of the date of enactment of this Act on the issues, alternatives, and policy considerations involved in the selection of locations for hazardous waste treatment, storage, and disposal facilities. This study shall include—

(A) an assessment of current and projected treatment, storage, and disposal capacity needs and shortfalls for hazardous waste by management category on a State-by-State basis;

(B) an evaluation of the appropriateness of a regional approach to siting and designing hazardous waste management facilities and the identification of hazardous waste management regions,

interstate or intrastate, or both, with similar hazardous waste management needs;

(C) solicitation and analysis of proposals for the construction and operation of hazardous waste management facilities by nongovernmental entities, except that no proposal solicited under terms of this subsection shall be analyzed if it involves cost to the United States Government or fails to comply with the requirements of subtitle C of the Solid Waste Disposal Act and other applicable provisions of law;

42 USC 6921.

(D) recommendations on the appropriate balance between public and private sector involvement in the siting, design, and operation of new hazardous waste management facilities;

(E) documentation of the major reasons for public opposition to new hazardous waste management facilities; and

(F) an evaluation of the various options for overcoming obstacles to siting new facilities, including needed legislation for implementing the most suitable option or options.

(e)(1) In order to determine the adequacy of existing common law and statutory remedies in providing legal redress for harm to man and the environment caused by the release of hazardous substances into the environment, there shall be submitted to the Congress a study within twelve months of enactment of this Act.

(2) This study shall be conducted with the assistance of the American Bar Association, the American Law Institute, the Association of American Trial Lawyers, and the National Association of State Attorneys General with the President of each entity selecting three members from each organization to conduct the study. The study chairman and one reporter shall be elected from among the twelve members of the study group.

(3) As part of their review of the adequacy of existing common law and statutory remedies, the study group shall evaluate the following:

(A) the nature, adequacy, and availability of existing remedies under present law in compensating for harm to man from the release of hazardous substances;

(B) the nature of barriers to recovery (particularly with respect to burdens of going forward and of proof and relevancy) and the role such barriers play in the legal system;

(C) the scope of the evidentiary burdens placed on the plaintiff in proving harm from the release of hazardous substances, particularly in light of the scientific uncertainty over causation with respect to—

(i) carcinogens, mutagens, and teratogens, and

(ii) the human health effects of exposure to low doses of hazardous substances over long periods of time;

(D) the nature and adequacy of existing remedies under present law in providing compensation for damages to natural resources from the release of hazardous substances;

(E) the scope of liability under existing law and the consequences, particularly with respect to obtaining insurance, of any changes in such liability;

(F) barriers to recovery posed by existing statutes of limitations.

(4) The report shall be submitted to the Congress with appropriate recommendations. Such recommendations shall explicitly address—

(A) the need for revisions in existing statutory or common law, and

(B) whether such revisions should take the form of Federal statutes or the development of a model code which is recommended for adoption by the States.

(5) The Fund shall pay administrative expenses incurred for the study. No expenses shall be available to pay compensation, except expenses on a per diem basis for the one reporter, but in no case shall the total expenses of the study exceed $300,000.

(f) The President, acting through the Administrator of the Environmental Protection Agency, the Secretary of Transportation, the Administrator of the Occupational Safety and Health Administration, and the Director of the National Institute for Occupational Safety and Health shall study and, not later than two years after the enactment of this Act, shall modify the national contingency plan to provide for the protection of the health and safety of employees involved in response actions.

EFFECTIVE DATES, SAVINGS PROVISION

42 USC 9652.

SEC. 302. (a) Unless otherwise provided, all provisions of this Act shall be effective on the date of enactment of this Act.

33 USC 1321.

(b) Any regulation issued pursuant to any provisions of section 311 of the Clean Water Act which is repealed or superseded by this Act and which is in effect on the date immediately preceding the effective date of this Act shall be deemed to be a regulation issued pursuant to the authority of this Act and shall remain in full force and effect unless or until superseded by new regulations issued thereunder.

(c) Any regulation—

(1) respecting financial responsibility,

(2) issued pursuant to any provision of law repealed or superseded by this Act, and

(3) in effect on the date immediately preceding the effective date of this Act shall be deemed to be a regulation issued pursuant to the authority of this Act and shall remain in full force and effect unless or until superseded by new regulations issued thereunder.

(d) Nothing in this Act shall affect or modify in any way the obligations or liabilities of any person under other Federal or State law, including common law, with respect to releases of hazardous substances or other pollutants or contaminants. The provisions of this Act shall not be considered, interpreted, or construed in any way as reflecting a determination, in part or whole, of policy regarding the inapplicability of strict liability, or strict liability doctrines, to activities relating to hazardous substances, pollutants, or contaminants or other such activities.

EXPIRATION, SUNSET PROVISION

42 USC 9653.

SEC. 303. Unless reauthorized by the Congress, the authority to collect taxes conferred by this Act shall terminate on September 30, 1985, or when the sum of the amounts received in the Treasury under section 4611 and under 4661 of the Internal Revenue Code of 1954 total $1,380,000,000, whichever occurs first. The Secretary of the Treasury shall estimate when this level of $1,380,000,000 will be reached and shall by regulation, provide procedures for the termination of the tax authorized by this Act and imposed under sections 4611 and 4661 of the Internal Revenue Code of 1954.

Ante, pp. 2797, 2799.

CONFORMING AMENDMENTS

SEC. 304. (a) Subsection (b) of section 504 of the Federal Water Pollution Control Act is hereby repealed.

33 USC 1364.

42 USC 9654.

(b) One-half of the unobligated balance remaining before the date of the enactment of this Act under subsection (k) of section 311 of the Federal Water Pollution Control Act and all sums appropriated under section 504(b) of the Federal Water Pollution Control Act shall be transferred to the Fund established under title II of this Act.

33 USC 1321.

(c) In any case in which any provision of section 311 of the Federal Water Pollution Control Act is determined to be in conflict with any provisions of this Act, the provisions of this Act shall apply.

LEGISLATIVE VETO

42 USC 9655.

SEC. 305. (a) Notwithstanding any other provision of law, simultaneously with promulgation or repromulgation of any rule or regulation under authority of title I of this Act, the head of the department, agency, or instrumentality promulgating such rule or regulation shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. Except as provided in subsection (b) of this section, the rule or regulation shall not become effective, if—

(1) within ninety calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the rule or regulation promulgated by the   dealing with the matter of   , which rule or regulation was transmitted to Congress on   .", the blank spaces therein being appropriately filled; or

(2) within sixty calendar days of continuous session of Congress after the date of promulgation, one House of Congress adopts such a concurrent resolution and transmits such resolution to the other House, and such resolution is not disapproved by such other House within thirty calendar days of continuous session of Congress after such transmittal.

(b) If, at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a rule or regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the rule or regulation and neither House has adopted such a resolution, the rule or regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, or either House has adopted such a resolution, the rule or regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after such rule is prescribed unless disapproved as provided in subsection (a) of this section.

(c) For purposes of subsections (a) and (b) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of thirty, sixty, and ninety calendar days of continuous session of Congress.

(d) Congressional inaction on, or rejection of, a resolution of disapproval shall not be deemed an expression of approval of such rule or regulation.

TRANSPORTATION

42 USC 9656. Ante, p. 2767.

SEC. 306. (a) Each hazardous substance which is listed or designated as provided in section 101(14) of this Act shall, within ninety days after the date of enactment of this Act or at the time of such listing or designation, whichever is later, be listed as a hazardous material under the Hazardous Materials Transportation Act.

49 USC 1801 note. Ante, p. 2781.

(b) A common or contract carrier shall be liable under other law in lieu of section 107 of this Act for damages or remedial action resulting from the release of a hazardous substance during the course of transportation which commenced prior to the effective date of the listing of such substance as a hazardous material under the Hazardous Materials Transportation Act, or for substances listed pursuant to subsection (a) of this section, prior to the effective date of such listing: *Provided, however*, That this subsection shall not apply where such a carrier can demonstrate that he did not have actual knowledge of the identity or nature of the substance released.

(c) Section 11901 of title 49, United States Code, is amended by—

(1) redesignating subsection (h) as subsection (i);

(2) by inserting "and subsection (h)" after "subsection (g)" in subsection (i)(2) as so redesignated by paragraph (1) of this subsection; and

(3) by inserting the following new subsection (h):

49 USC 10541.

"(h) A person subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, or an officer, agent, or employee of that person, and who is required to comply with section 10921 of this title but does not so comply with respect to the transportation of hazardous wastes as defined by the Environmental Protection Agency pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Congress) shall, in any action brought by the Commission, be liable to the United States for a civil penalty not to exceed $20,000 for each violation.".

ASSISTANT ADMINISTRATOR FOR SOLID WASTE

42 USC 6911.

SEC. 307. (a) Section 2001 of the Solid Waste Disposal Act is amended by striking out "a Deputy Assistant" and inserting in lieu thereof "an Assistant".

42 USC 6911a.

(b) The Assistant Administrator of the Environmental Protection Agency appointed to head the Office of Solid Waste shall be in addition to the five Assistant Administrators of the Environmental Protection Agency provided for in section 1(d) of Reorganization Plan Numbered 3 of 1970 and the additional Assistant Administrator provided by the Toxic Substances Control Act, shall be appointed by the President by and with the advice and consent of the Senate, and shall be compensated at the rate provided for Level IV of the Executive Schedule pay rates under section 5315 of title 5, United States Code.

5 USC app; 42 USC 4321 note. 15 USC 2601 note. Effective date.

42 USC 6911 note.

(c) The amendment made by subsection (a) shall become effective ninety days after the date of the enactment of this Act.

Facility name: ______________________________

Location: ______________________________

EPA Region: ______________________________

Person(s) in charge of the facility: ______________________________

____

____

Name of Reviewer: ____________________ Date: ____________________

General description of the facility:

(For example: landfill, surface impoundment, pile, container; types of hazardous substances; location of the facility; contamination route of major concern; types of information needed for rating; agency action, etc.)

____

____

____

____

____

____

____

Scores: S_M = (S_{gw} = S_{sw} = S_a =)

S_{FE} =

S_{DC} =

FIGURE 1
HRS COVER SHEET

Ground Water Route Work Sheet					
Rating Factor	**Assigned Value (Circle One)**	**Multi-plier**	**Score**	**Max. Score**	**Ref. (Section)**
[1] Observed Release	0 45	1		45	3.1
If observed release is given a score of 45, proceed to line [4]. If observed release is given a score of 0, proceed to line [2].					
[2] Route Characteristics					3.2
Depth to Aquifer of Concern	0 1 2 3	2		6	
Net Precipitation	0 1 2 3	1		3	
Permeability of the Unsaturated Zone	0 1 2 3	1		3	
Physical State	0 1 2 3	1		3	
	Total Route Characteristics Score			15	
[3] Containment	0 1 2 3	1		3	3.3
[4] Waste Characteristics					3.4
Toxicity/Persistence	0 3 6 9 12 15 18	1		18	
Hazardous Waste Quantity	0 1 2 3 4 5 6 7 8	1		8	
	Total Waste Characteristics Score			26	
[5] Targets					3.5
Ground Water Use	0 1 2 3	3		9	
Distance to Nearest Well/Population Served	0 4 6 8 10 12 16 18 20 24 30 32 35 40	1		40	
	Total Targets Score			49	
[6] If line [1] is 45, multiply [1] x [4] x [5] If line [1] is 0, multiply [2] x [3] x [4] x [5]				57,330	
[7] Divide line [6] by 57,330 and multiply by 100		S_{gw} =			

FIGURE 2
GROUND WATER ROUTE WORK SHEET

Surface Water Route Work Sheet					
Rating Factor	Assigned Value (Circle One)	Multi-plier	Score	Max. Score	Ref. (Section)
1 Observed Release	0 45	1		45	4.1
If observed release is given a value of 45, proceed to line 4. If observed release is given a value of 0, proceed to line 2.					
2 Route Characteristics					4.2
Facility Slope and Intervening Terrain	0 1 2 3	1		3	
1-yr. 24-hr. Rainfall	0 1 2 3	1		3	
Distance to Nearest Surface Water	0 1 2 3	2		6	
Physical State	0 1 2 3	1		3	
	Total Route Characteristics Score			15	
3 Containment	0 1 2 3	1		3	4.3
4 Waste Characteristics					4.4
Toxicity/Persistence	0 3 6 9 12 15 18	1		18	
Hazardous Waste Quantity	0 1 2 3 4 5 6 7 8	1		8	
	Total Waste Characteristics Score			26	
5 Targets					4.5
Surface Water Use	0 1 2 3	3		9	
Distance to a Sensitive Environment	0 1 2 3	2		6	
Population Served/Distance to Water Intake Downstream	0 4 6 8 10 12 16 18 20 24 30 32 35 40	1		40	
	Total Targets Score			55	
6 If line 1 is 45, multiply 1 x 4 x 5 If line 1 is 0, multiply 2 x 3 x 4 x 5				64,350	
7 Divide line 6 by 64,350 and multiply by 100	S_{sw} =				

FIGURE 7
SURFACE WATER ROUTE WORK SHEET

Air Route Work Sheet					
Rating Factor	Assigned Value (Circle One)	Multi-plier	Score	Max. Score	Ref. (Section)
1 Observed Release	0 45	1		45	5.1
Date and Location:					
Sampling Protocol:					
If line 1 is 0, the S_a = 0. Enter on line 5. If line 1 is 45, then proceed to line 2.					
2 Waste Characteristics					5.2
Reactivity and Incompatibility	0 1 2 3	1		3	
Toxicity	0 1 2 3	3		9	
Hazardous Waste Quantity	0 1 2 3 4 5 6 7 8	1		8	
	Total Waste Characteristics Score			20	
3 Targets					5.3
Population Within 4-Mile Radius	0 9 12 15 18 21 24 27 30	1		30	
Distance to Sensitive Environment	0 1 2 3	2		6	
Land Use	0 1 2 3	1		3	
	Total Targets Score			39	
4 Multiply 1 x 2 x 3				35,100	
5 Divide line 4 by 35,100 and multiply by 100		S_a =			

FIGURE 9
AIR ROUTE WORK SHEET

	s	s^2
Groundwater Route Score (S_{gw})		
Surface Water Route Score (S_{sw})		
Air Route Score (S_a)		
$S_{gw}^2 + S_{sw}^2 + S_a^2$		
$\sqrt{S_{gw}^2 + S_{sw}^2 + S_a^2}$		
$\sqrt{S_{gw}^2 + S_{sw}^2 + S_a^2} / 1.73 = S_M =$		

FIGURE 10
WORKSHEET FOR COMPUTING S_M

Fire and Explosion Work Sheet					
Rating Factor	Assigned Value (Circle One)	Multiplier	Score	Max. Score	Ref. (Section)
[1] Containment	1 3	1		3	7.1
[2] Waste Characteristics					7.2
Direct Evidence	0 3	1		3	
Ignitability	0 1 2 3	1		3	
Reactivity	0 1 2 3	1		3	
Incompatibility	0 1 2 3	1		3	
Hazardous Waste Quantity	0 1 2 3 4 5 6 7 8	1		8	
	Total Waste Characteristics Score			20	
[3] Targets					7.3
Distance to Nearest Population	0 1 2 3 4 5	1		5	
Distance to Nearest Building	0 1 2 3	1		3	
Distance to Sensitive Environment	0 1 2 3	1		3	
Land Use	0 1 2 3	1		3	
Population Within 2-Mile Radius	0 1 2 3 4 5	1		5	
Buildings Within 2-Mile Radius	0 1 2 3 4 5	1		5	
	Total Targets Score			24	
[4] Multiply [1] x [2] x [3]				1,440	
[5] Divide line [4] by 1,440 and multiply by 100		S_{FE} =			

FIGURE 11
FIRE AND EXPLOSION WORK SHEET

Direct Contact Work Sheet					
Rating Factor	Assigned Value (Circle One)	Multi-plier	Score	Max. Score	Ref. (Section)
[1] Observed Incident	0 45	1		45	8.1
If line [1] is 45, proceed to line [4] If line [1] is 0, proceed to line [2]					
[2] Accessibility	0 1 2 3	1		3	8.2
[3] Containment	0 15	1		15	8.3
[4] Waste Characteristics Toxicity	0 1 2 3	5		15	8.4
[5] Targets					8.5
Population Within a 1-Mile Radius	0 1 2 3 4 5	4		20	
Distance to a Critical Habitat	0 1 2 3	4		12	
Total Targets Score				32	
[6] If line [1] is 45, multiply [1] x [4] x [5] If line [1] is 0, multiply [2] x [3] x [4] x [5]				21,600	
[7] Divide line [6] by 21,600 and multiply by 100		S_{DC} =			

FIGURE 12
DIRECT CONTACT WORK SHEET

Oregon's Hazardous Substance Response Plan
Addendum
Verbally Presented 8-27-82

You have just heard the Director summarize one of the most difficult and frustrating staff reports I've been involved in. In reflecting on why this should be the case, I've concluded that it's largely due to the fact that there is no basis in Oregon law for its existence. Rather, it's based on Federal law (CERCLA or Superfund), EPA administrative rule (National Contingency Plan) and EPA guidance (Guidance for Establishing the National Priority List - June 28, 1982). Further, EPA determines the calendar of events, including timing, and reserves unto itself the right to revise the state's work, including listing additional sites.

Because of these uncertainties, we feel obligated to inform you of recent events which may significantly effect three of the sites discussed in the staff report and one new site not previously reported on.

Gould, Inc.

The primary reason Gould ranks high is due to historical data documenting an observed air release of lead above state and federal standards. Since that data was collected a year ago, however, the plant has shut down, the equipment removed, the buildings torn down and just last week a coat of asphalt sprayed over the contaminated soil. Further, the company has done additional air monitoring to show that these actions have corrected the ambient air violations.

Assuming that EPA will allow this recent work and sampling data to be taken into consideration, it is likely that Gould's score will drop significantly. A lower score will likely result in Gould not being listed on the National Priorities List. Irrespective of what happens with the score, we intend to work with Gould to make final plans for closure of the site including determining approvable land uses if the contaminated soil remains in place.

Stauffer Chemical Company

EPA has reviewed our work on Stauffer and reached a significantly different conclusion based on a single sample of well water contaminated with DDT in the parts per trillion range. They are calling that an observed release and it nearly doubles Stauffer's score.

Our opinion is that a single test in the parts per trillion range is not statistically valid and that no practicable remedial action is possible at that level. Those conclusions formed the basis for our decision that Stauffer should not be listed at this time. We do believe, however, additional monitoring should occur (which can be required through their existing WPCF permit) and that new data reviewed during future quarterly updates.

Umatilla Army Depot

Just this week we received from the Army a summary of a consultant's report that identifies an observed release of nitrates into the groundwater below the depot. The report goes on to conclude, however, that it would take at least 100 years for the contamination to reach the site boundary and speculates that through attenuation there would be no violation of drinking water standards at that time.

EPA may use this information one of two ways. A documented release will cause the score to increase significantly thereby supporting our original judgment to list. On the other hand, an observed release on federal land that does not extend beyond federal ownership is a basis for not listing a federal facility. Rather the June 28, 1982 guidance suggests that the matter at that point is purely a federal matter and the federal government will take whatever actions are necessary using general fund appropriations rather than Superfund.

Teledyne Wah Chang

Back in 1979 when we first began the uncontrolled hazardous waste site survey, Wah Chang's file and site were reviewed. That review resulted in a closed file since the contaminant of concern was related to low level radioactive waste materials. At the time EPA maintained Superfund was intended to cleanup site containing chemical hazardous waste. As recently as August 6, 1982 when our staff report was due, we had no indication that Wah Chang's site should be evaluated via the Hazard Ranking Model. Two weeks ago, however, we were informed that EPA had evaluated Wah Chang and had a preliminary score of 51. A score of 51 obviously makes it the highest ranking site in Oregon at this time. EPA's reason for listing was based on a headquarters decision to now include sites containing radioactive material not under the jurisdiction of the NRC.

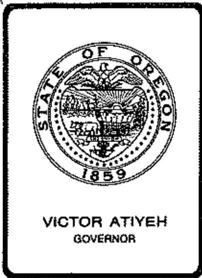
Aside from being surprised, we expressed extreme concern over the potential impact such a listing would have on the Energy Facility Siting Council's current deliberations toward a site certificate application. EPA's opinion is that that state process has no bearing on whether or not Wah Chang should be listed.

To avoid major delays or distortion of the state process under Chapter 587 (Senate Bill 108), we intend to write EPA and invite them to review the state process and complement that effort rather than duplicate it. Should they choose to do otherwise, it means Wah Chang will now have to satisfy two different government bodies with potentially different criteria.

In conclusion, the purpose of this update is not to necessarily revise the Director's recommendation, rather it's intended to verbally forewarn you, and others in the audience, that our work may not be recognized when finally acted on by EPA in late September.

It is our understanding that EPA intends to use any data generated between now and September 30, 1982 to further adjust scores before final listing in the Federal Register about September 30, 1982. I'd be happy to try and answer any questions.

RR:b
ZB1301



VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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522 SOUTHWEST 5th AVENUE, PORTLAND, OR 97204 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. L, August 27, 1982, EQC Meeting

Informational Report: Metro Waste Reduction Program

Background

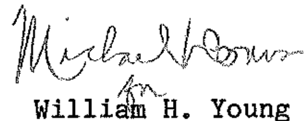
During the July 16, 1982 EQC meeting, staff presented an informational report discussing the status of waste reduction programs. Attached to the agenda item was the Department's acceptance letter of Metro's Waste Reduction Program (attached).

Testimony regarding Metro's program was given and Commission members questioned whether the Department and Metro agreed as to the level of commitment on certain items in the letter. Specific questions were raised on Items 4, 5 and 7 of the acceptance letter. The Commission asked staff to invite a Metro representative to the August 27, 1982 EQC meeting to discuss these items. The EQC asked discussion be limited to Items 4 (adequate funding), 5 (development of a data base), and 7 (substantial changes in the program requiring Department approval).

Metro has been invited to the meeting and has agreed to appear with a discussion of these items.

Director's Recommendation

It is recommended that the Commission receive testimony on this item and provide direction on subsequent action desired of the Department staff.

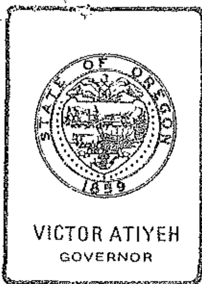


for William H. Young

Attachment I: Acceptance Letter

Robert L. Brown:b
229-5157
August 3, 1982
SB1198

DEQ-46



Attachment I
Agenda Item No. L
8/27/82 EQC Meeting

Department of Environmental Quality

522 SOUTHWEST 5TH AVE. PORTLAND, OREGON

MAILING ADDRESS: P.O. BOX 1760, PORTLAND, OREGON 97207

June 3, 1982

Rick Gustafson, Executive Officer
Metro
527 SW Hall
Portland, OR 97201

Re: SW - Metro
Waste Reduction Program

Dear Mr. Gustafson:

We have completed review of the Metropolitan Service District Waste Reduction Plan. We have also reviewed the progress of the present waste reduction program as outlined in the documentary materials which you have submitted over the last year.

Metro has the largest solid waste management responsibility of any local government in the State of Oregon. It is apparent that Metro will have not only the first but also the most comprehensive and effective waste reduction program in the state. The waste reduction plan elements and goals which you have chosen are appropriate to that responsibility. They are progressive yet attainable. If the program is implemented with high levels of Council and staff commitment and public involvement, the region's dependence on landfill disposal can be substantially reduced. The magnitude of this plan is appropriate for a regional government with the resources and role which Metro commands.

We understand from your letter of final submittal that: "It should be clearly emphasized that approval and subsequent funding for each specific project or aspect of the waste reduction plan is provided by the Metro Council through its formal decision-making process. Further commitment to each of the waste reduction program goals depends strongly upon future actions of the Council."

As submitted to the Department, the Metropolitan Service District Waste Reduction Plan consists of the document "Waste Reduction Plan" produced by Resource Conservation Consultants and approved by the Metro Council on January 8, 1981, and the supplemental materials referenced in the letter of final submittal of the Plan from Metro to the Department on April 14, 1982. The goals of this Plan, as accepted by the Department, are summarized on the attached sheet, "Metro Waste Reduction Plan Elements and Goals."

Acceptance of the Metro Waste Reduction Plan is hereby granted, subject to the following conditions and recommendations:

1. The waste reduction plan and associated waste reduction program description, including the goals and resource commitments, will, through official action of the Council, be included into the adopted Solid Waste Management Plan for the District.

2. The waste reduction program as described to the Council for adoption into the Solid Waste Management Plan will include both an immediate (next fiscal year) and a long-range strategy and

budget. Both the immediate and long-range strategies will address each of the elements of the waste reduction plan and indicate specific actions which will be taken to accomplish the waste reduction plan goals.

3. The waste reduction program to be implemented by Metro will be consistent with the plan and will be directed toward attaining the goals of that plan.

4. Adequate resources will be allocated toward implementation of the waste reduction program so as to make it consistent in level and impact with other solid waste management activities of the District.

5. Metro will develop an information base which will determine the starting point for measurement of accomplishment of the goals and objectives set forth in the plan and associated documentation.

6. Any decrease in the level of individual elements or goals outlined in the plan will be compensated by appropriate and equivalent increases in the levels of other elements or goals to maintain the overall effective level of the plan.

7. Any significant modification of the plan or deviation of the program from the direction of the plan must be approved by the Department and incorporated into the Solid Waste Management Plan by the Council.

8. All future modifications or revisions of the waste reduction plan will be based on an evaluation of the effectiveness of the present plan and program. Minor changes in the waste reduction program should be based on evaluation of the effectiveness of the present program and the projected impact of the revisions.

We look forward to working with and assisting Metro in the development of and implementation of their waste reduction program efforts. We are sure that the citizens of the region will support and participate in this program. Both this staff and the public in general continue to have the highest expectations for the success which Metro can accomplish in the area of waste reduction.

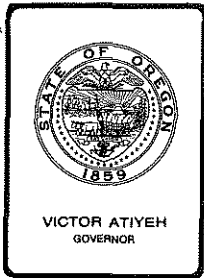
Sincerely,

Original Signed By
WILLIAM H. YOUNG
JUN 3 1982

William H. Young
Director

RLB:c
SC410

cc: DEQ, Northwest Region



VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

Mailing Address: BOX 1760, PORTLAND, OR 97207
522 SOUTHWEST 5th AVENUE, PORTLAND, OR 97204 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. M, August 27, 1982, EQC Meeting

Proposed Adoption of Amendments to Rules for Equipment Burning Salt Laden Wood Waste From Logs Stored in Salt Water, OAR 340-21-020(2), as an Amendment to the State Implementation Plan

Background and Problem Statement

Background

Oregon Administrative Rule (OAR) 340-21-020(2) exempts until January 1, 1984, equipment burning salt laden wood (from logs stored in salt water), from particulate concentration and opacity limits of 340-21, where violations are attributable only to salt. This rule required the Department to hold public hearing before July 2, 1982 "to evaluate the impact of the expiration of this exemption." Weyerhaeuser's mill on Coos Bay is the only source affected by this rule since the closure of the Georgia-Pacific Coos Bay mill. With salt laden wood, the boiler emissions reach 60+% opacity and 819 tons/yr. of particulate compared to the applicable standards of 40% opacity and 420 tons/year. The company is capable of meeting the Department's particulate emissions standards without further controls if salt emissions are exempted. After examining alternatives, the Commission authorized a hearing on a rule that would permanently exempt the salt.

Problem Statement

A public hearing was held June 16, 1982. Only one minor change in the rule was requested. The Commission is now asked to consider adoption of the amended rule, Attachment 1.

Authority for the Commission to Act is given in ORS 468.295(3) where the Commission is authorized to establish different rules for different areas of the State for different air contaminant sources.

DEQ-46

A "Statement of Need for Rulemaking" is Attachment 2.

Alternatives and Evaluation

No Action Alternative

The Commission could take no action and Weyerhaeuser would have to immediately design and construct equipment to control emissions to 0.2 gr/scf and 40% opacity by January 1, 1984 when the exemption to these rules in 340-21-020(2) expires. This alternative was listed in the April 16, 1982 Memorandum (Attachment 3). Reasons against this alternative were the minimal aesthetic and environmental benefits and the high costs. Mills in Victoria, B.C., and Shelton and Everett, Washington, which controlled similar emissions, were all at downtown locations in sensitive airsheds. There was no testimony at the June 16, 1982 hearing in favor of further control, or claiming Coos Bay to be a "sensitive" airshed, or requesting aesthetic improvement.

Adoption of Rule Amendments Authorized for Hearing

The Commission could adopt the rule amendments it authorized for hearing on April 16, 1982. Three Southwest Oregon people spoke in favor of them at the June 16, 1982 hearing. Three industry spokesmen were also in favor of them but two wanted no testing requirements left in the rule. See the Hearings Officer's Report, Attachment 4.

The emission limits for Fuel Burning Equipment, rule 340-21-020, are part of the Oregon State Implementation Plan (SIP). So any exception must also be made part of the SIP and be submitted to EPA for approval.

Rule Development Process

Since 1975, industrial firms have approached the Department for relief from rules violated solely because of salt particles in the smoke coming from fuel derived from logs stored in salt water. By 1980, only the Weyerhaeuser mill was still seeking this relief as others had permanently shut down. The exemption to the opacity and emission concentration rules were extended to January 1, 1984. Concurrently, Weyerhaeuser was required to study the cost of compliance and to measure and to model the effect of uncontrolled salt emissions. The results are summarized in Attachment 3, the Department's Agenda Item G, April 16, 1982, EQC Meeting "Request for Authorization to Hold a Public Hearing..." In summary, measured and modeled ground level impact from the salt were shown to be minimal and cost of control was identified at $4,453,000 capital cost.

After reviewing Weyerhaeuser's reports and receiving their request for a rule change to permanently exempt salt from rule limits, the Department asked the Commission to authorize a hearing for a rule change. The staff had to conduct a hearing, anyway, per rule 340-21-020(2), so after reviewing the experience of mills in Washington State and British Columbia, and comparing their situation to Weyerhaeuser's in Coos Bay, the rule

proposed for hearing was a permanent salt exemption with four mitigating conditions:

1. Total particulate emissions, including salt, are proposed to be limited;

2. The stack gas must not exceed a darkness of Ringlemann 2;

3. Weyerhaeuser must source test every other year to check the wear and the operating efficiency of the multiclones capturing particulate emissions from the boiler;

4. The general opacity and particulate concentration requirements for boilers are still applicable to the non-salt portion of the exhaust gases.

Testimony at the hearing in Coos Bay on June 16, 1982 generally supported the Department's rule change as authorized for hearing. The Weyerhaeuser spokesman and one industrial spokesman objected to the testing requirement, Condition 3 above.

The Proposed Rule

The rule amendments proposed for adoption today make an exemption permanent, which formerly expired on January 1, 1984. It limits the total particulate emitted, including the salt, to no more than 0.6 gr/scf. It adds a requirement to test the stack for particulate every other year. See Attachment 1.

Testimony at the hearing objected to the every-other-year testing. The Department believes the infrequent testing is warranted for this large source of emissions and in consideration of past history of control system deterioration. Erosion and corrosion on the multiclones presently installed to collect particulate are caused by salt, ash, and sand in the flue gas. The present margin of compliance is not great; and other mills have had salt build-up problems in multiclones.

Summation

1. Oregon Administrative Rule 340-21-020(2) required the Department to hold a hearing by July 1, 1982 to evaluate the impact of the boiler salt emission exemption rule, scheduled to expire on January 1, 1984.

2. Rule 340-21-020(2) required Weyerhaeuser to do two studies. The Weyerhaeuser-Coos Bay Ambient Salt Study concludes that the 550 T/yr. of salt emitted from the Weyerhaeuser stack is pretty well dispersed and it cannot be distinguished from the much larger quantities of salt entering the area from ocean spray. The Weyerhaeuser Economic Study demonstrated that installing an electroscrubber or equivalent device to capture enough salt to meet 0.2 gr/scf and 40% opacity would involve considerable expense (over $4 million initial capital cost and

over $100,000 annual operating cost). Also, the captured salt would pose a disposal problem.

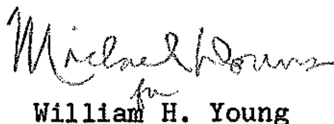
3. Other mills in the State of Washington and Province of British Columbia that have removed salt from their boiler flue gas have done so because of the proximity of those mills to centers of large populations and/or the tourist trade. (Salt laden fuels tend to cause heavy white plumes which are more objectionable at some locations).

4. The June 16, 1982 public hearing resulted in testimony supporting the proposed rule. The Weyerhaeuser salt plume at Coos Bay neither causes nor contributes to ambient air violations and has not resulted in a single complaint and is not in a sensitive area. Therefore, the high cost of salt emission control does not appear justified.

5. Periodic testing of the stack should be required because this is a large source of emissions and because of the erosion and corrosion of salt, ash, and sand on the multiclones installed to collect particulate. The present margin of compliance is not great; and other mills have had salt build-up problems in multiclones, resulting in deterioration of collector efficiency.

Director's Recommendation

Based on the Summation, it is recommended that the Commission adopt amendments to OAR 340-21-020(2) (Attachment 1) concerning boilers out of compliance because of salt and instruct the Department to submit the amendments to EPA as a change to the State Implementation Plan.



William H. Young

Attachments:
1. Proposed Rules Change in OAR 340-21-020(2)
2. Statement of Need for Rulemaking
3. EQC Agenda Item No. G, April 16, 1982, EQC Meeting
4. Hearing Officer's Report

J.F. Kowalczyk:a
(503) 229-6459
July 29, 1982
AA2403 (1)

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 grains per standard cubic foot for existing sources.

(b)0.1 grains per standard cubic foot for new sources.

(2)(a) For sources burning salt laden wood waste on July 1, [1980] 1981, 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 subsection (1)(a) or (b) of this rule and rule 340-21-015 [until January 1, 1984]. In no case shall sources burning salt laden woodwaste exceed 0.6 grains per standard cubic foot. Sources which utilize this exemption, to demonstrate compliance otherwise with subsection (1)(a) or (b) of this rule, shall:

(A) Not exceed a darkness of Ringlemann 2 from the boiler stacks for more than 3 minutes in any one hour.

(B) [By no later than January 1, 1982] Submit the results of a particulate emissions source test of the boiler stacks bi-annually.

[(C) By no later than January 1, 1982 submit a report on the cost and feasibility of possible control strategies to meet subsection (1)(a) of this rule and the environmental impact of the salt emissions on the airshed.

(b) 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.]

STATEMENT OF NEED FOR RULEMAKING

Pursuant to ORS 183.335(2), this statement provides information on the intended action to amend a rule.

Legal Authority

The statutory authority is ORS 468.295(3) where the Commission is authorized to establish different rules for different areas of the state.

Need For The Rule

Weyerhaeuser reports, listed below, and Department review of the situation, indicate that the salt impacts from the boilers are small in comparison to natural sea salt impacts. The Coos Bay airshed has no air quality ambient violations. While the area caters to tourists, the industrial area around the mill is recognized as heavy-industrial zoned, and neither the company's file nor recent hearings have received any complaints about the heavy white opacity of Weyerhaeuser's stack. The Department has visited out-of-state mills where the salt is being captured, and Weyerhaeuser has estimated a capture cost for this stack; the concensus is that the cost and corrosion invovled are not worth the aesthetic and minimal environmental benefit. Therefore, the Department recognizes a need to have the Commission consider converting a temorary rule 340-21-020(2), expiration date Janaury 1, 1984, to a permanent exemption.

Principal Documents Relied Upon

1. Agenda Item N, January 30, 1981, EQC Meeting "Proposed Adoption of Modified Rules for Hogged Fuel Boilers Utilizing Salt Laden Fuel, OAR 340-21-020(2)".

2. "Coos Bay Ambient Salt (Particulate) Study", April 1980 Through May 1981, C.E. Ward and A.E. Seip, Weyerhaeuser, September 1, 1981.

3. Technical Assessment of Boiler Emission Collection Options for Sub-Micron Particles From Salt Water-Stored Wood Fuel, North Bend, OR, Mill, James L. Wooten, Weyerhaeuser Corporate Engineering, November 1981.

4. Weyerhaeuser letter December 22, 1981 to DEQ requesting permanent exemption of their Coos Bay salt plume from Oregon Administrative Rules.

5. Weyerhaeuser Stack Test December 8, 9, 1981, at North Bend, Oregon, Project No. 047-4206-81-03, A.E. Seip, Janaury 26, 1982.

6. Agenda Item No. G, April 16, 1982, EQC Meeting "Request for Authorization to Hold a Public Hearing on Proposed Revisions to the State Air Quality Implementation Plan for: Equipment Burning Salt-Laden Woodwaste From Logs Stored in Salt Water, OAR 340-21-020(2)".

7. EPA letter May 26, 1982, George A. Abel to DEQ reviewing conditions for approval of a possible salt exemption for Weyerhaeuser's Coos Bay Boilers.

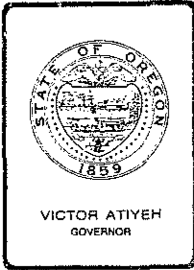
Fiscal and Economic Impacts On Small Business and Others

Report 3 above quoted a capital cost of $4,453,000 and an annual operating cost of $124,000 for an electroscrubber filter ES 250-6 to bring the stack into compliance (catch the salt). The proposed rule change would relieve a large business of this cost, and not affect other mills in Oregon as no others burn wood waste from logs stored in salt water. Small contractors, and perhaps one maintenance man per year at the Weyerhaeuser mill site, could be deprived of work (not be employed) as a result of the proposed exemption, if the control equipment to capture the salt is not installed and operated.

Land Use Compatability

Were Weyerhaeuser required to catch the 550 tons per year of salt and 269 tons per year of ash and char, some land might have to be degraded as the landfill to accept this worthless material. As long as the salt is dispersed by the tall stack, the heavy rains of the region will eventually return it to the sea, through leaching, but no land would be used for land-filling the salt-ash-char being emitted.

AA1690.S (1)



VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

Mailing Address: BOX 1760, PORTLAND, OR 97207
522 SOUTHWEST 5th AVENUE, PORTLAND, OR 97204 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. G(3), April 16, 1982, EQC Meeting

Request for Authorization to Conduct a Public Hearing on Revising the State Implementation Plan Regarding Rules for Equipment Burning Salt Laden Wood Waste from Logs Stored in Salt Water, OAR 340-21-020(2)

Background

Oregon Administrative Rule (OAR) 340-21-020(2) exempts equipment burning salt laden wood (from logs stored in salt water), from particulate concentration and opacity limits of 340-21, where violations are attributable only to salt, until January 1, 1984. This rule requires the Department to hold public hearing before July 2, 1982 "to evaluate the impact of the expiration of this exemption." Weyerhaeuser's mill on Coos Bay is the only source affected by this rule. With salt laden wood, the boiler emissions reach 60+% opacity and 819 tons/yr. of particulate compared to the applicable standards of 40% opacity and 420 tons/year. The company is capable of meeting the Department's particulate emissions standards without further controls if salt emissions are exempted.

Problem Statement

A public hearing needs to be held to meet the rule requirement. Also, Weyerhaeuser's letter of December 22, 1981 asked the Department (and the Commission) to amend the rules to permanently exempt salt, based on their completed monitoring and economic studies and finally an overall particulate emissions limit, including salt, must be established in the rule in order to satisfy EPA.

Authority for the Commission To Act is given in ORS 468.295(3) where the Commission is authorized to establish different rules for different areas of the State for different air contaminant sources.

A "Statement of Need for Rulemaking" is attached to the Public Hearing Notice (Attachment 2).

Evaluation of Weyerhaeuser Reports

Rule 340-21-020(2)(a)(C) required Weyerhaeuser to submit two reports covering an ambient air analysis and an economic evaluation on control options. The Weyerhaeuser reports, and the staff review, indicate that the ambient salt impacts from the boilers are small in comparison to natural sea salt impacts. The Coos Bay airshed has been demonstrated to have no air quality ambient violations. While the coastal area caters to tourists, the industrial area around the mill

is recognized as zoned for heavy-industrial use. Neither the company's file nor recent hearings have received any complaints about the heavy white opacity of Weyerhaeuser's plume. The Department staff has visited mills in Washington and British Columbia where salt from wood-fired boilers is being effectively captured. Weyerhaeuser has estimated control cost for their stack based on control equipment similar to the installation in Washington and British Columbia. Their view is that the costs involved are not worth the minimal environmental benefit, and they have requested a permanent exemption for salt emissions. The only other alternative to further control or exemption is to dry deck logs. Since the mill is designed to handle logs transported to the site by water and since land area for dry decking is not adequate, this alternative used by other mills, is not feasible at the Weyerhaeuser site. Therefore, the Department recognizes a need to have the Commission consider converting a temporary exemption in rule 340-21-020(2), with an expiration date of January 1, 1984, to a permanent exemption.

Evaluation of Baghouse Collecting Salt Emissions

Simpson Timber in Shelton, Washington, has had two baghouses cleaning the salt (and char and ash) from hogged-fuel boilers' flue gas for over six years. The maintenance costs are on the order of two extra men. The baghouses are removed from service three times a year for changing the broken bags.

Scott Paper in Everett, Washington, has one huge baghouse to control emissions from their powerhouse which contains five boilers. The five individual boilers each have their own multiclones. The boilers now burn a mixture of hogged-fuel, 5 - 20% chipped tires, sludge and knots, and oil. Formerly, the hogged-fuel was mostly from logs stored in salt water, so the baghouse was installed to meet a 20% opacity rule. The baghouse was tested emitting 0.02 gr/dscf of TSP (front and back half), including the salt, while it was achieving less than 20% opacity.

Weyerhaeuser's November, 1981 study estimated an installed capital cost of $5,864,000 and an annual maintenance and operating cost of $260,000 for a baghouse for their mill on Coos Bay similar to the ones installed at Shelton and Everett, Washington.

Evaluation of Rock Scrubber Collecting Salt Emissions

B. C. Forest Products in Victoria, British Columbia, has had a dry rock scrubber cleaning the salt (and char and ash) from hogged-fuel boilers' flue gas for five years. The mill redesigned the scrubbers to make them work without plugging. The multiclones ahead of the scrubbers, on one boiler, are still cleaned of salt buildup weekly.

Weyerhaeuser's November, 1981 study estimated an installed capital cost of $4,453,000 and an annual maintenance and operating cost of $136,000 for a rock scrubber similar to the Victoria installation with an added 20,000 volt electric charging element added to it, for their mill on Coos Bay.

Alternatives

1. No Change in Rule, Make Weyerhaeuser Plan to Capture Most of the Salt by January 1, 1984.

Reasons For:

Mills at Shelton and Everett, Washington, and at Victoria, British Columbia, have not been granted exemptions from rules because of sea salt in flue gas. They have developed methods of controlling the air pollution, and will continue meeting those rules equivalent to what Weyerhaeuser would have to meet at Coos Bay, 40% opacity and 0.20 gr/dscf TSP (front and back half) corrected to 12% CO_2.

Reasons Against:

There are minimal aesthetic and environmental benefits to be gained at Coos Bay or downwind in the forests of southwest Oregon, from having one company spend several million dollars once and about a hundred thousand annually to capture salt, and some char and wood ash, which the installed set of multiclones are presently not capturing. The mills in Victoria, Shelton, and Everett were all at downtown locations in sensitive airsheds which necessitated and justified the control cost.

2. Extend the Rule Exemption from January 1, 1984 to a Longer Period, to January 1, 1987.

Reasons For:

Technology may improve and perhaps electrostatic precipitators will be developed to solve the problem more economically or the desire to burn other supplemential fuels like coal, garbage or tires, might justify the economics for adding higher efficienty controls.

Reasons Against:

The Department staff has been rehashing this problem since 1975 and Weyerhaeuser desires a final decision once and for all. Certainly, Weyerhaeuser's ability to pay for this electroscrubber had never been in doubt but it's still a lot of money for capturing 550 tons per year of salt where there is no demonstrated need to do so. No ambient standards are being violated and the staff has not found any complaint about emissions from Weyerhaeuser's stack through two public hearings and five years of following this case.

3. Make the Exemption for Salt Permanent.

Reasons for:

There is only one stack at one mill in Oregon that now needs this exemption and is applying for it. The environmental benefits of capturing the salt now going out the stack seem small to non-existant in comparison to the costs of capturing it. The proposed rule exempting Weyerhaeuser's mill from the statewide opacity and particulate concentration rules has four features which would protect the Coos Bay area from excessive air pollution: (A) total particulate emissions, including salt, are proposed to be limited; (B) the stack gas must not exceed a darkness of Ringlemann 2; (C) Weyerhaeuser must

source test every other year to check the wear and the operating efficiency of the multiclones; (D) the general opacity and grain loading requirements for boilers are still applicable to the non-salt portion of the exhaust gases.

Reasons Against:

The firm is financially and technically capable of meeting the statewide rule, as the cost is known and the technology demonstrated at three other mills in Shelton and Everett, Washington, and Victoria, British Columbia. The Coos Bay coast nearby is known for the tourist trade. Highway 101 which passes within several hundred feet of this mill's stack is the area's main artery for tourists. While the area around the mill is dedicated to heavy industry, the mill stack is so high that its white plume can be seen for miles.

Evaluation of Revising the State Implementation Plan

EPA has accepted rule 340-21-020(2)'s temporary exemptions from statewide opacity and particulate concentration rules because of sea salt only as expressed in Weyerhaeuser's Air Contaminant Discharge Permit. The company has completed studies which show that meeting the Department's regular particulate emission limits while burning salt-laden fuel would be very expensive with very little environmental benefits.

The staff is requesting authorization to hold a hearing to consider amendments to the State Implementation Plan to make the exemption permanent.

Summation

1. Oregon Administrative Rule 340-21-020(2) requires the Department to hold a hearing by July 1, 1982 to evaluate the impact of the boiler salt emission exemption rule expiring on January 1, 1984.

2. The Weyerhaeuser - Coos Bay Ambient Salt Study concludes that the 550 T/yr. of salt emitted from the Weyerhaeuser stack is pretty well dispersed and it can hardly be distinguished from the much larger quantities of salt entering the area from ocean spray.

3. The Weyerhaeuser Economic Study demonstrated that installing an electro-scrubber or equivalent device to capture enough salt to meet 0.2 gr/scf and 40% opacity would involve considerable expense and corrosion (about 1/2 million capital cost and over $100,000 annual operating cost). Then the captured salt would pose a disposal problem.

4. Other mills in the State of Washington and Province of British Columbia have removed salt from their boiler flue gas because of the proximity of those mills to centers of large populations and/or the tourist trade.

5. The Weyerhaeuser salt plume at Coos Bay neither causes nor contributes to ambient air violations and has not resulted in a single complaint and is not

in a sensitive area. Therefore, the high cost of salt emission control does not appear justified.

6. A hearing should be authorized to take testimony on a rule to permanently exempt Weyerhaeuser from removing salt from the flue gas of their mill stack on Coos Bay and to amend the State Implementation Plan.

Director's Recommendation

Based on the Summation, it is recommended that the Commission authorize a public hearing to revise OAR 340-21-020(2) concerning boilers out of compliance because of salt and to consider the proposed amended rules for adoption as a revision to the State Implementation Plan.

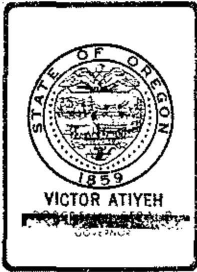
Bill

William H. Young

Attachments:

1. Proposed Rules Change in OAR 340-21-020(2)
2. Notice of Public Hearing and Statement of Need

JFK:ahe
(503) 229-6459
March 24, 1982



Environmental Quality Commission

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

To: Environmental Quality Commission

From: Gary Grimes, Appointed Hearings Officer

Subject: Public Hearing Report on Revising the State Implementation Plan Regarding Rules for Equipment Burning Salt-Laden Wood Waste from Logs Stored in Salt Water, OAR 340-21-020(2)

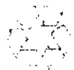
Summary of Procedure

Pursuant to notice, a public hearing was convened at the Neighborhood Facility Building in Coos Bay, Oregon at 3:00 p.m. on June 16, 1982. The purpose of the hearing was to receive public comment on proposed changes to OAR 340-21-020(2). Three (3) persons testified in person and written comments were received from three (3) additional parties. All written testimony is attached as a part of this record. The hearings record was held open through June 26, 1982 to allow for the submission of written testimony.

Summary of Testimony

Frank Brazell, President of the Bay Area Chamber of Commerce, questioned the need for further eliminating salt emissions from the Weyerhaeuser plant in North Bend and the economic consequences of requiring controls to remove salt in order to meet an emission standard. Salt in the air, he claimed, is a part of the coastal environment. Mr. Brazell finds no visual or aesthetic problems associated with the white plume from Weyerhaeuser's stack and expressed appreciation over being able to view a stack's plume in these economic times.

Ted Weintraub, small business, whose business is located approximately 1/4 mile from Weyerhaeuser's plant site, expressed his opinion that there would be no real air quality benefit gained from requiring Weyerhaeuser to add salt removing emission controls to its boiler stack. Mr. Weintraub referred to studies done by Weyerhaeuser which revealed that ambient air salt concentrations were greater on the North Spit than in the corridor predominantly downwind from Weyerhaeuser's stack. Mr. Weintraub also expressed his belief that the costs of control were excessive and unwarranted for the benefits to be gained.



Dan Weybright, plant engineer for the Weyerhaeuser North Bend facility, read a prepared statement into the record (copy attached). Mr. Weybright referred to the study, completed by Weyerhaeuser, on the impact of salt emissions from Weyerhaeuser's boilers. Weyerhaeuser claims that the studies they conducted and information that they submitted to the Department clearly justifies the exemption from both an environmental and a cost standpoint.

Mr. Weybright further presented cost estimates for two systems to control salt emissions that ranged from $5,900,000 to $4,500,000 with annual operating costs at $260,000 and $140,000 respectively. "Weyerhaueser Company fully supports the salt exemption".

However, Weyerhaeuser Company questions the value of and the need for biennial source testing as contained in the proposed salt exemption rule. Weyerhaeuser requests the Environmental Quality Commission adopt the salt exemption as proposed, deleting the biennial source test requirement.

There being no further public testimony, the public hearing was closed with the record held open for 10 days to receive written testimony. Written testimony submitted is condensed in the following portion of this report and attached in full as part of the record.

Andre Caron, Regional Manager of the National Council of the Paper Industry for Air and Stream Improvement, Inc., submitted testimony in favor of exempting sea salt from wood residue fired boiler emissions. Mr. Caron cited the substantial costs of control, the natural occurrence of sea salt in the air, and the potential disposal p roblem that would be created by salt capture as reasons for exempting the salt from Weyerhaueser's emissions.

Thomas Donaca, General Counsel, Associated Oregon Industries, submitted testimony supporting the salt emission exemption as proposed. Mr. Donaca cited the insignificant environmental benefit that would be gained through such a major capital investment and the current non-measurable impact of the Weyerhaeuser salt emissions on the air shed as reasons for the exemption.

Mr. Donaca questioned the benefits that would be gained from requiring biennial compliance source testing and suggested the Department consider deleting this provision from the regulations.

Ed Taylor, Junction City, Oregon, submitted written testimony supporting the exemption of salt emissions from Weyerhaeuser's boiler stack.

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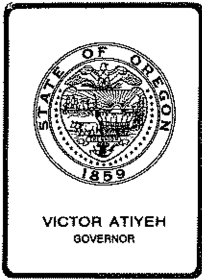


Environmental Quality Commission

Mailing Address: BOX 1760, PORTLAND, OR 97207
522 SOUTHWEST 5th AVENUE, PORTLAND, OR 97204 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. N , August 27, 1982, EQC Meeting

Proposed Adoption of Amendments to Rules Governing On-Site Sewage Disposal; Fees for Multnomah County, OAR 340-72-070, and Fees for Jackson County, OAR 340-72-080

Background and Problem Statement

ORS 454.745(4) provides that the Commission at the request of the Director or any Contract County may by rule increase fees above the maximum levels established in Subsection (1) of ORS 454.745. Fee increases permitted by the Commission shall be based upon actual costs for efficiently conducted minimum services as developed by the Director or Contract County. In addition, ORS 454.745(4) provides that a Contract County, with approval of the Commission, may adopt fee schedules for services related to this program that are not specifically listed in the statute.

Jackson County has requested that some of the County's fees be increased above the maximum now established in ORS 454.745. With increasing program costs, the county feels that an increase is necessary in order to maintain an adequate level of service and to make their program more self-supporting. Jackson County has developed fee information upon which the proposal is based. That information is contained in Attachment "A". Multnomah County has requested a rule amendment that would provide for a double fee where work is commenced on a system without first obtaining the proper permit (Attachment "B"). There is precedent for double fees in this situation. The Department of Commerce rules provide for double fees where building and plumbing permits are not obtained prior to start of work.

At its July 16, 1982 meeting, the Commission authorized public hearings to take testimony on the question of amending the on-site sewage disposal fee schedule for Multnomah County, and a new fee schedule for the on-site sewage disposal program in Jackson County. Notice of public hearing was provided by publication of notice in the Secretary of State's Bulletin.

Public hearings were held in Medford and Portland on August 2, 1982. The hearing officers' reports are attached (Attachment "C").

Alternatives and Evaluation

Alternatives are:

1. Continue fees for Jackson County at the present maximums established in ORS 454.745.

2. Increase maximum fees above present levels as requested by Jackson County.

3. Deny Multnomah County's request for a double fee rule.

4. Approve Multnomah County's request for a double fee rule.

In evaluating the two alternatives for Jackson County, the second alternative appears more appropriate. Program costs have increased since the present fees were established. Cost increases are a result of numerous inspection visits required for alternative system construction control. Also, Jackson County is experiencing a fiscal crisis brought on by a depressed local economy and reductions in O & C timber receipts. This has forced a move towards greater fee support for this and other county programs. The proposed fee schedule would provide about ninety-six (96) percent of the program costs during an average year.

Multnomah County believes that the requirement of a double permit fee for failure to obtain proper permits, prior to commencing work on a system, will deter such practices and avoid the time and expense for legal abatement of such conduct.

Summation

1. The Commission may by rule establish fees for a Contract County or increase maximum on-site fees established in ORS 454.745 at the request of the Director or any Contract County.

2. Jackson County has requested that some of the maximum fee levels established in ORS 454.745 be increased for that county.

3. Multnomah County has requested establishment of a double permit fee for failure to obtain a permit prior to commencing work on a system.

4. The Commission authorized public hearings be held, at the July 16, 1982 EQC meeting

5. Public hearings were held in Medford and Portland on August 2, 1982.

Director's Recommendation

Based upon the summation, it is recommended that the Commission adopt proposed OAR 340-72-080, the schedule of fees to be charged by Jackson County, and adopt the proposed amendment to the Multnomah County fee schedule, OAR 340-72-070(14)

William H. Young

Attachments: 6

"A" Jackson County's Analysis of Subsurface Fees
"B" Multnomah County Memorandum Requesting EQC Action
"C" Hearing Officers' Reports
"D" Statement of Need
"E" Proposed Rule for Jackson County
"F" Proposed Rule for Multnomah County

Sherman O. Olson, Jr.
229-6443
July 30, 1982
XL1829

ATTACHMENT "A"

June 11, 1982

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
JUN 14 1982
OFFICE OF THE DIRECTOR

Environmental Quality Commission
c/o William H. Young, Director
Department of Environmental Quality
P. O. Box 1760
Portland OR 97207

RE: Proposed Fee Increases for the Jackson County On-Site Sewage Disposal System Program

Dear Mr. Young:

In accordance with ORS 454.745 and OAR 340-71-140, I am submitting for EQC consideration a proposed fee schedule for the Jackson County On-Site Sewage Disposal Program. Commission review will be required because the proposed fees, in many cases, exceed the maximums presently established by the EQC. The intent of this new fee schedule is to bring the Jackson County septic program closer to a self-supporting position.

Jackson County assumed responsibility for the septic program in 1974. Since that time, the costs of running the program have been offset by a combination of income from application fees and contributions from the county general fund. Until recently, general fund monies have provided approximately 50 percent of the Sanitation Division budget, exclusive of general administrative costs. This degree of county subsidy resulted from a belief by the Board of Commissioners that lower fees would encourage voluntary compliance with the septic system regulations. They also feel the county as a whole benefits from a properly conducted septic program in such areas as improved public health, enhanced water quality, and the prevention and abatement of nuisances. Currently, however, Jackson County is experiencing a fiscal crisis brought on by a depressed local economy and severe reductions in O & C timber receipts. This has forced a move toward greater fee support for this and many other county programs. Responding to this problem, the Board of Commissioners adopted, in November, 1981, a fee schedule designed to offset about 75 percent of the Sanitation Division budget, again, exclusive of general administrative costs. The proposed fee increases outlined herein would provide about 96 percent fee support of the division budget during an average year.

RECEIVED
Water Quality Division
Dept. of Environmental Quality

As in many other areas of Oregon, Jackson County is experiencing a sharp decline in building activity, particularly of single family dwellings. This had led to a similar decline in application rates for septic system services. There is every reason to believe that these trends will continue throughout the next year. As a result, there have been a series of personnel cuts in the septic system program. One field sanitarian was eliminated from the current budget and another sanitarian has been reassigned to other duties within the Planning Department. The budget for fiscal year 1982-83 includes a further cut of one field staff position. Additional staff reductions may become necessary depending upon application rates. Also, the amount of fees received will be closely monitored to ensure that fee income does not exceed costs of running the program.

The proposed fee schedule is based largely on an analysis of our program to determine the amount of staff time required to perform each service. Responding to an application typically requires time in the field (by the sanitarian) and time in the office (both by the sanitarian and by the clerical support staff). Our field sanitarians work a 40-hour week (10 hours a day, four days a week). Thus, a work year is:

52 weeks x 40 hours/ week = 2,080 hours, or
52 weeks x 4 days/week = 208 days.

However, certain deductions must be made from the above figures. Thus,

Vacation leave:	3 weeks @ 40 hours/week	= 120 hours (12 days)/year
Holidays:	9 days @ 8 hours/day	= 72 hours (9 days)/year
Sick leave:	6 days @ 10 hours/day	= 60 hours (6 days)/year
Conferences/misc. training:	3 days @ 10 hours/day	= 30 hours (3 days)/year
	Total	= 282 hours (30 days)/year

Therefore, net work days/year = 208 - 30 = 178
net work hours/year = 2,080 - 282 = 1798

Field sanitarians are assigned to office coverage on a rotating basis. This allows them to catch up on paperwork and provide technical assistance to the public after regular office hours. Sanitarians spend an average of three days per month (36 days/year) providing office coverage; the number of days each has available for field work is 178 - 36 = 142.

However, each day available for field work is not spent entirely in the field. Office hours consume two and one-half hours, coffee breaks another one-half hour, and miscellaneous activities one-half hour.

Thus,

Office hours:	2½ hours/day x 142 days	= 355 hours/year
Coffee breaks:	½ hour/day x 142 days	= 71 hours/year
Miscellaneous:	½ hour/day x 142 days	= 71 hours/year
	Total	= 497 hours/year

So, the total number of nonfield hours per year per sanitarian is

Hours not worked (vacation, sick leave, etc.)	=	282
Office coverage (36 days @ 10 hours/day)	=	360
Office hours, coffee breaks, miscellaneous	=	497
Total	=	1,139 hours

And, the number of field hours available to each sanitarian per year is

	2,080 total hours
-	1,139 nonfield hours
	941 hours/year

This shows that each sanitarian spends about 45 percent of his time in the field. To put it another way, for each hour the sanitarian works in the field, he spends 1.2 hours away from the field.

The cost of maintaining a sanitarian in the field is the sum of his or her base salary plus adjustments for nonfield time, division overhead, department overhead, and county overhead. The current average wage of a field sanitarian in Jackson County is $12.40/hour. This must be multiplied by 2.2 to compensate for nonfield time.

Division overhead includes employee benefits, secretarial and counter staff support, motor pool expenses, office supplies and equipment, postage, training, building utilities, and supervisory costs. These add up to 50.0 percent of the 1982-83 budget; multiplying the sanitarian's hourly pay by 2.0 is necessary to compensate for this overhead.

Department overhead includes administrative and clerical support, telephone service, data and word processing, certain office and postage expenses, and outlay for travel and training. These add another 14.6 percent to the costs of providing septic program services.

County overhead is for such items as general and administrative expenses, utilities, postage, data processing, centralized purchasing, and janitirial service. These increase our program costs by another 12.1 percent. If anything, department and county overhead expenses are understated since depreciation and building lease costs are not included. Therefore, a single hour of a sanitarian's time in the field costs Jackson County

Salary		Nonfield Time		Division Overhead		Department Overhead		County Overhead		
$12.40	x	2.2	x	2.0	x	1.146	x	1.121	=	$70.09

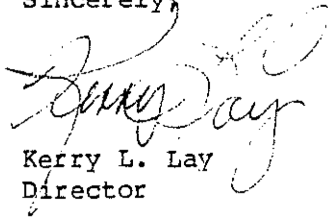
Most of the applications received by the Sanitation Division are for site evaluations, new construction permits, authorization notices, and repairs or alterations of existing systems. Together they comprise over 90 percent of the septic program workload. Following is a list of these various types of applications along with the average amount of field time required by each. Also shown is our current fee and the proposed fee.

Application	Amount of Field Time required (hrs)	Current Fee	Proposed Fee
Site Evaluation			
(including re-evaluations)	2.2	$135	$175
Preliminary Site Inspection	1.0	50	75
Alteration Permit	2.0	50	50
Repair Permit	3.0	25	40
Authorization Notice	0.8	25	40
New Construction Permit			
Standard System	1.2	50	80
Aerobic System	3.0	90	130
Capping Fill	3.0	90	130
Evapotranspiration			
Absorption (ETA)	3.0	90	130
Gray Water Waste Disposal			
Sump	1.0	50	80
Holding Tank	1.5	90	100
Pressure Distribution	3.0	90	130
Redundant	2.5	90	110
Sand Filter	3.5	130	150
Seepage Trench	1.2	50	80
Steep Slope	1.2	50	80
Tile Dewatering	3.0	90	130

The proposed fees do not correlate precisely with the amount of field time required. This is because fees for certain services (especially repair and alteration permits) are kept low to encourage applications. Also, we perform certain services which are not fee supported, such as complaint investigations, health hazard surveys, and water table investigations. The proposed fees include an adjustment factor to partially offset the costs of providing nonfee-supported services.

A complete listing of Jackson County's proposed fee schedule is attached. If you have any questions, please feel free to call me or my Supervising Sanitarian, Brad Prior, at 776-7554.

Sincerely,



Kerry L. Lay
Director

KLL:mkf
Attachment

Proposed Fee Schedule

ON-SITE SEWAGE DISPOSAL SYSTEMS	PROPOSED FEES
(a) New Site Evaluation	
(A) Single Family Dwelling:	
(i) First Lot	$175
(ii) Each Additional Lot Evaluated During Initial Visit	$160
(B) Commercial Facility System	
(i) For First 1,000 Gallons Projected Daily Sewage Flow	$175
(ii) Plus For Each 500 Gallons or Part Thereof Above 1,000 Gallons	$ 40
(b) Preliminary Site Inspection	$ 75

This fee will be credited to the site evaluation fee if application for a site evaluation on the same property is made within 90 days.

ON-SITE SEWAGE DISPOSAL SYSTEMS	PROPOSED FEES
(c) Construction Installation Permit:	
(A) For First 1,000 Gallons Projected Daily Sewage Flow:	
(i) Standard On-Site System	$ 80
(ii) Alternative System:	
Aerobic System	$130
Capping Fill	$130
Cesspool	$ 50
Evapotranspiration-Absorption	$130
Gray Water Waste Disposal Sump	$ 80
Holding Tank	$100
Pressure Distribution	$130
Redundant	$110
Sand Filter	$150
Seepage Pit	$ 50
Seepage Trench	$ 80
Steep Slope	$ 80
Tile Dewatering	$130

(B) For systems with projected daily sewage flows greater than 1,000 gallons, the construction installation permit fee shall be equal to the fee required in (c)(A), above, plus $10 for each 500 gallons or part thereof above 1,000 gallons.

Note: Fees for construction permit for systems with projected daily sewage flows greater than 5,000 gallons shall be in accordance with the fee schedule for WPCF permits.

(C) Construction-Installation Permit Renewal:

(i) If Field Visit Required . . . . $ 50

(ii) No Field Visit Required . . . . $ 10

NOTE: Renewal of a permit may be granted to the original permittee if an application for permit renewal is filed prior to the original permit expiration date.

(d) Alteration Permit . . . . $ 50

(e) Repair Permit:

(A) Single Family Dwelling . . . . $ 40

(B) Commercial Facility . . . The appropriate fee identified in (c)(A) and (B) applies.

(f) Authorization Notice:

If Field Visit Required . . . . $ 40
No Field Visit Required . . . . $ 0

(g) Annual Evaluation of Alternative System (Where Required) . . . . $ 25

(h) Annual Evaluation of Large System (2,501 to 5,000 GPD) . . . . $ 50

(i) Annual Evaluation of Temporary Mobile Home . . . . $ 25

(j) Rural Area Variance to Standard Subsurface Rules

(A) Site Evaluation $175

NOTE: In the event there is on file a site evaluation report for that parcel that is less than ninety days old, the site evaluation fee shall be waived.

(B) Construction Installation Permit . . . The appropriate fee identified in (c) applies.

(k) Sewage Disposal Service:

Pumper truck Inspection, Each Business Licensed . . . . $ 25

MULTNOMAH COUNTY OREGON

ENVIRONMENTAL SERVICES/PERMIT SECTION
2115 SE MORRISON STREET
PORTLAND, OREGON 97214

Inspection (503) 248-5272
Building 248-3047
Plumbing 248-3668
Sewage 248-3671
Right-of-Way Use 248-3582

DONALD E. CLARK
COUNTY EXECUTIVE

May 14, 1982

MEMORANDUM

TO: JACK OSBORNE, SUPERVISOR

FROM: HARDING CHINN, MULTNOMAH COUNTY SANITARIAN (HC)

SUBJECT: ADDENDUM TO MULTNOMAH COUNTY FEE SCHECULE (340-72-070)

JUSTIFICATION:

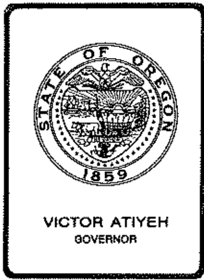
Under current rules there are no penalties involved when a person obtains his permit after construction has begun on any on-site sewage disposal system. Multnomah County believes that the requirement of a double permit fee for such abuses may deter this practice in the future and avoid the time and expense for legal abatement of such conduct.

The inclusion of a double fee penalty is consistent with both the State Building and Plumbing Administrative Rules which already have a double fee inclusion.

I submit the following rule for approval by the E.Q.C. as part of the Multnomah County Fee Schedule (340-72-070).

"Any person commencing work in violation of para (1) as described in Administrative Rule 340-71-160, if subsequently permitted to obtain a permit, shall pay double the fee fixed by this Section".

HC/bm



Environmental Quality Commission

Mailing Address: BOX 1760, PORTLAND, OR 97207
522 SOUTHWEST 5th AVENUE, PORTLAND, OR 97204 PHONE (503) 229-5696

ATTACHMENT "C"

MEMORANDUM

To: Environmental Quality Commission

From: Sherman O. Olson, Jr., Hearing Officer

Subject: Report on Public Hearing held on August 2, 1982, in Portland, on the question of establishing a fee schedule for on-site sewage disposal permits and activities for Jackson County, Proposed OAR 340-72-080; and amending OAR 340-72-070, the fee schedule for Multnomah County.

Summary of Procedure

Pursuant to Public Notice, a public hearing was convened within the EPA Conference Room, Second Floor of the Yeon Building, 522 S.W. Fifth Ave., Portland, on August 2, 1982, at 10 a.m. The purpose of the hearing was to receive testimony on whether it is in the best interests of the public and the County to have a double fee for violation of permit requirements. The second issue was whether a proposed fee schedule for on-site activities in Jackson County reflects actual costs for efficiently conducted required program services.

Summary of Testimony

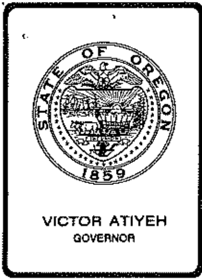
Except for the hearing officer, no one attended the hearing. No testimony was offered for consideration.

Respectfully submitted,

Sherman O. Olson, Jr.

Sherman O. Olson, Jr.
Hearing Officer

SOO:1
XL1833
August 3, 1982



Environmental Quality Commission

Mailing Address: BOX 1760, PORTLAND, OR 97207
522 SOUTHWEST 5th AVENUE, PORTLAND, OR 97204 PHONE (503) 229-5696

August 4, 1982

MEMORANDUM

To: Environmental Quality Commission

From: David H. Couch, Hearings Officer

Subject: Report on Public Hearing Held August 2, 1982 on Amendments to Rules Governing On-Site Sewage Disposal; Fees for Multomah County, OAR 340-72-070, and Fees for Jackson County, OAR 340-72-080

Summary of Procedure

Pursuant to public notice, a public hearing was convened at 10:00 a.m. on August 2, 1982 in the Second Floor Conference Room, 201 W. Main Street, Medford, Oregon. The purpose of the public hearing was to receive testimony on the question of amending rules governing on-site fees to be charged by Jackson County, 340-72-080, and amending fee rules for Multnomah County, OAR 340-72-070.

Summary of Verbal Testimony

1. Archie C. Pierce, 99 Pierce Heights, Medford, Oregon 97501. As a developer of rural properties in Jackson County, Mr. Pierce felt that due to the state of the economy, a fee increase could not be justified. Mr. Pierce was in opposition to the fee increase and suggested a fee decrease was actually indicated.

2. Bradley W.H. Prior, Sanitarian Supervisor, Jackson County Department of Planning and Development
   Historically the subsurface program in Jackson County has been fifty (50) percent fee supported. County general funds have been used to help support the program due to overall general community public health benefit. A drop in fee income and general fund money has necessitated the requested increase. A fifty (50) percent staff reduction is anticipated in the next year. Work load is down. It is hoped that staff reductions along with a fee increase will maintain a fifty (50) to seventy-five (75) percent fee support.

Summary of Written Testimony

None

Respectfully submitted,

David H. Couch
Hearings Officer

RECEIVED
AUG 9 1982
Water Quality Division
Dept. of Environmental Quality

Contains Recycled Materials

DHC:fs
encls. 1. Hearing Tape
2. Witness Registration Forms (2)
3. August 3, 1982 Article from Mail Tribune

ATTACHMENT "D"

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

In the Matter of the Adoption of Rule 340-72-080 and Amending Rule 340-72-070, Establishing a Fee Schedule for On-Site Sewage Disposal Permits and Services in Jackson and Multnomah Counties	)	Statutory Authority, Statement of Need, Principal Documents Relied Upon, and Statement of Fiscal Impact

1. Citation of Statutory Authority: ORS 454.625, which authorizes the Environmental Quality Commission to adopt rules pertaining to on-site sewage disposal and ORS 454.745 which establishes fees to be charged for on-site sewage disposal permits and services.

2. Need for Rule: Jackson County has experienced an increase in costs for providing services, issuing permits and general administration of the on-site sewage disposal program. In order to maintain the present level of service and to make the program more self-supporting, a general fee increase is necessary. The proposed fee increase will support approximately 90 percent of the on-site sewage disposal program.

   Under current rules there are no penalties when a person obtains a permit after starting construction of a sewage system, a violation of rules. Multnomah County believes that the requirement for a double permit fee for such abuses may deter this practice.

3. Documents relied upon in proposal of the rule:

   a. Letter from Kerry L. Lay, Administrator, Jackson County Department of Planning & Development to the Environmental Quality Commission, dated June 11, 1982

      The above letter is available for public inspection at Jackson County Department of Planning & Development, 32 W. Sixth St., Medford, during regular business hours, 8 a.m. to 5 p.m., Monday through Friday.

   b. Memorandum from Harding Chinn, Multnomah County Sanitarian, to Jack Osborne of the Department of Environmental Quality, dated May 14, 1982.

      The above memorandum is available for public inspection at Multnomah County Department of Environmental Services, 2115 S.E. Morrison, Portland, during the hours listed above.

4. Fiscal and Economic Impacts: Some fees are increased. The direct monetary impact will fall upon individual applicants for permits or services. A positive impact will be seen by increased County Revenues which will offset General Fund monies in the county's budget. There is no expected economic impact on small businesses.

Dated: July 15, 1982

William H. Young, Director
Department of Environmental Quality

XL1722.A

ATTACHMENT "E"

Amend OAR 340 Division 72 by adding a new rule as follows:

340-72-080 JACKSON COUNTY FEE SCHEDULE

ON-SITE SEWAGE
DISPOSAL SYSTEMS

(1) New Site Evaluation

(a) Single Family Dwelling:

(A) First Lot $175

(B) Each Additional Lot Evaluated During Initial Visit . . $160

(b) Commercial Facility System

(A) For First 1,000 Gallons Projected Daily Sewage Flow. . $175

(B) Plus For Each 500 Gallons or Part Thereof Above 1,000 Gallons. . . . . $ 40

(2) Preliminary Site Inspection . . . . $ 75

This fee will be credited to the site evaluation fee if application for a site evaluation on the same property is made within 90 days.

(3) Construction Installation Permit:

(a) For First 1,000 Gallons Projected Daily Sewage Flow:

(A) Standard On-Site System . . . . $ 80

(B) Alternative System:

Aerobic System $130
Capping Fill $130
Evapotranspiration-Absorption. $130
Gray Water Waste Disposal Sump . . . . $ 80
Holding Tank $100
Pressure Distribution. $130
Redundant $110
Sand Filter $150
Seepage Trench . . . . $ 80
Steep Slope . . . . $ 80
Tile Dewatering. $130

(b) For systems with projected daily sewage flows greater than 1,000 gallons, the construction installation permit fee shall be equal to the fee required in subsection (3)(a) of this rule, plus $10 for each 500 gallons or part thereof above 1,000 gallons.

NOTE: Fees for construction permits for systems with projected daily sewage flows greater than 5,000 gallons shall be in accordance with the fee schedule for WPCF permits.

(c) Construction-Installation Permit Renewal:

(A) If Field Visit Required . . . . $ 50

(B) No Field Visit Required . . . . $ 10

NOTE: Renewal of a permit may be granted to the original permittee if an application for permit renewal is filed prior to the original permit expiration date.

(4) Alteration Permit . . . . $ 50

(5) Repair Permit:

(a) Single Family Dwelling . . . . $ 40

(b) Commercial Facility . . . The appropriate fee identified in subsections (3)(a) and (b) of this rule apply.

(6) Authorization Notice:

If Field Visit Required . . . . $ 40
No Field Visit Required . . . . $ 0

(7) Annual Evaluation of Alternative System (Where Required) . . . . $ 25

(8) Annual Evaluation of Large System (2,501 to 5,000 GPD) . . . . . $ 50

(9) Annual Evaluation of Temporary Mobile Home . . . . $ 25

(10) Rural Area Variance to Standard Subsurface Rules

(a) Site Evaluation $175

NOTE: In the event there is on file a site evaluation report for that parcel that is less than ninety days old, the site evaluation fee shall be waived.

(b) Construction Installation Permit . . . The appropriate fee identified in Section (3) of this rule applies.

(11) Sewage Disposal Service:

Pumper Truck Inspection, Each Business Licensed . . . . $ 25

XL1722.B
6/18/82

ATTACHMENT "F"

PROPOSED RULE AMENDMENT

Amend OAR 340-72-070 by adding a new section (14) to read as follows:

(14) Any person commencing work without having first been issued a permit, as required in section 340-71-160(1), if subsequently permitted to obtain a permit, shall pay double the fee established in this rule.

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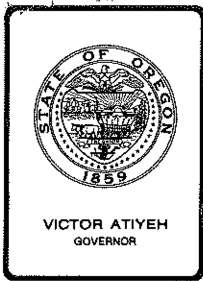


VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

Mailing Address: BOX 1760, PORTLAND, OR 97207
522 SOUTHWEST 5th AVENUE, PORTLAND, OR 97204 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. O, October 15, 1982, EQC Meeting

ADDENDUM: Additional Testimony Concerning Proposed Adoption of Revisions to the Emission Standards for Hazardous Air Contaminants

Max C. Bader,M.D., Health Officer and Deputy Administrator of the Health Division of Oregon's Human Resources Department, submitted comments on the proposed asbestos rules too late to be considered in the Hearing Officer's Report. Comments are attached.

Comment on Additional Testimony

Dr. Bader sees little real benefit from omitting the EPA exemption of small demolition and renovation jobs. With his testimony, Dr. Bader mailed a June 17, 1982 article, "The Pathogenesis of Asbestos-Associated Disease," which references Selikoff and Lee's "Asbestos and Disease." In reviewing "Asbestos and Disease", the Department concluded that even small amounts of friable asbestos are capable of causing cancer. Even though there may not be many people exposed to small demolition/renovation jobs, the Department believes that the rule to prevent these exposures is worthwhile.

Dr. Bader comments that the new rule forbidding open storage may be overly stringent. The point of the Department's proposed rule is to be able to cite a violation based on evidence that asbestos was not properly contained. The fact that a small pile or accumulation of open-stored friable asbestos is found does not necessarily mean that the problem is small. The pile could have been initially large but has mostly blown away. Being able to get corrective action without observing the act of visible asbestos emissions is considered the real reason for adding this forbidding of piles. The problem has been that there have not been enough inspectors to devote enough man-hours to wait for visible emissions to be observed. The present "no visible emissions" rule is difficult to enforce.

Director's Recommendation

The Director recommends adoption of the rules as proposed without change. Staff experience in the field indicates that the more stringent rules will aid in correcting normally encountered asbestos problems.

Bill

William H. Young

Attachment:

Dr. Bader Memorandum

JFKowalczyk:ahe
(503) 229-6459
October 14, 1982

STATE OF OREGON

INTEROFFICE MEMO

...DIVISION
SEP 0? 1982

TO: Office of Community Health Services

DATE: September 7, 1982

FROM: Max Bader, M.D. *Max Bader MD*

SUBJECT: Comments on DEQ Proposed Rule Changes Concerning Emission Standards for Hazardous Air Contaminants (including Asbestos) and New Source Performance Standards

The proposed DEQ rule changes concerning hazardous air contaminants are generally straightforward and merely bring Oregon into compliance with EPA. The rules are more stringent for asbestos than is required by EPA. I see little real benefit to be gained from adopting this more stringent position. Small demolition and renovation jobs are not apt to greatly contaminate the ambient air. It is the workers who are at risk and they are already covered by OSHA rules.

The second deviation from EPA relates to open storage of asbestos or asbestos-containing waste material. This may be overly stringent. The intent to prevent significant dissemination of asbestos particles into the air and to avoid creation of a nuisance is reasonable. However, considering the fact that most asbestos being consumed in the U.S. today goes into cement pipe, flooring and roofing products, and friction products, I wonder if the rule is not a bit too rigid. Perhaps it should more clearly apply to situations where significant amounts of small asbestos fibers are released from the waste material.

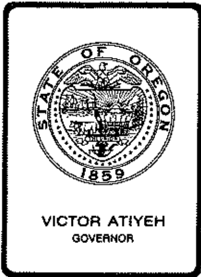
The risk to the general public's health from asbestos is extremely small, especially in view of the phase-out of amphiboles types of asbestos. It is the occupational exposures, especially of workers who are smokers, which constitute the real risk situations.

MB:ph

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
OCT 12 1982
AIR QUALITY CONTROL

Contains Recycled Materials

81-125-1387



VICTOR ATIYEH
GOVERNOR

Department of Environmental Quality

522 S.W. 5th AVENUE, BOX 1760, PORTLAND, OREGON 97207

September 24, 1982

MEMORANDUM

To: Environmental Quality Commission

From: Director (Bill)

Subject: Agenda Item O, October 15, 1982, EQC Meeting

Proposed Adoption of Revisions to the Emission Standards for Hazardous Air Contaminants, OAR 340-25-450 to 480, to Make the Department's Rules Pertaining to Control of Asbestos and Mercury Consistent with the Federal Rules; and to Amend Standards of Performance for New Stationary Sources, OAR 340-25-505 to 645, to Include the Federal Rule for New Phosphate Rock Plants; and to Amend the State Implementation Plan.

USEPA Administrator, Ms. Anne Gorsuch, has instructed the EPA Regional Administrators to speed delegation of National Environmental Standards for Hazardous Air Pollutants (NESHAPS) and New Source Performance Standards (NSPS) to the States.

Accordingly, Region X EPA has prepared notices and taken other administrative actions to delegate NESHAPS for Asbestos and Mercury to DEQ based on the understanding that the EQC was scheduled to adopt revised rules at its October meeting.

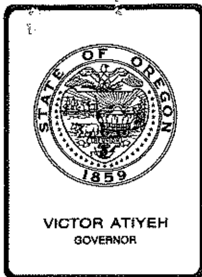
Region X EPA has specifically requested DEQ to get this item on the October EQC agenda if at all possible.

We agreed to try to accommodate EPA's request; however, to do so will require late mailing of this agenda item to the Commission.

Specifically, the Public Hearing on these proposed rules revisions is scheduled for October 5. If there is not much testimony, as is expected to be the case, the staff report probably can be completed for mailing on Friday, October 8, and should be received by you on Monday, October 11. This would give you a few days to familiarize yourselves with the proposed rules changes prior to the meeting on October 15. If the report cannot be completed in time to mail it on Friday, we will take the item off the agenda.

If you are unwilling to consider this item in this manner, please let me know so I can notify EPA and schedule it for the December meeting.

EJWeathersbee:ahe



Environmental Quality Commission

Mailing Address: BOX 1760, PORTLAND, OR 97207

522 SOUTHWEST 5th AVENUE, PORTLAND, OR 97204 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. O, October 15, 1982, EQC Meeting

Proposed Adoption of Revisions to the Emission Standards for Hazardous Air Contaminants, OAR 340-25-450 to 480, to Make the Department's Rules Pertaining to Control of Asbestos and Mercury Consistent with the Federal Rules; and to Amend Standards of Performance for New Stationary Sources, OAR 340-25-505 to 645, to Include the Federal Rule for New Phosphate Rock Plants; and to Amend the State Implementation Plan.

Background and Problem Statement

Background

The U.S. Environmental Protection Agency (EPA) began adopting National Emission Standards for Hazardous Air Pollutants (NESHAPS) in June 1973. To acquire delegation to administer these standards, the Commission adopted OAR 340-25-450 to 480, in September 1975; subsequently, the Department received delegation to administer emission standards for asbestos, beryllium, beryllium rocket motor firing, and mercury in Oregon.

EPA began adopting New Stationary Source Performance Standards (NSPS) in 1971. To acquire delegation to administer these standards, the Commission adopted OAR 340-25-505 to 705 in September 1975, and amended them in 1981. EPA delegated certain NSPS to the Department in 1976 and in 1981.

In a March 3, 1982 letter, John R. Spencer, EPA Region X Administrator, asked that the Department adopt nine federal changes to the NESHAPS asbestos rules, three changes to the NESHAPS mercury rules, and several changes to the NSPS rules. This would keep the State and Federal rules consistent, and keep delegation up to date.

As the Department prepared updates of the federal asbestos rule, several problems were uncovered dealing with enforceability of the rules and effectiveness of the disposal requirements. The rule, which the Commission authorized on August 27, 1982 for a hearing, had proposed changes which would make the Oregon rule more stringent than the existing federal rule, to deal with these problems.

The hearing authorized by the Commission was held October 5, 1982. The Hearing Officer's report is Attachment 3 to this Memorandum.

Problem

The decision before the Commission is whether to take no action, which would mean pertinent Oregon rules would not be up to date with EPA's and therefore, there would be split jurisdiction on certain sources, adopt part of the proposed rule changes, or to adopt the rules changes recommended by the Director (see Attachment 1).

Authority for the Commission to act is given in Oregon Revised Statutes 468.020 and 468.295(3) where the Commission is authorized to establish emission standards for sources of air contaminants.

A "Statement of Need for Rulemaking" is Attachment 2 of this memorandum.

Proposed Rule Changes and Additions

Most of the proposed rule changes and additions are completely described in the August 27, 1982 Hearing Authorization Report, EQC Agenda Item D (Attachment 4). Minor changes were requested by seven persons who offered written hearing testimony; these changes are described in the middle of Attachment 3, the Hearing Officer's Report. The actual language of the proposed rule changes are shown in Attachment 1, where the proposed added words are underlined and the proposed deletions are [bracketed].

Changes to Rule Caused by Enforcement Problems

In December 1980, the Washington State Pollution Control Hearings Board ruled against Puget Sound Air Pollution Control Agency, setting aside violations against their asbestos rule and $1250 in civil penalties against Consumers Central Heating Co. The agency had not actually witnessed visible emissions, although the circumstantial evidence left behind in asbestos debris was incontrovertible. The agency's asbestos rule is the existing federal rule, 40 CFR 61.22(d), adopted by the Washington State Department of Ecology and the Agency by reference.

To avoid having a similar problem in Oregon, new rule 340-25-465(10)(e) was written to forbid open piles of asbestos. Testimony was received which resulted in some improvements to this rule, but no testimony was received objecting to it. During the final review, only the first sentence of the rule was retained. The remainder is considered to weaken the enforceability of the rule; it will be retained as an instruction to the field staff, but is not recommended as a rule.

In 1978, the Supreme Court ruled against EPA in Adamo v. EPA, saying that 40 CFR 61.22 was not an emission standard but a work practice, and therefore invalid.

Oregon law, ORS 468.020(1), allows adoption of "such rules and standards as it considers necessary and proper in performing the functions vested by law in the Commission". To avoid DEQ work practice requirements from being invalidated, like EPA in the Adamo v. EPA case, the words "and Procedural Requirements" are being added to the title of the State NESHAPS rules and to the title of the asbestos rule, to cover the obvious inclusion of "work practices", with emission standards. There was no testimony on these additions.

Encapsulation

The Department had believed there were other methods of encapsulating friable asbestos, rather than wetting it down in demolition, or rather than removing it in hard to get at places in renovation. Proposed rule 340-25-465(4)(b)(D) was written to allow encapsulation as an alternative to wetting or removal. There was no written testimony received on this subject. The Department has since found that added documentation on the effectiveness of encapsulating is not available yet but may soon be in the form of an ASTM report. Therefore, until an ASTM report is released with more details, 340-25-465(4)(b)(D) as proposed, should not be adopted.

Burning Beryllium in Incinerators

Rule 340-25-470(2)(d) allows incinerators to burn beryllium and/or beryllium containing waste; so does the nine-year-old federal rule 40 CFR 61.32(c). Dr. Carl H. Lawyer, M.D., testified that beryllium poisoning is so similar to sarcoidosis, which is common in Oregon, occasionally fatal, that he would like to see the rule changed to forbid even incinerators from burning beryllium and/or beryllium containing waste. The hearing officer's report reviews the unlikely chance that significant amounts of beryllium could be spread through the airsheds by incinerator exhaust gases. Other than prohibitions in air permits of known beryllium users, the Department does not think an outright prohibition against burning beryllium-containing waste in incinerators is necessary or practical to enforce.

Negative Declarations For Rules Which Are Not Needed in Oregon

There are some standards which have been issued by EPA which it is believed will never apply in Oregon because such sources will not locate here. For these standards listed below, the Department proposes to make a negative declaration to EPA, and proposes not to include them in the Oregon Administrative Rules.

Source	Rule	Date of Federal Register
Vinyl Chloride Production Plants	40 CFR 61.63 Subpart F	October 21, 1976
Primary Copper Smelters	Subpart P (40 CFR 60)	January 15, 1976 March 3, 1978
Primary Zinc Smelters	Subpart Q	January 15, 1976 March 3, 1978
Primary Lead Smelters	Subpart R	January 15, 1976 March 3, 1978
Phosphate Fertilizer Industry	Subparts T,U,V,W,X	August 6, 1975 March 3, 1978
Painting in Auto and Light Duty Truck Assembly Plants	Subpart MM	December 24, 1980
Ammonium Sulphate Manufacture	Subpart PP	November 12, 1980

State Implementation Plan

Changes in these rules are changes in the Oregon State Implementation Plan (SIP). Therefore, should the Commission approve rule changes, the Commission should also direct the Department to submit the changes to EPA for approval as SIP changes, and seek renewed delegation for administering the federal NESHAPS and NSPS rules in Oregon. EPA has reviewed the proposed rules and has indicated they are approvable.

Summation

1. EPA adopted the first New Stationary Source Performance Standards (NSPS) in 1971. More have been added since then, the most recent two in April 1982.

2. EPA adopted the first National Emission Standards for Hazardous Air Pollutants (NESHAPS) in June 1973. They added a rule for vinyl chloride in October 1976 and have amended the other NESHAPS rules.

3. To acquire delegation to administer NSPS and NESHAPS in Oregon, the Commission adopted equivalent administrative rules in September 1975, and subsequently received delegation for all sources then covered by federal rules.

4. The Commission amended the Department's NSPS rules in April 1981, adding 8 new rules. Ten other NSPS rules were not adopted for the following reasons:

Five source types were considered unlikely to locate in Oregon:

Primary Copper Smelters	Subpart P
Primary Zinc Smelters	Subpart Q
Primary Lead Smelters	Subpart R
Phosphate Fertilizer Industry, 5 Categories	Subparts T,U,V,W,X

Primary Aluminum Plant, Subpart S, was less stringent than OAR 340-25-265(1)

Lime Manufacturing, Subpart HH, had been remanded to EPA by the courts for amending.

5. In a March 3, 1982 letter, EPA requested the Department to bring its NESHAPS rules up-to-date with federal changes to asbestos and mercury NESHAPS rules, and to adopt the most recent federal NSPS changes, so delegation of these standards could be made. These changes are also changes to the State Implementation Plan (SIP).

6. Of the new NSPS that EPA has requested DEQ to adopt, the Commission should not adopt the following, as it is unlikely they will ever be built in Oregon.

Source	Rule	Date of Federal Register
Vinyl Chloride Production	Subpart F 40 CFR 61.63	October 21, 1976
Painting in Auto and Light Duty Truck Assembly Plants	Subpart MM 40 CFR 60.392	December 24, 1980
Ammonium Sulphate Manufacturers	Subpart PP 40 CFR 60.422	November 12, 1980

7. Environmental Agencies have lost two appeals of important enforcement actions of EPA's asbestos NESHAPS rule. Therefore, the Department, after careful study, is proposing improvements to the EPA asbestos rule. (These are mentioned on page 2).

8. The proposed rule changes (Attachment 1) should bring the State rules up-to-date with the federal EPA NESHAPS and NSPS rules, where needed. The regulated sources affected are:

a. Asbestos mills
b. Road surfacing with asbestos containing waste materials
c. Asphalt concrete manufacturing
d. Demoliton contractors, workers
e. Fabrication using asbestos as a raw material
f. Asbestos insulation
g. Waste disposal sites which plan to accept asbestos waste
h. Sewage treatment plants burning sludge
i. Gas turbines
j. Lead-acid battery manufacturing plants
k. Phosphate rock plants

9. Since it is not certain yet that the proposed, alternative encapsulation technique for handling asbestos is as effective as other required alternatives, it is recommended that the proposed rule, 340-25-465(4)(b)(D), not be adopted allowing encapsulation.

<u>Director's Recommendation</u>

It is recommended that the Commission adopt the attached amendments to OAR 340-25-450 to 25-700, rules on Hazardous Air Contaminants and Standards of Performance for New Stationary Sources, and to direct the Department to transmit the amended rules to EPA as amendments to the State Implementation Plan, seeking delegation from EPA for administering state rules comparable to federal rules.

William H. Young

Attachments: 1. Proposed Rules 340-25-450 to 340-25-700
2. Statement of Need for Rulemaking
3. Hearing Officer's Report
4. EQC Agenda Item No. D, August 27, 1982 Meeting

J.F. Kowalczyk:a
AA2645 (1)
229-6459
October 7, 1982

Emission Standards <u>and Procedural Requirements</u>
For Hazardous Air Contaminants

Policy

340-25-450 The Commission finds and declares that certain air contaminants for which there is no ambient air standard may cause or contribute to an identifiable and significant increase in mortality or to an increase in serious irreversible or incapacitating reversible illness, and are therefore considered to be hazardous air contaminants. Air contaminants currently considered to be in this category are asbestos, beryllium, and mercury. Additional air contaminants may be added to this category provided that no ambient air standard exists for the contaminant, and evidence is presented which demonstrates that the particular contaminant may be considered as hazardous. It is hereby declared the policy of the Department that the standards contained herein and applicable to operators are to be minimum standards,and as technology advances, conditions warrant, and Department or regional authority rules require or permit, more stringent standards shall be applied.

Definitions

340-25-455 As used in this rule, and unless otherwise required by context:

(1) "Asbestos" means actinolite, amosite, anthophyllite, chrysotile, crocidolite, or tremolite.

(2) "Asbestos manufacturing operation" means the combining of commercial asbestos, or in the case of woven friction products, the combining of textiles containing commercial asbestos with any other material(s) including commercial asbestos, and the processing of this combination into a product as specified in rule 340-25-465.

(3) "Asbestos material" means asbestos or any material containing at least 1% asbestos by weight, including particulate asbestos material.

(4) "Asbestos mill" means any facility engaged in the conversion or any intermediate step in the conversion of asbestos ore into commercial asbestos.

(5) "Asbestos tailings" means any solid waste product of asbestos mining or milling operations which contains asbestos.

(6) "Beryllium" means the element beryllium. Where weight or concentrations are specific in these rules, such weights or concentrations apply to beryllium only, excluding any associated elements.

(7) "Beryllium alloy" means any metal to which beryllium has been added in order to increase its beryllium content, and which contains more than 0.1 percent beryllium by weight.

(8) "Beryllium containing waste" means any material contaminated with beryllium and/or beryllium compounds used or generated during any process or operation performed by a source subject to these rules.

(9) "Beryllium ore" means any naturally occurring material mined or gathered for its beryllium content.

(10) "Commercial asbestos" means any variety of asbestos which is produced by extracting asbestos from asbestos ore.

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

(12) "Demolition" means the wrecking or removal of any boiler, duct, pipe, or [load supporting] structural member insulated or fireproofed with asbestos material or of any other thing made of friable asbestos such as decorative panels.

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

(14) "Director" means the Director of the Department or regional authority and authorized deputies or officers.

(15) "Friable asbestos material" means any asbestos material easily crumbled or pulverized by hand, resulting in the release of particulate asbestos material. This definition shall include any friable asbestos debris.

(16) "Hazardous air contaminant" means any air contaminant considered by the Department or Commission to cause or contribute to an identifiable and significant increase in mortality or to an increase in serious irreversible or incapacitating reversible illness and for which no ambient air standard exists.

(17) "Mercury" means the element mercury, excluding any associated elements and includes mercury in particulates, vapors, aerosols, and compounds.

(18) "Mercury ore" means any mineral mined specifically for its mercury content.

(19) "Mercury ore processing facility" means a facility processing mercury ore to obtain mercury.

(20) "Mercury chlor-alkali cell" means a device which is basically composed of an electrolyzer section and a denuder (decomposer) section, and utilizes mercury to produce chlorine gas, hydrogen gas, and alkali metal hydroxide.

(21) "Particulate asbestos material" means any finely divided particles of asbestos material.

(22) "Person" means any individual(s), corporation(s), association(s), firm(s), partnership(s), joint stock company(ies), public and municipal corporation(s), political sub-division(s), the state and agency(ies) thereof, and the federal government and any agency(ies) thereof.

(23) "Propellant" means a fuel and oxidizer physically or chemically combined, containing beryllium or beryllium compounds, which undergoes combustion to provide rocket propulsion.

(24) "Propellant plant" means any facility engaged in the mixing, casting, or machining of propellant.

(25) "Regional authority" means any regional air quality control authority established under the provisions of **ORS** 468.505.

(26) "Renovation" means the removing or stripping of friable asbestos material used to insulate or fireproof any pipe, duct, boiler, tank, reactor, turbine, furnace, decorative panel, or structural member.

(27) [26] "Startup" means commencement of operation of a new or modified source resulting in release of contaminants to the ambient air.

(28) "Structural member" means any load-supporting member, such as beams and load-supporting walls; or any non-supporting-member, such as ceilings and non-load-supporting walls.

(29) "Asbestos-containing waste material" means any waste which contains commercial asbestos and is generated by a source subject to the provisions of this subpart, including asbestos mill tailings, control device asbestos waste, friable asbestos waste material, and bags or containers that previously contained commercial asbestos.

General Provisions

340-25-460 (1) Applicability. The provisions of these rules shall apply to any source which emits air contaminants for which

a hazardous air contaminant standard is prescribed. Compliance with the provisions of these rules shall not relieve the source from compliance with other applicable rules of the Oregon Administrative Rules, Chapter 340, or with applicable provisions of the Oregon Clean Air Act Implementation Plan.

(2) Prohibited activities:

(a) No person shall operate any source of emissions subject to these rules without first registering such source with the Department following procedures established by ORS 468.320 and OAR 340-20-005 through 340-20-015. Such registration shall be accomplished within ninety (90) days following the effective date of these rules.

(b) After the effective date of these rules, no person shall construct a new source or modify any existing source so as to cause or increase emissions of contaminants subject to these rules without first obtaining written approval from the Department.

(c) No person subject to the provisions of these emission standards shall fail to provide reports or report revisions as required in these rules.

(3) Application for approval of construction or modification. All applications for construction or modification shall comply with the requirements of rules 340-20-020 through 340-20-030 and the requirements of the standards set forth in these rules.

(4) Notification of startup. Notwithstanding the requirements of rules 340-20-020 through 340-20-030, any person owning or operating a new source of emissions subject to these emission standards shall furnish the Department written notification as follows:

(a) Notification of the anticipated date of startup of the source not more than sixty (60) days no less than thirty (30) days prior to the anticipated date.

(b) Notification of the actual startup date of the source within fifteen (15) days after the actual date.

(5) Source reporting and approval request. Any person operating any existing source, or any new source for which a standard is prescribed in these rules which had an initial startup which preceded the effective date of these rules shall provide the following information to the Department within ninety (90) days of the effective date of these rules:

(a) Name and address of the owner or operator.

(b) Location of the source.

(c) A brief description of the source, including nature, size, design, method of operations, design capacity, and identification of emission points of hazardous contaminants.

(d) The average weight per month of materials being processed by the source and percentage by weight of hazardous contaminants contained in the processed materials, including yearly information as available.

(e) A description of existing control equipment for each emission point, including primary and secondary control devices and estimated control efficiency of each control device.

(6) Source emission tests and ambient air monitoring:

(a) Emission tests and monitoring shall be conducted using methods set forth in 40 CFR, Part 61, Appendix B, as published in the [Federal Register, Volume 38, No. 66, Friday, April 6, 1973] Code of Federal Regulations last amended by the Federal Register, June 8, 1982, pages 24703 to 24716. The methods described in 40 CFR, Part 61, Appendix B, are adopted by reference and made a part of these rules. Copies of these methods are on file at the Department of Environmental Quality.

(b) At the request of the Department, any source subject to standards set forth in these rules may be required to provide emission testing facilities as follows:

(A) Sampling ports, safe sampling platforms, and access to sampling platforms adequate for test methods applicable to such source.

(B) Utilities for sampling and testing equipment.

(c) Emission tests may be deferred if the Department determines that the source is meeting the standard as proposed in these rules. If such a deferral of emission tests is requested, information supporting the request shall be submitted with the request for written approval of operation. Approval of a deferral of emission tests shall not in any way prohibit the Department from canceling the deferral if further information indicates that such testing may be necessary to insure compliance with these rules.

(7) Delegation of authority. The Commission may, when any regional authority requests and provides evidence demonstrating its capability to carry out the provisions of these rules relating to hazardous contaminants, authorize and confer jurisdiction within its boundary until such authority and

jurisdiction shall be withdrawn for cause by the Commission.

Stat. Auth. ORS Ch.
Hist: DEQ 96.f. 9-2-75, ef. 9-25-75

Emission Standards **and Procedural Requirements** **For Asbestos**

340-25-465 (1) Emission standard for asbestos mills. [There shall be no] No person shall cause to be discharged into the atmosphere any visible emissions [to the outside air] from any asbestos milling operation except as provided under section (7) of this rule. For purposes of these rules, the presence of uncombined water in the emission plume shall not be cause for failure to meet the visible emission requirement. Outside storage of asbestos materials is not considered a part of an asbestos mill.

(2) Roadways and Parking Lots. The surfacing of roadways, parking lots or any other surface covering on which vehicle traffic might reasonably be expected to occur, with asbestos tailings or asbestos material is prohibited, except for temporary roadways on an area of asbestos ore deposits. For purposes of these rules, the deposition of asbestos tailings on roadways covered by snow or ice is considered surfacing.

(3) Manufacturing. [There shall be no] No person shall cause to be discharged into the atmosphere any visible emissions [to the outside air], except as provided in section (7) of this rule, from any building or structure in which manufacturing operations utilizing commercial asbestos are conducted, or directly from any such manufacturing operations if they are conducted outside buildings or structures. Visible emissions from boilers or other points not producing emissions directly from the manufacturing operation and having no possible asbestos material in the exhaust gases shall not be considered for purposes of this rule. The presence of uncombined water in the exhaust plume shall not be cause for failure to meet the visible emission requirements. Manufacturing operations considered for purposes of these rules are as follows:

(a) The manufacture of cloth, cord, wicks, tubing, tape, twine, rope, thread, yarn, roving, lap, or other textile materials.

(b) The manufacture of cement products.

(c) The manufacture of fireproofing and insulating materials.

(d) The manufacture of friction products.

(e) The manufacture of paper, millboard, and felt.

(f) The manufacture of floor tile.

(g) The manufacture of paints, coatings, caulks, adhesives, or sealants.

(h) The manufacture of plastics and rubber materials.

(i) The manufacture of chlorine.

(j) The manufacture of shotgun shells.

(k) The manufacture of asphalt concrete

l [(j)] Any other manufacturing operation which results or may result in the release of asbestos material to the ambient air.

(4) Demolition and renovation. All persons, both the contractor and the owner, intending to demolish any institutional, commercial, or industrial building, including apartment buildings having four or more dwelling units, structure, facility, installation, or any vehicle or vessel including, but not limited to, ships; or any portion thereof which contains any boiler, pipe, duct, tank, reactor, turbine, furnace, or [load supporting] structural member that is insulated or fireproofed with friable asbestos material shall comply with the requirements set forth in this rule:

(a) Notice of intention to demolish and/or renovate shall be provided to the Department [at least ten (10) days] prior to commencement of such demolition and/ or renovation [at any time prior to commencement of demoliton covered under subsection (4)(c) of this rule]. Such notice shall include the following information:

(A) Name and address of person intending to engage in demolition.

(B) Description of building, structure, facility, installation, vehicle, or vessel to be demolished or renovated, including address or location where the demolition is to be accomplished.

(C) Schedule starting and completion dates of demolition.

(D) Method of demolition and/or of renovation to be employed.

(E) Procedures to be employed to insure compliance with provisions of this section.

(F) Name and address or location of the waste disposal site where the friable asbestos waste will be deposited.

(G) Name and address of owner of facility to be demolished or renovated.

(b) The following procedures shall be employed to prevent emissions of particulate asbestos material into the ambient air:

(A) Friable asbestos materials used to insulate or fireproof any boiler, pipe, duct, or [load supporting] structural member shall be wetted and removed from any building, structure, facility, installation, or vehicle or vessel before demolition of [load supporting] structural members is commenced. Boilers, pipe, duct, or [load supporting] structural members that are insulated or fireproofed with friable asbestos materials may be removed as units or in sections without stripping or wetting, except that where the boiler, pipe, duct, or structural member is cut or disjointed the exposed friable asbestos material shall be wetted. Friable asbestos debris shall be wetted adequately to insure that such debris remains wet during all stages of demolition and related handling operations.

(B) No pipe, duct, or [load supporting] structural member that is covered with asbestos material shall be dropped or thrown to the ground from any building structure, facility, installation, vehicle, or vessel subject to this section, but shall be carefully lowered or taken to ground level in such a manner as to insure that no particulate asbestos material is released to the ambient air.

(C) No friable asbestos debris shall be dropped or thrown to the ground from any building structure, facility, installation, vehicle, or vessel subject to this section, or from any floor to any floor below. Any debris generated as a result of demolition occurring fifty (50) feet (15.24 meters) or greater above ground level shall be transported to the ground via dust-tight chutes or containers.

[~~(D)-Equivalent-methods-of-encapsulating-asbestos-may-be submitted-to-the-Department-in-writing,-and-upon-written approval,-may-be-substituted-as-approved-for-(A),-(B),-or-(C) above.~~]

(D) [E] For renovation operations, local exhaust ventilation and collection systems may be used, instead of wetting; these systems shall comply with 340-25-465(7).

(c) Any person intending to demolish a building, structure, facility, or installation subject to the provisions of this section, but which has been declared by proper state or local

authorities to be structurally unsound and which is in danger of imminent collapse is exempt from the requirements of this section, other than the reporting requirements specified in subsection (4)(a) of this rule, and the wetting of friable asbestos debris as specified in paragraph (4)(b)(A) of this rule.

(d) Sources located in cities or other areas of local jurisdiction having demolition regulations or ordinances no less restrictive than those of this rule may be exempted from the provisions of this section. Such local ordinance or regulation must be filed with and approved by the Department before an exemption from these rules may be issued. Any authority having such local jurisdiction shall annually submit to the Department a list of all sources subject to this section operating within the local jurisdictional area and a list of those sources observed by the local authority during demolition operations.

(5) Spraying:

(a) [There shall be no] No person shall cause to be discharged into the atmosphere any visible emissions [to the ambient air] from any spray-on application of materials containing more than one (1) percent asbestos on a dry weight basis used to insulate or fireproof equipment or machinery, except as provided in section (7) of this rule. Spray-on materials used to insulate or fireproof buildings, structures, pipes, and conduits shall contain less than one (1) percent asbestos on a dry weight basis. In the case of any city or area of local jurisdiction having ordinances or regulations for spray application materials more stringent than those in this section, the provisions of such ordinances or regulations shall apply.

(b) Any person intending to spray asbestos materials to insulate or fireproof buildings, structures, pipes, conduits, equipment, or machinery shall report such intention to the Department [at least twenty (20) days] prior to the commencement of the spraying operation. Such report shall contain the following information:

(A) Name and address of person intending to conduct the spraying operation.

(B) Address or location of the spraying operation.

(C) The name and address of the owner of the facility being sprayed.

(c) The spray-on application of materials in which the asbestos fibers are encapsulated with a bituminous or resinous binder during spraying and which are not friable after drying is exempted from the requirements of paragraphs (5)(a) and (5)(b).

(6) Options for air cleaning. Rather than meet the no visible emissions requirements of sections (1), (3), and (4) of this rule, owners and operators may elect to use methods specified in section (7) of this rule.

(7) Air cleaning. All persons electing to use air cleaning methods rather than comply with the no visible emission requirements must meet all provisions of this section.

(a) Fabric filter collection devices must be used, except as provided in subsections (b) and (c) of this section. Such devices must be operated at a pressure drop of no more than four (4) inches (10.16 cm) water gauge as measured across the filter fabric. The air flow permeability, as determined by ASTM Method

D737-69, must not exceed 30 $ft.^3/min./ft.^2$ (9.144 $m^3/min./m^2$) for woven fabrics or 35 $ft.^3/min./ft.^2$ (10.67 $m^3/min./m^2$) for felted fabrics with the exception that airflow permeability for 40 $ft.^3/min./m^2$ (12.19 $m^3/min./m^2$) for woven and 45 $ft.^3/min./ft.^2$ (13.72 $m^3/min./m^2$) for felted fabrics shall be allowed for filtering air emissions from asbestos ore dryers. Each square yard (square meter) of felted fabric must weigh at least 14 ounces (396.9 grams) and be at least one-sixteenth (1/16) inch (1.59 cm) thick throughout. Any synthetic fabrics used must not contain fill yarn other than that which is spun.

(b) If the use of fabric filters creates a fire or explosion hazard, the Department may authorize the use of wet collectors designed to operate with a unit contacting energy of at least forty (40) inches (101.6 cm) of water gauge pressure.

(c) The Department may authorize the use of filtering equipment other than that described in subsections (7)(a) and (b) of this rule if such filtering equipment is satisfactorily demonstrated to provide filtering of asbestos material equivalent to that of the described equipment.

(d) All air cleaning devices authorized by this section must be properly installed, operated, and maintained. Devices to bypass the air cleaning equipment may be used only during upset and emergency conditions, and then only for such time as is necessary to shut down the operation generating the particulate asbestos material.

(e) All persons operating any existing source using air cleaning devices shall, within ninety (90) days of the effective date of these rules, provide the following information to the Department:

(A) A description of the emission control equipment used for each process.

(B) If a fabric is utilized, the following information shall be reported:

(i) The pressure drop across the fabric filter in inches water gauge and the airflow permeability in $ft.^3/min./ft.^2$ ($m^3/min./m^2$).

(ii) For woven fabrics, indicate whether the fill yarn is spun or not spun.

(iii) For felted fabrics, the density in $ounces/yard^3$ (gms/m^3) and the minimum thickness in inches (centimeters).

(C) If a wet collector is used the unit contact energy shall be reported in inches of pressure, water gauge.

(D) All reported information shall accompany the information required in paragraph 340-25-460(5)(a)(E).

(8) Fabricating: No person shall cause to be discharged into the atmosphere any visible emissions except as provided in paragraph (7) of this section, from any fabricating operations, including the following, if they use commercial asbestos or, from any building or structure in which such operations are conducted.

(a) The fabrication of cement building products.

(b) The fabrication of friction products, except those operations that primarily install asbestos friction materials on motor vehicles.

(c) The fabrication of cement or silicate board for ventilation hoods; ovens; electrical panels; laboratory furniture; bulkheads, partitions and ceilings for marine construction; and flow control devices for the molten metal industry.

(9) Insulating: Molded insulating materials which are friable and wet-applied insulating materials which are friable after drying, installed after the effective date of these regulations, shall contain no commercial asbestos. The provisions of this paragraph do not apply to insulating materials which are spray applied; such materials are regulated under (3).

(10) Waste disposal for manufacturing, fabricating, demolition, renovation and spraying operations: The owner or operator of any source covered under the provisions of paragraphs (3), (4), (5), or (8) of this section shall meet the following standards:

(a) There shall be no visible emissions to the outside air, except as provided in paragraph (10)(c) of this section, during the collection; processing, including incineration; packaging; transporting; or deposition of any asbestos-containing waste material which is generated by such source.

(b) All asbestos-containing waste material shall be disposed of at a disposal site authorized by the Department.

(A) Persons intending to dispose of waste-containing asbestos shall notify the landfill operator of the type and volume of the waste material and obtain the approval of the landfill operator prior to bringing the waste to the disposal site.

(B) All waste-containing asbestos shall be stored and transported to the authorized disposal site in leak-tight containers such as plastic bags with a minimum of thickness of 6 mil., or fiber or metal drums.

(C) The waste transporter shall immediately notify the landfill operator upon arrival of the waste at the disposal site. Off-loading of waste-containing asbestos shall be done under the direction and supervision of the landfill operator.

(D) Off-loading of waste-containing asbestos shall occur at the immediate location where the waste is to be buried. The waste burial site shall be selected in an area of minimal work activity that is not subject to future excavation.

(E) Off-loading of waste-containing asbestos shall be accomplished in a manner that prevents the leak-tight transfer containers from rupturing and prevents visible emissions to the air.

(F) Immediately after waste-containing asbestos is deposited at the disposal site, it shall be covered with at least 2 feet of soil or other waste before compacting equipment runs over it. If other waste is used to cover the asbestos-containing material prior to compaction, the disposal area shall be covered with 1 foot of soil before the end of the operating day.

(c) Rather than meet the requirements of this section, an owner or operator may elect to use an alternative disposal method which has received prior approval by the Department in writing.

(d) All asbestos-containing waste material shall be sealed into containers labeled with a warning label that states:

Caution

Contains Asbestos
Avoid Opening or Breaking Container
Breathing Asbestos is Hazardous
to Your Health

Alternatively, warning labels specified by Occupational Safety and Health Standards of the Department of Labor, Occupational Safety and Health Administration (OSHA) under 29 CFR 1910-93a(g)(2)(ii) may be used, or its Oregon State equivalent OAR 437-115-040(2)(b).

(e) Open storage or accumulation of friable asbestos material or asbestos-containing waste material is prohibited. [~~When-found-in-violation-of-this-rule-against-open-storage-or accumulation,-the-owner,-operator-and/or-contractor-at-any-site subject-to-these-rules-shall-immediately-cover-or-otherwise control-friable-asbestos-material-upon-being-notified-of-its uncovered-state-and-remove-the-friable-asbestos-material-within one-week.~~]

Stat. Auth. ORS Ch.
Hist: DEQ 96. f. 9-2-75. ef. 9-25-75.

Emission Standard For Beryllium

340-25-470 (1) Applicability. The provisions of this rule are applicable to the following emission sources of beryllium.

(a) Extraction plants, ceramic plants, foundries, incinerators, and propellant plants which process beryllium, beryllium ore, oxides, alloys, or berryllium containing waste.

(b) Machine shops which process beryllium, beryllium oxides, or any allow when such alloy contains more than five percent (5%) beryllium by weight.

(c) Other sources, the operation of which results or may result in the emission of beryllium to the outside air.

(2) Emission limit:

(a) No person shall cause to be discharged into the atmosphere emissions [to the ambient air] from any source [shall not exceed] exceeding 10 grams of beryllium for any 24 hour period [, except as provided in subsection (2)(b) of this rule].

(b) [Rather than meet the requirements of subsection (a) of this section, persons operating sources of beryllium emissions may request approval from the Department to comply with an ambient air concentration limit for beryllium emissions in the

vicinity of the source. The ambient concentration shall not exceed 0.0 micrograms per cubic meter as an average of all samples taken during any one month period. Approval of such requests may be granted by the Director provided that:

(A) At least three (3) years of ambient sampling data is available which demonstrates that the future ambient concentrations of beryllium will not exceed this standard concentration in the vicinity of the source. Such three (3) year period shall be the three years ending thirty (30) days before the effective date of these rules.

(B) The person requesting this approval makes such request in writing to the Department within forty-five (45) days after the effective date of these rules, including the following information:

(i) A description of the sampling procedures, including methods of sampling, method and frequency of calibration, and averaging technique for determining monthly concentrations.

(ii) Identification of sampling sites, including number of stations, distance, and heading from the source, ground elevations, and height above ground of sampling inlets.

(iii) Plots of source and surrounding area, including emission points, sampling sites, and topographic features significantly affecting dispersion of contaminants.

(iv) Information necessary for estimating dispersion, incluidng stack height and inside diameter, exit gas temperature and velocity or flow rate, and beryllium concentration in exit gases.

(v) Air sampling data as required in subsection (2)(b) of this rule, including data for individual samples and site locations used to develop the one month average concentrations; and a description of data and procedures (methods or models) used to design the air sampling network.

(c) Within sixty (60) days of receipt of such report, the Department will notify persons making the request of the decision to approve or deny the request. Prior to denying approval of provisions of subsection (2)(b) of this rule, the Department will consult with representatives of the source for which the report was submitted.]

(d)]The burning of beryllium and/or beryllium containing waste except propellants is prohibited except in incinerators, emissions from which must comply with the standard.

(c)[(e)] Stack sampling:

(A) Unless a deferral of emission testing is obtained under the provisions of subsection 340-25-460(6)(c), each person operating a source subject to the provisions of this standard shall test emissions from his source subject to the following schedule:

(i) Within ninety (90) days of the effective date of these rules for existing sources or for new sources having startup dates prior to the effective date of this standard.

(ii) Within ninety (90) days of startup in the case of a new source having a startup date after the effective date of this standard.

(B) The Department shall be notified at least thirty (30) days prior to an emission test so that they may, at their option, observe the test.

(C) Samples shall be taken over such periods and frequencies as necessary to determine the maximum emissions occurring during any 24 hour period. Calculations of maximum 24 hour emissions shall be based on that combination of process operating hours and any variation in capacities or processes that will result in maximum emissions. No changes in operation which may be expected to increase total emissions over those determined by the most recent stack test shall be made until estimates of the increased emissions have been calculated, and have been reported to and approved in writing by the Department.

(D) All samples shall be analyzed and beryllium emissions shall be determined and reported to the Department within thirty (30) days following the stack test. Records of emission test results and other data needed to determine beryllium emissions shall be retained at the source and made available for inspection by the Department for a minimum of two (2) years following such determination.

[(f) Ambient air sampling:

(A) Sources subject to the provisions of this section shall locate and operate ambient air sampling sites in accordance with a plan submitted to and approved in writing by the Department. Such sites shall be located in such a manner as to detect maximum ambient air concentrations in the vicinity of the source.

(B) All monitoring sites shall be operated in such a manner as to provide continuous samples, except for a reasonable time allowed for instrument calibration and repair, or for replacement of equipment needing repair.

(C) Filters shall be analyzed and contaminant concentrations calculated within thirty (30) days of the date they are collected. Concentrations of contaminants at all sampling sites shall be reported to the Department each calendar month. Records of concentrations and other data necessary to determine concentrations shall be retained at the source and made available for inspection by the Department for a minimum of two (2) years after determinations have been made.

(D) The Department may require changes in the sampling network at any time in order to insure that the maximum ambient air concentrations of beryllium in the area of the source are being measured.]

Emission Standard For Beryllium Rocket Motor Firing

340-25-475 The emission standard for Beryllium Rocket Motor Firing, **40 CFR, Part 61, Section 61.40 through 61.44,** adopted Friday, April 6, 1973, <u>and as amended on August 17, 1977 and March 3, 1978,</u> is adopted by reference and made a part of these rules. A copy of this emission standard is on file at the Department of Environmental Quality.

Emission Standard for Mercury

340-25-480 (1) Applicability. The provisions of this rule are applicable to sources which process mercury ore to recover mercury, sources using mercury chlor-alkali cells to produce chlorine gas and alkali metal hydroxide, and to any other source, the operation of which results or may result in the emission of mercury to the ambient air.

(2) Emission Standard. <u>No person shall cause to be discharged into the atmosphere</u> emissions [to the ambient air] from any source [shall not] exceed <u>ing</u> 2,300 grams of mercury during any 24 hour period, <u>except that mercury emissions to the atmosphere from sludge incineration plants, sludge drying plants, or a combination of these that process wastewater treatment plant sludges shall not exceed 3200 grams of mercury per 24-hour period.</u>

(3) Stack sampling:

(a) Mercury ore processing facility:

(A) Unless a deferral of emission testing is obtained under subsection 340-25-460(6)(c) of these rules, each person operating a source processing mercury ore shall test emissions from his source, subject to the following:

(i) Within ninety (90) days of the effective date of these rules for existing sources or for new sources having startup dates prior to the effective date of this standard.

(ii) Within ninety (90) days of startup in the case of a new source having a startup date after the effective date of this standard.

(B) The Department shall be notified at least thirty (30) days prior to an emission test so that they may, at their option, observe the test.

(C) Samples shall be taken over such periods and frequencies as necessary to determine the maximum emissions occurring during any 24 hour period. Calculations of maximum 24 hour emissions shall be based on that combination of process operating hours and any variation in capacities or processes that will result in maximum emissions. No changes in operation which may be expected to increase total emissions over those determined by the most recent stack test shall be made until estimates of the increased emissions have been calculated, and have been reported to and approved in writing by the Department.

(D) All samples shall be analyzed and mercury emissions shall be determined and reported to the Department within thirty (30) days following the stack test. Records of emission test results and other data needed to determine mercury emissions shall be retained at the source and made available for inspection by the Department for a minimum of two (2) years following such determination.

(b) Mercury chlor-alkali plant:

(A) Hydrogen and end-box ventilation gas streams. Unless a deferral of emission testing is obtained under subsection 340-25-460(6)(c), each person operating a source of this type shall test emissions from his source following the provisions of subsection (3)(a) of this rule.

(B) Room ventilation system:

(i) Unless a deferral of emission testing is obtained under subsection 340-25-460(6)(c), all persons operating mercury chlor-alkali plants shall pass all cell room air in forced gas streams through stacks suitable for testing.

(ii) Emissions from cell rooms may be tested in accordance with provisions of paragraph (3)(b)(A) of this rule or may demonstrate compliance with paragraph (3)(b)(B)(iii) of this rule and assume ventilation emissions of 1,300 grams/day of mercury.

(iii) If no deferral of emission testing is requested, each person testing emissions shall follow the provisions of subsection (3)(a) of this rule.

(c) Any person operating a mercury chlor-alkali plant may elect to comply with room ventilation sampling requirements by carrying out approved design, maintenance, and housekeeping practices. A summary of these approved practices shall be available from the Department.

(d) Stack sampling and sludge sampling at wastewater treatment plants shall be performed in accordance with 40 CFR 61.53(d) or 40 CFR 61.54, last amended by Federal Register June 8, 1982, page 24703.

Standards of Performance for New Stationary Sources

Statement of Purpose

340-25-505 The U.S. Environmental Protection Agency has adopted in **Title 40, Code of Federal Regulations, Part 60,** Standards of Performance for certain new stationary sources. It is the intent of this rule to specify requirements and procedures necessary for the Department to implement and enforce the aforementioned Federal Regulation.

Definitions

340-25-510 (1) "Administrator" herein and in **Title 40, Code of Federal Regulations, Part 60,** means the Director of the Department or appropriate regional authority.

(2) "Federal Regulation" means **Title 40, Code of Federal Regulations, Part 60,** as promulgated prior to [June 1, 1975] April 17, 1982.

(3) "CFR" means Code of Federal Regulations.

(4) "Regional authority" means a regional air quality control authority established under provisions of ORS 468.505.

Statement of Policy

340-25-515 It is hereby declared the policy of the Deparment to consider the performance standards for new stationary sources contained herein to be minimum standard; and, as technology advances, conditions warrant, and Department or regional authority rules require or permit, more stringent standards shall be applied.

Delegation

340-25-520 The Commission may, when any regional authority requests and provides evidence demonstrating its capability to carry out the provisions of these rules, authorize and confer jurisdiction upon such regional authority to perform all or any of such provisions within its boundary until such authority and jurisdiction shall be withdrawn for cause by the Commission.

Applicability

340-25-525 This rule shall be applicable to stationary sources identified in rules 340-25-550 through [340-25-645]

340-25-655 for which construction or modification has been commenced, as defined in **Title 40, Code of Federal Regulations (40 CFR) 60.2** after the effective dates of these rules.

General Provisions

340-25-530 Title 40, CFR. Part 60, Subpart A. as promulgated prior to [October 8, 1980] April 17, 1982 , is by this reference adopted and incorporated herein. Subpart A includes paragraphs 60.1 to 60.16 which address, among other things, definitions, performance tests, monitoring requirements, and modification.

Performance Standards

Federal Regulations Adopted by Reference

340-25-535 Title 40, CFR, Parts 60.40 through 60.154, and 60.250 through [60.335] 60.404, as established as final rules prior to [October 8, 1980] April 17, 1982, is by this reference adopted and incorporated herein. As of [October 8, 1980], April 17, 1982, the Federal Regulations adopted by reference set the emission standards for the new stationary source categories set out in rules 340-25-550 through [340-25-645] 340-25-655 (these are summarized for easy screening, but testing conditions, the actual standards, and other details will be found in the **Code of Federal Regulations**).

:::

Standards of Performance for Gas Turbines

340-25-645 The pertinent federal rules are **40 CFR 60.330 to 60.335**, also known as **Subpart GG.** The following emission standards, summarizing the federal standards set forth in **Subpart GG**, apply to any stationary gas turbine with a heat input at peak load equal to or greater than 10.7 gigajoules per hour (1,000 HP) for which construction was commenced after Octboer 3, 1977 ; [except as noted in subsection (1)(c) of this rule:]

(1) Standard for Nitrogen Oxides. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere from any stationary gas turbine, nitrogen oxides in excess of the rates specified in 40 CFR 60.332.

[(a) 75 ppm for units greater than or equal to 107.2 gigajoules/hour, which is located in a Metropolitan Statistical Area and is in gas and oil transportation or production, or used for other purposes;

(b) 150 ppm for units greater than or equal to 107.2 gigajoules/hour, which is located outside a Metropolitan Statistical Area and is in gas and oil transportation or production;

(c) 150 ppm for units between 10.7 and 107.2 gigajoules/hour that commence construction, modification, or reconstruction after October 3, 1982;

(d) Exempt from the Nitrogen Oxide standards are units used for emergency standby, firefighting, military (except for garrison facility), military training, and research and development turbines.]

(2) Standard for Sulfur Dioxide. Owners or operators shall:

(a) Not cause to be discharged into the atmosphere from any gas turbine any gases which contain sulfur dioxide in excess of 150 ppm by volume at 15 percent oxygen, on a dry basis; or

(b) Not burn in any gas turbine any fuel which contains sulfur in excess of 0.80 percent by weight.

Standards of Performance for Lead-Acid Battery Manufacturing Plants

340-25-650 The pertinent federal rules are 40 CFR 60.370 to 60.374, also known as Subpart KK. The following standards set forth in Subpart KK apply to any lead-acid battery manufacturing plant that produces or has the design capacity to produce in one day (24 hours) batteries containing an amount of lead equal to or greater than 5.9 Mg (6.5 tons), for which construction or modification of any facility affected by the rule commenced after January 14, 1980.

Standards for Lead No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere:

(1) From any grid casting facility any gases that contain lead in exess of 0.40 milligram of lead per dry standard cubic meter of exhaust (0.000176 gr/dscf).

(2) From any paste mixing facility any gases that contain in excess of 1.00 milligram of lead per dry standard cubic meter of exhaust (0.00044 gr/dscf).

(3) From any three-process operation facility any gases that contain in excess of 1.00 milligram of lead per dry standard cubic meter of exhaust (0.00044 gr/dscf).

(4) From any lead oxide manufacturing facility any gases that contain in excess of 5.0 milligrams of lead per kilogram of lead feed (0.010 lb/ton).

(5) From any lead reclamation facility any gases that contain in excess of 4.50 milligrams of lead per dry standard cubic meter of exhaust (0.00198 gr/dscf).

(6) From any other lead-emitting operation any gases that contain in excess of 1.00 milligram per dry standard cubic meter of exhaust (0.00044 gr/dscf).

(7) From any affected facility other than a lead reclamation facility any gases with greater than 0 percent opacity.

(8) From any lead reclamation facility any gases with greater than 5 percent opacity.

Standards of Performance for Phosphate Rock Plants

340-25-655 The pertinent federal rules are 40 CFR 60.400 to 60.404, also known as Subpart NN. The following standards set forth in Subpart NN apply to phosphate rock plants which have a maximum plant production capacity greater than 3.6 megagrams per hour (4.0 tons per hour), for which construction or modification of the facility affected by this rule commenced after September 21, 1979.

Standard for Particulate No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere:

(1) From any phosphate rock dryer any gases which:

(a) Contain particulate matter in excess of 0.030 kilogram per megagram of phosphate rock feed (0.060 lb/ton), or

(b) Exhibit greater than 10-percent opacity.

(2) From any phosphate rock calciner processing unbeneficiated rock or blends of beneficiated and unbeneficiated rock, any gases which:

(a) Contains particulate matter in excess of 0.12 kilogram per megagram of phosphate rock feed (0.23 lb/ton), or

(b) Exhibit greater than 10-percent opacity.

(3) From any phosphate rock calciner processing beneficiated rock any gases which:

(a) Contain particulate matter in excess of 0.055 kilogram per megragram of phosphate rock feed (0.11 lb/ton), or

(b) Exhibit greater than 10-percent opacity.

(4) From any phosphate rock grinder any gases which:

(a) Contain particulate matter in excess of 0.006 kilogram per megagram of phosphate rock feed (0.012 lb/ton), or

(b) Exhibit greater than zero-percent opacity.

(5) From any ground phosphate rock handling and storage system any gases which exhibit greater than zero-percent opacity.

Compliance

340-25-700 Compliance with standards set forth in this rule shall be determined by performance tests and monitoring methods as set forth in the Federal Regulation adopted by reference in rule 340-25-530.

More Restrictive Regulations

340-25-705 If at any time there is a conflict between Department or regional authority rules and the Federal Regulation (40 CFR, Part 60), the more stringent shall apply.

AA2363 (1)
10/8/82

Attachment 2

STATEMENT OF NEED FOR RULEMAKING

Pursuant to ORS 183.335(2), this statement provides information on the intended action to amend a rule, OAR 340-25-450 to OAR 340-25-700.

Legal Authority

The statutory authority is ORS 468.020(1) and ORS 468.295(3) where the Commission is authorized to establish different rules for different sources of air pollution.

Need for the Rule

Two rule changes are needed to protect workers and to protect people who later enter the premises from cancer-causing asbestos particles. These proposed changes in the Emission Standards and Procedures For Asbestos would make the Oregon rules more stringent than the existing federal rule (40 CFR 61.22):

1. No exemption for small demolition and renovation projects (where friable asbestos is less than 260 lineal feet or 160 square feet);

2. An Oregon rule to forbid any open storage or accumulation of asbestos or asbestos-containing waste material in 340-25-465(10)(e).

The other changes bring the older Oregon rules up-to-date with the latest changes and additions to the federal "National Emission Standards for Hazardous Air Pollutants", 40 CFR 61, and with the federal "Standards of Performance for New Stationary Sources", 40 CFR 60. As Oregon rules are kept up-to-date with the federal rules, then the federal EPA delegates jurisdiction for their rules to the Department, allowing Oregon industry and commerce to be regulated by only one environmental agency. This action was urged most recently by EPA's March 3, 1982 letter.

Principal Documents Relied Upon

1. 40 CFR 60, 61 Code of Federal Regulations, as amended in recent Federal Registers concerning "Standards of Performance for New Stationary Sources", and "National Emission Standards for Hazardous Air Pollutants".

2. Adamo v. EPA, 1978, Supreme Court decision declaring that EPA's asbestos rule 40 CFR 61.22 was not an emission standard but a work practice.

3. Consumers Central Heating Co. v. PSAPCA, a December 3, 1980 Washington State Pollution Control Hearings Board final order which vacated violations and $1250 civil penalties because no visible emissions were

witnessed, in spite of the circumstantial evidence of considerable asbestos debris left on the premises.

4. Asbestos and Disease, by Dr. Irving J. Selikoff and Dr. Douglas H.K. Lee, 1978, Academic Press, New York.

5. U.S. Environmental Protection Agency letter, March 3, 1982, John R. Spencer, Region X Administrator, to W.H. Young, DEQ Director, concerning delegation of federal rules to Oregon.

6. Federal Register, September 2, 1982, pages 38832-38859, Proposed NSPS for Lime Plants, response to court remand.

7. Federal Register, September 3, 1982, page 38982, Notice of Delegation of NSPS to Oregon for Aluminum Plants, approving OAR 340-25-255 through -285 to be used instead of 40 CFR 60.190 through .195.

Fiscal Impact Statement

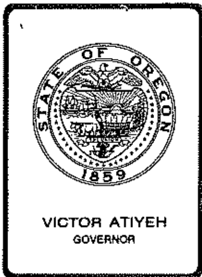
Asbestos rules and the other NESHAPS and NSPS rules are already promulgated by EPA. Adoption by and delegation to DEQ simplifies environmental administration generally at less costs. However, DEQ has proposed changes to make the state asbestos rule more stringent than the federal rule, and these changes would affect small businesses. The changes are:

1. No exemption would be allowed for small demolition and renovation jobs, causing some demolition and renovation contractors to purchase specially marked bags, apply more water, and incur special dump fees.

2. Open storage or accumulation of asbestos or asbestos-containing waste material would be forbidden, causing the owner (or contractor) some additional clean-up and disposal costs.

To somewhat mitigate these increased costs on small businesses, the Department has removed 10 and 20 day prior notice requirements in the federal rule, simplified the rule leaving out 9 definitions and nearly 2 pages of waste site practices used only at asbestos mines (there are no mines of asbestos in Oregon).

DEQ feels these improvements to the federal rule are necessary to protect the public health from carcinogenic asbestos particles escaping to the atmosphere and the costs that may be incurred by small businesses would be far outweighed by the health benefits.



VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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MEMORANDUM

Attachment 3

To: Environmental Quality Commission

From: Hearing Officer, Peter Bosserman

Subject: Public Hearing Report on Revising NESHAPS and NSPS Rules, Considering Changes Making the State Asbestos Rule More Stringent Than the Federal Rule

Summary of Procedure

Legal notice of the hearing was given in the Secretary of State's bulletin; notice of the hearing was mailed to 560 parties; and more than 40 copies of the proposed rule changes were mailed out to interested parties. The public hearing was convened in Room 1400 of the Yeon Builidng, 522 S.W. 5th, Portland, Oregon at 3:00 p.m. on October 5, 1982. No one gave verbal testimony; written testimony was received from nine persons before, during, and up to the 5 p.m. deadline for testimony as announced in the Hearing Notice. The written testimony is on file at the Department of Environmental Quality, in the Air Quality Division, at the above address. Eight people attended the hearing; the Hearing Officer waited until 4:35 p.m. before vacating the room.

Testimony and Hearing Officer's Comment

Minor Testimony

Bruce Shaw, Jackson County resident, asked that 340-25-465(2) be expanded to include parking lots and other surfaces where vehicles might be driven (i.e., paved log decks). His county has deposits of asbestos mixed with rock which has gotten into road paving. Therefore, the prohibition should be broadened from "asbestos-containing waste materials" to "asbestos material," which is anything (i.e., crushed rock) with more than 1% asbestos.

Laura Barlow of the Accident Prevention Division of Oregon Workers' Compensation Department presented their Division's testimony by letter at the hearing. They desired the addition of "duct" and deletion of "load-supporting" in 340-25-455(12) and 340-25-465(4)(b)(A) and (B). This is agreed with and proposed for Commission action.

D'Arcy P. Banister, Bureau of Mines, Department of Interior, wanted some assurance that mining, milling, mine waste dumps, and mill waste dumps were in a different category, and regulated by other standards and rules. While 340-25-465(10)(e), forbidding open piles of asbestos, is not applicable to the categories enumerated by Banister, 340-25-465(1) specifically covers milling, as does the existing, equivalent federal rule 40 CFR 61.22(a). Oregon has no asbestos mines and mills, although Oregon has some asbestos deposits.

James A. Broad, DEQ Northwest Region engineer, noted that the next to last paragraph on page 5 of the rules should be a lower case, rather than an upper case, "C". Condition 340-25-465(10)(e) should specify action as soon as practicable but within one week.

In the Beryllium rule, and in one phase in the Mercury rule, certain options were allowed when the rule was first put into force in 1975. There is no record of anyone availing themselves of these alternatives. Therefore, Mr. Broad recommended that this alternative language be stricken because it is no longer effective and when it was, no one availed themselves of it. See deletions recommended on pages 13, 14, 15, and 16 of the rules.

The rule quoted in rule 340-25-480(3)(a)(A) has a typing error. The rule cited is 340-25-460(6)(c), not 340-25-465(6)(c) in versions sent out for hearing.

David W. St. Louis, DEQ Willamette Valley Region engineer, desired two changes in the definitions of demoliton: removal of "load supporting" and the addition of language to include demolition of buildings where the only asbestos was in decorative panels. See page 2 of the rule.

The definition of Renovation also omits decorative panels made of friable asbestos.

Renovation should be included in 340-25-465(4)(a)(B) and (D). See added words on page 7 of rule.

In the first paragraph on page 8, it is the address of the owner of the facility (the building or boiler), not of the property which is desired.

In paragraphs (A) and (B) on page 8, the words "load supporting" should be deleted in four places, as the requirement to wet down applies to all structural members covered with friable asbestos.

On page 9 in paragraph (6), the reference to (2) is a typing error; it should refer to (3).

On page 11, Mr. St. Louis wanted paragraph (8) to include all fabricating operations by changing the third line to read "from any operations including the following if they use commercial".

On page 13, Mr. St. Louis asked for a sentence requiring immediate covering of the asbestos (or wetting down), then removal within a week in paragraph (e).

Van A. Kollias, DEQ Regional Operations staff, noted correct legal phrasing for a rule in 340-25-650: "No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere..... from any facility any gases with greater than zero percent opacity". The following rules should be rephrased to make a person responsible: 340-25-465(1), -465(3), -465(5), -465(8), -470(2)(a), -480(2).

Joe Weller, Oregon Lung Association, wrote the following:

> "Because asbestos exposure to workers and the general public may lead to the development of permanent lung injury, special procedures for its handling are required.
>
> "The Oregon Lung Association has reviewed the proposed rules and supports all detailed changes. We believe that public exposure to asbestos will not increase and may decrease as a result of the proposed changes."

The preceding testimony is considered minor, as all that was proposed improved the rules and made them more consistent, and the testimony was not contradictory. For example, even the testimony to expand 340-25-465(8) to include all fabricating with asbestos met with no objection by safety engineer James Zimmerman of the Associated General Contractors, who attended the hearing to review the testimony received.

Major Testimony

Encapsulation

Mark H. Hooper, EPA Region X Chemical Engineer, summarized federal EPA comments in his September 20, 1982 letter. Proposed 340-25-465(4)(b)(D), offering an alternative of encapsulation during renovation, is proposed for deletion for lack of substantiating evidence. The local exhaust option is then renumerated from (E) to (D). Otherwise, Mr. Hooper sees the proposed rules as being EPA-approvable.

The Hearing Officer phoned Ed Drazga, Sr., of KRZ Co., Moorestown, N.J., a nationally recognized expert on encapsulation of friable asbestos. This was done at the suggestion of Ken Wong of Sanderson Safety Supply of Portland, Oregon, and at the urging of two persons attending the hearing, where they learned of EPA's testimony requesting deletion of 340-25-465(4)(b)(D). The current authoritative study on encapsulation is by Battelle, and cites both good and unacceptable practices. Copies are not available for the hearing record. A new authoritative study by American Society for Testing Materials (ASTM) is being prepared for release on October 20, 1982, by Committee E-6, on which Ed Drazga, Sr., serves.

The Hearing Officer reviewed the matter in a phone call with Ken Wong of Sanderson Safety Supply. It is doubtful whether a safe rule allowing some encapsulation could be written from the hearsay evidence gathered to date. Therefore, the staff will try to keep up-to-date on safe (and unsafe) encapsulation methods. Some time later, the asbestos rule can be modified to include the best methods of encapsulation as alternatives.

Burning Beryllium in Incinerators

Carl H. Lawyer, M.D., of the Thoracic Clinic, a specialist in diseases of the lungs, objected to 340-25-470(2)(d), allowing incinerators to burn beryllium and/or beryllium-containing waste. The Hearing Officer gives the following reasons for this nine-year-old rule allowing incinerators to burn it.

Beryllium may only be found as a minor alloying element in nonsparking tools, and in small percentages in rarely used alloys poured at aluminum plants and brass and bronze foundries. Whether trash and waste from these sources would find its way into mass burning incinerators so as to emit more than the rule allows (10 grams of beryllium per 24 hours) would be determined from tests on the mass burners. More likely, the aluminum plants and foundries would recycle metal or landfill slag for beryllium and beryllium-containing waste.

Also, beryllium has a melting point of 1284° C (2343° F) and a vaporization point of 2767° C (5013° F). Therefore, it is highly likely that nonsparking tools would come out in the bottom ash of an incinerator and end up recycled or in a landfill, because incinerator temperatures are not hot enough to melt or vaporize tools.

Since Dr. Lawyer's testimony needs more time for study, the hearing officer recommends the following action:

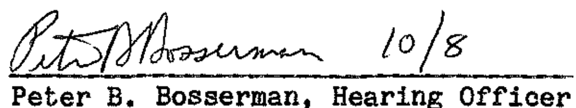
1. Users of beryllium and alloys containing beryllium should be polled about their waste disposal practices.

2. Are products containing beryllium likely to be put into incinerators in Oregon?

3. Depending upon investigation results, and after competent review, the Department should implement sufficient controls over beryllium and beryllium containing waste either through rule action or through appropriate conditions in air contaminant discharge permits.

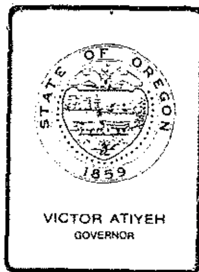
4. No rule changes are advised at this time.

Respectfully submitted,



Peter B. Bosserman, Hearing Officer

PBB:a
AA2646



Environmental Quality Commission

Mailing Address: BOX 1760, PORTLAND, OR 97207
522 SOUTHWEST 5th AVENUE, PORTLAND, OR 97204 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. D, August 27, 1982, EQC Meeting

Request for authorization to hold a public hearing on revisions to the Emission Standards for Hazardous Air Contaminants OAR 340-25-450 to 480 to make the Department's rules pertaining to control of asbestos and mercury consistent with the Federal rules;and to amend Standards of Performance for New Stationary Sources OAR 340-25-505 to 645 to include the Federal rule for new phosphate rock plants; and to amend the State Implementation Plan.

Background and Problem Statement

The U.S. Environmental Protection Agency (EPA) adopted National Emission Standards for Hazardous Air Pollutants (NESHAPS) beginning in June 1973. To acquire delegation to administer these standards, the Commission adopted OAR 340-25-450 to 480, in September 1975 and subsequently the Department received delegation to administer emission standards for asbestos, beryllium, beryllium rocket motor firing, and mercury in Oregon.

EPA adopted New Stationary Source Performance Standards (NSPS) beginning in 1971. To acquire delegation to administer these standards, the Commission adopted OAR 340-25-505 to 705 in September 1975, and amended them in 1981. EPA delegated NSPS to the Department in 1976 and in 1981. NSPS for lime plants was not adopted because the Federal Standard for this source was in litigation. NSPS for aluminum plants was not adopted as it was believed Oregon's aluminum plant rules were more stringent.

In a March 3, 1982 letter, John R. Spencer, EPA Region X Administrator, asked that the Department adopt the existing NSPS for lime plants and aluminum plants. In the same letter, Spencer asked that the Department adopt nine federal changes to the NESHAPS asbestos rules, and three changes to the NESHAPS mercury rules.

Problems

The Department believes that the OAR 340-25-255 to 285 for primary aluminum plants is more stringent than the federal NSPS (40 CFR 60.190 to .195, Subpart S). By separate letter to EPA, the Department is requesting delegation to administer the OAR, rather than the NSPS, as an equivalent regulatory option.

The NSPS for lime plants is still not considered ready for adoption into the OAR. EPA is reviewing revisions to the lime plant standard in the Office of Air, Noise, and Radiation. When those revisions are published in the federal register as a final rule, in settlement of the litigation, then it can be added to Oregon rules. This approach appears agreeable to EPA.

Other rule changes requested by EPA will necessitate new rule adoptions. Some additional changes in asbestos rules are considered desireable by the Department to better address potential problems caused by this air pollutant. Authority for the Commission to act is given in Oregon Revised Statutes 468.020 and 468.295(3) where the Commission is authorized to establish emission standards for sources of air contaminants.

A "Statement of Need for Rulemaking" is appended to Attachment 2 of this memorandum.

Alternatives and Evaluation

1. The Commission could take NO ACTION.

    a. A no-action consequence would be that both the Department and EPA staffs would have to review certain hazardous emission sources in Oregon because the DEQ's NESHAPS rules have not been kept up-to-date with EPA's. Region X of EPA is urging Commission action to avoid this duplication of review and dual jurisdiction.

    b. Taking NO ACTION on the NSPS rules would cause dual reviews by EPA and DEQ on certain new sources, such as phosphate rock plants.

2. The Commission could authorize the attached amendments for public hearing.

    a. This would help EPA-Department cooperation to achieve single state jurisdiction and review of certain new and modified sources.

    b. This would assist the Department in developing up-to-date hazardous source rules which are compatible with the Oregon Workman's Compensation Department, who also have an extensive set of OAR's to protect Oregon workers from hazardous air contaminants, such as asbestos.

3. The rules changes being considered should be considered changes in Oregon State Implementation Plan (SIP) in order to allow EPA to delegate administration of applicable Federal Rules.

Rule Development Process

The Department has assembled complete lists of amendments to NESHAPS and NSPS, and the Federal Registers describing those rule changes. The Department has determined up-to-date status on the lime plant NSPS, and has been researching the efforts of other regulatory agencies to abate the public health threat from friable asbestos in the environment.

PROPOSED RULE CHANGES AND ADDITIONS

Changes to Standards of Performance for New Stationary Sources (NSPS)

Gas Turbines, Subpart GG, was changed by 47 FR 3767, January 27, 1982. More exemptions were added, and units of less than 30 MW were given the less stringent NO_x standard of 150 ppm. Because of these added complexities, and because the federal form of the rule is an equation and not set in simple terms, it is better at this point to adopt the rule by reference, and not try to present it in a shortened or simplified manner (which could be misleading). Since the SO_x part of the rule is unchanged and simple, it will not be changed; see OAR 340-25-645 toward the end of Attachment 1.

Lead-Acid Battery Manufacturing, Subpart KK, was added by 47 FR 16573, April 16, 1982. This new standard for lead particulate emissions and opacity is proposed to be added as OAR 340-25-650.

Phosphate Rock, Subpart NN, was added by FR 16589, April 16, 1982. This new standard for particulate and opacity is proposed to be added as OAR 340-25-655.

NSPS Changes Which Cause No Change in the Oregon Rule

60.101 (Subpart J) was amended by 45 FR 79452, December 1, 1980. For new petroleum refineries, the definition of "Fuel Gas" was clarified; no change in OAR 340-25-580 is needed.

60.112 (Subpart Ka) was amended by 45 FR 83228, December 18, 1980. For new storage vessels with double seals, no gaps were allowed for those with a vapor-mounted primary seal; no change in OAR 340-25-585(3) is needed.

The above changes are incorporated by changing the date of the federal rules, adopted by reference, from October 8, 1980 to April 17, 1982, in OAR 340-25-510(2), 340-25-530, and twice in 340-25-535.

Negative Declaration For Rules Which Are Not Needed in Oregon

There are some standards which have been issued by EPA which it is believed will never apply in Oregon because such sources will not locate here. For these standards listed below, the Department will make a negative declaration to EPA, and will not include them in the Oregon Administrative Rules.

Source	Rule	Date of Federal Register
Vinyl Chloride Production Plants	40 CFR 61.63 Subpart F	October 21, 1976
Primary Copper Smelters	Subpart P (40 CFR 60)	January 15, 1976 March 3, 1978
Primary Zinc Smelters	Subpart Q	January 15, 1976 March 3, 1978
Primary Lead Smelters	Subpart R	January 15, 1976 March 3, 1978
Phosphate Fertilizer Industry	Subparts T,U,V,W,X	August 6, 1975 March 3, 1978
Painting in Auto and Light Duty Truck Assembly Plants	Subpart MM	December 24, 1980
Ammonium Sulphate Manufacture	Subpart PP	November 12, 1980

Changes to National Emission Standards for Hazardous Air Pollutants (NESHAPS)

The following list explains the changes to the federal rules, 40 CFR 61, as published in the Federal Registers for the NESHAPS rules. It also explains how these changes can be incorporated in rules, OAR 340-25-460. Desireable changes to the asbestos rule are also discussed.

Changes to Asbestos Rules

Federal Register Amendments October 14, 1975

1. "Commercial" added to "asbestos" in 340-25-465(3), first sentence, so that the rule does not apply to asbestos trace contaminants found in such raw materials as talc.

2. "Duct" added in demolition to other locations where friable asbestos is found in 340-25-465(4) after "boiler, pipe".

3. EPA added exemption cutoff points of 260 ft. of insulated pipe or 160 sq. ft. of insulation, but if this insulation is part of a demolition project, it must be "merely reported". The Department recommends against providing this exemption, as even small amounts of friable asbestos are dangerous; see Asbestos and Disease by Selikoff and Lee.

4. Temporary ventilation (exhausting through a baghouse) is listed as an alternative to wetting during demoliton or renovation. This alternative is added in 340-25-465(4)(b)(E).

5. To the title of 340-25-465(4) Demolition, "renovation" is added.

6. Labeling of asbestos waste bags is included in the OAR in 340-25-465(10)(d).

7. Use of asbestos waste in paving is forbidden in 340-25-465(2).

8. Tailings from asbestos mills and manufacturing plants come under the waste disposal rule added, 340-25-465(10).

9. The definitions of "Renovation" and "Asbestos-containing waste material" were added to 340-25-455. The definitions of planned renovation, emergency renovation, adequately wetted, removing, stripping, fabricating, inactive waste disposal site, active waste disposal site, and roadways are considered by the Department of too little value to be included in Oregon Adminstrative rules. The intent is not to change or deviate from the federal rule, only to simplify and shorten.

10. To the list of manufacturing in 340-25-465(3) is added (j) shotgun shells, (k) asphaltic concrete.

11. Added is 340-25-465(4)(a)(F), Name and address of the waste disposal site for the asbestos waste.

12. Paragraph 340-25-465(8), Fabricating is added.

13. Paragraph 340-25-465(9), Insulating is added.

14. Paragraph 340-25-465(10) Waste disposal is added. It simply requires no visible emissions, and covering by two feet of compacted cover at the end of the working day at a waste disposal site conforming to the Department's rules. The other options, when asbestos waste is not covered daily, as delineated in two pages of federal rules, requiring fencing, and signs warning of hazardous asbestos waste, are not included by the Department as they are considered unrealistic.

Federal Register Amendment March 2, 1977

1. A definition of "Structural member" was added to 340-25-455(28) to include asbestos insulation on walls and ceilings.

Federal Register Amendment June 19, 1978

1. Spraying asbestos with binders exempts the operations from the rules, by added paragraph 340-25-465(5)(c).

2. Because of the Adamo vs EPA case and EPA's insistence that a work practice requirement is an emission standard, the Department is re-titling the titles and subtitles to:

"Emission Standards and Procedural Requirements for Hazardous Air Contaminants"

"Emission Standards and Procedural Requirements for Asbestos"

Additional Changes in the Asbestos Rules Considered Desireable by the Department:

1. Added 340-25-465(4)(b)(D) to allow encapsulation methods to be substituted for wetting and removal methods. Especially in renovation, friable asbestos can be incapsulated and rendered safe in some cases, rather than removed.

2. Added 340-25-465(10)(e) to forbid open storage of asbestos or asbestos waste, in response to an appealed case (Consumers Central Heating Co. V. PSAPCA, December 3, 1980) lost by enforcement personnel of the Puget Sound Air Pollution Control Agency.

3. Added "owner or contractor", to the beginning of 340-25-465(4) so that both would be liable for proper handling of asbestos in demolition and renovation, as they both are in 340-25-465(10) and the corresponding federal rule on waste disposal, 40 CFR 61.22(j) pertaining to owners or contractors at waste disposal sites.

4. Simplified the prior notice requirements of the demolition and spraying rules by removing the 10 and 20 day notice period.

Changes to Mercury Rules

Federal Register October 14, 1975

1. The higher emission standard for sludge incineration plants is added to 340-25-480(2).

2. Definitions of "sludge" and "sludge dryer" added to the federal rule are not proposed for addition to the Oregon rule, as they are too detailed.

3. The section concerning stack sampling of sludge incineration and drying plants is too detailed and is not proposed as an addition to the Oregon rule. The same with sludge sampling. Instead, these portions of the federal rule are proposed to be added to the state rule by reference; see proposed 340-25-480(3)(d).

Federal Register June 8, 1982

1. New and Revised test methods for mercury at chlor-alkali plants and sludge incinerators are referenced in 340-25-460(6).

Summation

1. EPA adopted the first New Stationary Source Performance Standards (NSPS) in 1971. More have been added since then, the most recent two in April 1982.

2. EPA adopted the first National Emission Standards for Hazardous Air Pollutants (NESHAPS) in June 1973.

3. To acquire delegation to administer NSPS and NESHAPS in Oregon, the Commission adopted equivalent administrative rules in September 1975, and subsequently received delegation.

4. EPA amended its NESHAPS rules, and added one more NESHAP rule in October 1976, Vinyl Chloride.

5. The Commission amended the NSPS rules in April 1981, adding 8 new rules. But the Commission declined to pass ten others for the following reasons:

Negative Declaration as such sources were unlikely to locate in Oregon:

Primary Copper Smelters	Subpart P
Primary Zinc Smelters	Subpart Q
Primary Lead Smelters	Subpart R
Phosphate Fertilizer Industry, 5 Categories	Subparts T,U,V,W,X

Primary Aluminum Plant, Subpart S, was less stringent than OAR 340-25-265(1)

Lime Manufacturing, Subpart HH, had been remanded to EPA by the courts for amending.

6. In a March 3, 1982 letter, EPA requested the Department to bring its NESHAPS rules up-to-date with federal changes to asbestos and mercury NESHAPS rules, and to adopt the federal NSPS for lime and aluminum plants, so delegation of these standards could be made.

7. Because the only federal lime plant rule officially published in the Federal Register is still the one remanded back to EPA for changes by the court, the Commission still has grounds to decline to adopt a lime plant NSPS.

8. In a separate action, the Director is asking EPA to consider Oregon's own aluminum plant rule as an acceptable substitute for the federal rule, Subpart S, and to delegate NSPS jurisdiction for aluminum plants on that basis.

9. The Commission should go to hearing with rules that omit the following, as it is unlikely they will ever be built in Oregon. It is then the intent to give EPA a negative declaration for these categories when the rules are submitted for approval:

Source	Rule	Date of Federal Register
Vinyl Chloride Production	Subpart F 40 CFR 61.63	October 21, 1976
Painting in Auto and Light Duty Truck Assembly Plants	Subpart MM 40 CFR 60.392	December 24, 1980
Ammonium Sulphate Manufacturers	Subpart PP 40 CFR 60.422	November 12, 1980

10. Environmental Agencies have lost two appeals of important enforcement actions of EPA's asbestos NESHAPS rule. Therefore, the Department, after careful study, is proposing improvements to the asbestos rule, which depart from the federal rule. (These are listed on page 6).

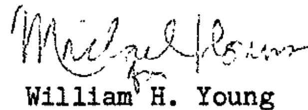
11. The proposed rule changes (Attachment 1) should bring the State rules up-to-date with the federal EPA NESHAPS and NSPS rules, where practical. The regulated sources affected are:

    a. Asbestos mills
    b. Road surfacing with asbestos containing waste materials
    c. Asphalt concrete manufacturing
    d. Demolition contractors, workers
    e. Fabrication using asbestos as a raw material
    f. Asbestos insulation
    g. Waste disposal sites which plan to accept asbestos waste

h. Sewage treatment plants burning sludge
i. Gas turbines
j. Lead-acid battery manufacturing plants
k. Phosphate rock plants

Director's Recommendation

It is recommended that the Commission authorize the Department to hold a hearing to consider the attached amendments to OAR 340-25-450 to 25-700, rules on Hazardous Air Contaminants and Standards of Performance for New Stationary Sources, and to consider those rule changes as amendments to the State Implementation Plan.



William H. Young

Attachments: 1. Proposed Rules 340-25-450 to 25-700
2. Notice of Public Hearing with attached Statement of Need for Rulemaking

J.F. Kowalczyk:a
(503) 229-6459
July 30, 1982
AA2395 (1)

AGENDA ITEM E

Young
Olson
EQC

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August 23, 1982

Environmental Quality Commission
c/o Mr. Bill Young
Director
522 S.W. Fifth Avenue
Box 1760
Portland, Oregon 97207

Re: WQ-SSS-Variance Denial-Mr. and Mrs. John Mullivan

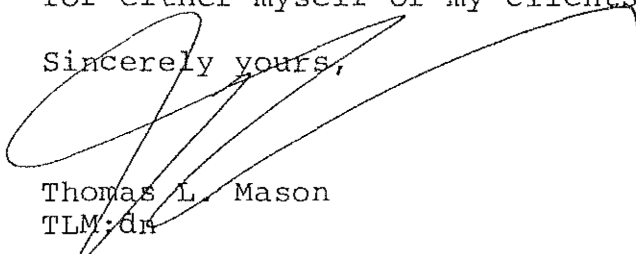
Dear Mr. Young:

Mark O'Donnell, the senior partner in our firm, has asked me to handle this matter for Mr. and Mrs. John Mullivan. At his request, the hearing was set over until August 27, 1982.

Unfortunately, I am unavailable on that date as I am a member of the Oregon Legislature, and must attend a meeting of the Legislative Council Committee of which I am a member.

If possible, I should like Mr. and Mrs. Mullivan's request rescheduled for the next meeting of the Commission scheduled in the Portland area. Mr. Olson mentioned that you would be having an October 15th meeting in Medford, however, this would be an impractical distance for either myself or my clients to travel.

Sincerely yours,



Thomas L. Mason
TLM:dn

cc: Mr. and Mrs. John Mullivan

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
AUG 2? 1982
OFFICE OF THE DIRECTOR

Item J

Portland Air Quality Advisory Committee

P.O. Box 1760
Portland, Oregon 97207
(503) 229-6092

TESTIMONY OF PORTLAND AIR QUALITY ADVISORY COMMITTEE
FOR THE AUGUST 27 ENVIRONMENTAL QUALITY COMMISSION MEETING

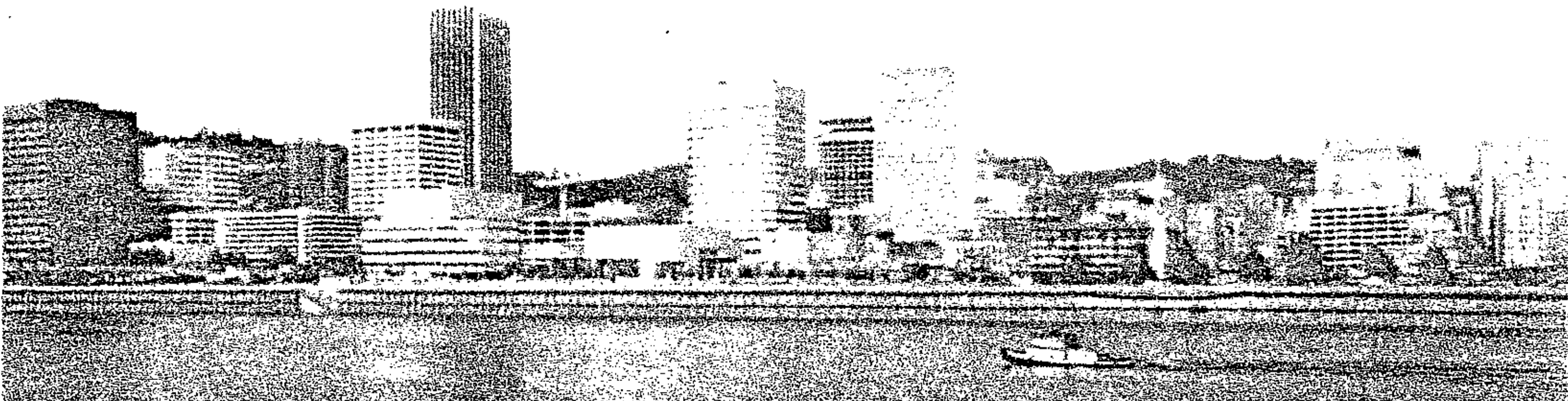
The Portland Air Quality Advisory Committee has supported the effort to end backyard burning for over three years. Our reasons can be summarized as follows:

1. A ban on backyard burning seems to be the easiest to achieve of all the potential control strategies for particulates.

2. Burning of yard debris creates fine particulates in areas where people live, thus creating a greater health hazard than other sources.

The report by the Department summarizes the impacts of backyard burning on the airshed and the efforts to control these impacts and their source. In the past, implementation of a burning ban has been postponed because of the lack of alternative disposal methods. Although the final report on the METRO Yard Debris program is not yet available, it is clear that viable alternatives to backyard burning have been identified. Both the coordinator of the yard debris demonstration project and the project steering committee have said that disposal alternatives are now, or soon will be, reasonably available to a substantial majority of the population of the Portland area. At present, two sites in the region are available for the public to deposit yard debris for a nominal fee--McFarlane's Bark near Oregon City and Waste By-Products in North Portland. If Grim's Fuel opens a proposed site near King City, the region will be fairly well served except for the Gresham area. Waste By-Products is also interested in establishing sites in Gresham and Aloha if enough yard debris can be attracted into the processing system.

Thus, we think that the intent of the present law has been met and that proven alternatives for disposal of yard debris are in place. However, the viability of these alternatives depends on a timely implementation of a ban on backyard burning. During the demonstration project,



cooperation developed among the cities, counties, METRO, and the DEQ. Beaverton, Oregon City, Portland, and other cities--to a lesser extent--fed separated yard debris into the processing system. Continuation of this cooperation is tenuous now that the demonstration is over. The continued interest of private industry in receiving and processing yard debris is also in jeopardy without the extra volume of debris which would be generated by a ban on burning. Opposition to a ban on burning seems to have diminished in Clackamas County where a yard debris disposal site has been established. It is likely that new sites in washington County will also reduce opposition to a ban.

Obviously, momentum has been established to implement a yard debris disposal program that includes a ban on backyard burning. The Portland Air Quality Advisory Committee therefore urges the Commission to carefully consider the report of the Department and to move expeditiously toward a ban on backyard burning.

WRITTEN TESTIMONY
Agenda Item J

3327 SW Dosch Rd.
Portland, Ore. 97201
August 24, 1982

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
AUG 26 1982
OFFICE OF THE DIRECTOR

Environmental Quality Commission
P. O. Box 1760
Portland, Ore. 97207

Dear Commissioners:

I will be unable to appear at your meeting Friday and am consequently sending my comments in this form.

I am Owen P. Cramer, retired fire research meteorologist. During the past year I have, at Mr. Young's request, spent some time with Doug Brannock, D.E.Q. Meteorologist, examining the weather and nephelometer records for last fall's burning season, and investigating the possibilities for improving the basis for selection of burn days.

One of my objectives was to find an objective index of air quality that would actually reflect the concentration of smoke size particulate. Since it is generally accepted that total suspended particulate (TSP) is not an indicator of smoke concentration, TSP was not considered. And since other sources also contribute the same size particulate as backyard burning, it seemed highly unlikely that a good measure of such smoke would be possible. But the sampling of the Portland area by nephelometer does indicate the quality of air with respect to smoke size particulate.

Examination of October and November D.E.Q. nephelometer data for the afternoon hours, when good dispersion and clean background air should give low readings, showed that the air quality was considerably better on burn days than on no-burn days. Specifically, in the period 1200-1800 PST frequency of B-scat readings greater than 3 was 13 times greater on no-burn days than on burn days. What this illustrates is that the system for selecting days with low background loading and good dispersion, in general, works very nicely. There were no nephelometer-indicated problems in December. The spring nephelometer data was not yet available when I made my review .

While some may question use of the afternoon readings alone, readings made in the evening, night, and morning usually mask any residual daytime emissions with the normal accumulation of all particulate in the stable air near the surface. Smoke once dispersed does not descend to the surface layers at night -- fall velocity of smoke particulate is negligible, and certainly most of the burning is terminated by two hours before sunset purposely to avoid ground accumulations.

I note that in the report from the Director for Agenda Item J, in Table 1, occurrences of days exceeding the T.S.P. standard are linked to residential open burning. It is my understanding that smoke-size particulate density is definitely not measured by T.S.P., so the premise behind this table may be falaceous. T.S.P. is not measured with the nephelometer. It is also interesting to note that in the 6-plus years of data used in the table there were probably close to 350 burn days. It is also interesting that no attention is given to improvement in the burn-day selection process that is each year more successful in

keeping the back-yard burning days separated from airmass loadings and dispersion problems that result in unacceptably polluted air as shown both by nephelometer and T.S.P.

While considerable improvement is occuring, more is needed. The frequency of burn days is such that the criteria for burn day selection can be further tightened, especially for week ends at the beginning of the burn season. I believe that the use of the objective system I have suggested earlier can help enhance the forecaster's judgement.

My recommendations would be:

1. Develop an objective index indicative of (even if not a precise measure) the concentration of smoke-size particulate in the Portland air. Use this index to indicate the extent to which"smokiness" episodes actually coincide with burn days.

2. Tighten the requirements for burn days to give a greater margin of safety separating such days from those with poor dispersion or high background loadings of smoke-size particulate. (Alternative 5)

3. Continue to push alternatives to burning wherever they apply.

4. Use newspaper releases and TV news items to instruct burners especially at the start of each burning season.

5. Continue to use the existing burn seasons since suitable days are rare in summer and the fuels usually too wet in winter. But keep the option open of allowing burning at other times following storms or during unusual years, which we do have, when summer or winter conditons are suitable.

6. Install temperature and wind equipment which the Department already owns at the 2000-foot level on a tower in the west hills to aid with prediction and verification of ventilation index for the Portland area. Accurate prediction of wind has been a problem, and this is not surprising with the nearest upper air wind and temperature observations made only twice daily 50 miles away at Salem.

7. In the absence of any standard for respirable particulate or smoke-size particulate, it might be well to at least suggest some levels of nephelometer readings as targets which are not to be exceeded on burn days -- this would have to be experimental, but would give the forecaster a target.

8. Try a little more enforcement against violators. Every other source treated with this importance gets enforcement action.

9. Ask the Department to come up with measurements that will actually show how smoke-size particulate for which there is no standard, violates a T.S.P. standard to which it is not only poorly related but in which it is masked by every other source of all size particles.

It is difficult for me to see how an activity, that, with few exceptions, is permitted on the days that afterward demonstrate the best air quality can be actually viewed as such a threat.

Sincerely

Owen P. Cramer

Owen P. Cramer

Item L

PROGRAM	FY 83 BUDGET AMOUNT	FY 83 TOTAL USER FEE	FY 82 BUDGET AMOUNT	FY 82 TOTAL USER FEE	FY 81 BUDGET AMOUNT	FY 81 TOTAL USER FEE
Recycling	275,670[1]	263,624	296,780	286,780	143,198	126,198
Yard Debris	65,504	-0-	173,496	11,996	-0-	-0-
Resource Recovery	417,050	95,192	303,445	-0-	486,170[2]	206,170
Total	758,224	358,816	773,721	298,776	629,368	332,368

[1]For 1983 Budget no general solid waste administration or general fund overhead is included.

[2]In 1982 Budget included North Processing Station Program.

6657B/D4

MetroForum

SPRING 1982

PUBLISHED BY THE METROPOLITAN SERVICE DISTRICT

METRO

GARBAGE
It just doesn't go away

Tossing garbage in the can is easy. Too easy. Last year we had to get rid of about 780,000 tons of garbage in the metropolitan area. That's about 14 pounds a week per person. The problem is, we're running out of places to put all that garbage. Our landfills are reaching their limits and closing.

What should we *do* with garbage in the tri-county area? Metro's job is to see that it is disposed of safely and economically. After looking at many alternatives, Metro has developed a program that will ease the burden on our landfills and hold down garbage disposal costs. This newsletter describes Metro's garbage program.

You can help by wasting less

The best way to solve the garbage problem is to reduce waste. The less garbage we all create, the less we have to get rid of. About 30 percent of your garbage is easily recycled, and the tri-county area has many drop-off centers and some curbside collection services for recyclables. You can help reduce the amount of garbage we must dispose of by recycling in your home. Call our Recycling Switchboard for details. 224-5555.

Metro is actively involved in promoting and supporting recycling.

- Metro's Recycling Switchboard has handled over 21,000 requests for information about where, what and how to recycle.
- The Metro Council this year awarded a total of $75,000 to 17 separate recycling organizations in the region. The money will be used for site improvements, equipment or public education activities. The funds are intended to help to improve local recycling opportunities.
- Metro has a seven-minute slide show on recycling, available for schools, community organizations and other groups. Call Nancy Carter at 221-1646 to make arrangements.
- Metro publishes the *Recycling Forum*, a bimonthly newsletter with information about local recyclers and markets. To get on the mailing list for this free

Continued on next page

Continued from front page
publication, drop a card to Metro's Recycling Switchboard, 527 S.W. Hall Street, Portland, Oregon 97201, Attn: Jo Brooks.

With more recycling, we will extend the life of our landfills and save energy and natural resources that now go to making brand new products instead of reusing existing ones. Please pitch in and help. Your personal participation will make a difference.

Reliable system reclaims energy from garbage

Even with a strong commitment to recycling, a lot of garbage will not or cannot be recycled. So, Metro is negotiating with the private firm of Wheelabrator-Frye, Inc. to build and operate a plant in Oregon City that will convert ⅔ of the region's garbage into steam energy. Publishers Paper Co. has contracted with Metro to buy the steam the plant produces for use in its nearby paper mill. The energy recovery facility will supply steam energy to replace a million barrels of oil a year.

Burning garbage as a fuel to create energy is not new. There are 280 similar plants operating safely and successfully around the world. Taking the best of the technology, Metro has proposed a facility that will meet the toughest environmental standards ever applied to a garbage-burning plant. It will have over $20 million in pollution control equipment. All tests indicate that this equipment will keep emissions well within state and federal limits.

The Oregon Department of Environmental Quality (DEQ) is now reviewing the application for an air quality permit to build the facility. The DEQ plans to hold a public hearing in Oregon City this summer, where the issues of environmental quality will be fully examined.

How can we build a sophisticated garbage plant and still hold down the cost to the consumer? Wheelabrator-Frye will invest 25% of the capital and Metro will issue revenue bonds to finance the remainder of the $165 million facility. The bonds will be repaid with guaranteed income from the energy contract with Publishers, the sale of recovered metals from the ash and a "tipping fee" charged to the trucks that dump garbage at the facility (just as tipping fees are now charged at all area landfills).

Before any bonds are issued or any construction begins, however, the Metro Council will conduct a full public review of the project. The Council will not make a commitment to the energy recovery facility unless it is satisfied that the project is a cost-effective and environmentally safe way to dispose of garbage.

Are landfills obsolete?

With or without recycling and an energy recovery plant, we still need landfills. Some garbage cannot be burned, and we must have a place to bury unsold ash from the energy recovery plant. For the short-term, Metro has just finished a 55-acre expansion of the St. Johns Landfill, extending its life to the late 1980s. But, the federal Environmental Protection Agency allowed the expansion *only* if we agreed to find a new landfill site. After studying 45 potential sites, Metro has selected one (called Wildwood) in northwest Multnomah County, and has applied to the County for the necessary land use permits. If Wildwood becomes our new regional landfill, it will take this region's garbage for 16 years without the energy recovery plant and *31* years if we have energy recovery.

Streamlining garbage disposal

For greatest efficiency our garbage disposal system will need transfer stations where garbage can be centrally collected and moved by large truck to either the energy recovery plant or to a landfill. Transfer stations save energy by reducing the number of trips to a disposal site. Metro is working with local governments in the region to locate the best sites for a transfer station:

- on industrially zoned land;
- near major roads;
- in areas where the greatest amount of the region's garbage is generated.

This summer, the region's first transfer station will be built. Located next to the site of the proposed energy recovery plant, the station will take garbage from Clackamas County haulers and citizens when Rossman's Landfill closes later this year. Garbage will be trucked from the transfer station to the St. Johns Landfill.

Many other West Coast cities have transfer stations. They are clean, quiet, indoor operations; garbage is cleared out daily. Most transfer stations include drop-off centers for recycled material.

Serving the Region
METROPOLITAN SERVICE DISTRICT

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Executive Officer

Metro Council

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Ernie Bonner
District 8
Bruce Etlinger
District 10
Marge Kafoury
District 11
Mike Burton
District 12

The future is now

There is no denying that Metro's solid waste program is far-reaching. But our region has become too large to rely on a casual approach to garbage disposal. We must all start recycling and reusing what we can. What is not recyclable can be converted into energy rather than just thrown away. Ash from the energy recovery plant can be used as a road building material or buried in a safe, well managed sanitary landfill. The system can be tied together by transfer stations that make garbage collection cost-effective and help hold down the rates we all pay.

The system requires a commitment from all of us . . . to cut down on our personal contribution to the garbage problem, and to participate in the public process of siting the right disposal facilities. Please take a careful look at Metro's program to dispose of your community's garbage.

Metro wants to know what you think...

1. Do you now recycle?

   _____ newspapers   _____ glass   _____ tin cans   _____ other

2. Would you recycle more if home pick-up of recyclables was available in your area? _____

3. How do you feel about Metro's proposed garbage disposal program?

   Recycling _____

   Energy Recovery _____

   New Landfill _____

   Transfer Stations _____

4. Would you like more information about:

   _____ recycling   _____ energy recovery   _____ transfer stations   _____ landfill

NAME: _____

ADDRESS: _____ (City, Zip) _____

PHONE: _____

Status of Metro's Solid Waste Projects

RECYCLING

Metro has appointed a citizen's advisory committee to study the potential for curbside collection of recyclables in the tri-county area and to recommend what Metro's role should be in such a program.

ENERGY RECOVERY

DEQ has issued a draft air quality permit for the energy recovery facility, and will conduct a public hearing at the Oregon City Senior Center on July 12 at 7 p.m. Meanwhile, contract negotiations with the preferred builder/operator of the plant are nearing completion. When an agreement is reached, the Metro Council will begin its deliberations on whether to proceed with the project. The Council meetings are open to the public. Watch for announcements later this summer.

LANDFILLS

On June 17 a Multnomah County hearings officer heard Metro's case for a sanitary landfill at the Wildwood site. After taking testimony from supporters and opponents of the proposed landfill, the hearings officer will decide whether to approve the site as suitable for a landfill. A decision is expected later this summer or early fall.

TRANSFER STATIONS

Construction has begun on the Clackamas Transfer & Recycling Center in Oregon City, due to be completed late this year. Metro envisions two more transfer stations in the region, one in Washington County and one in Multnomah County. Metro is now working with local governments to assure that the transfer stations will meet their needs.

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JULY/AUGUST 1982
VOL. 1, NO. 4

Metro's Recycling Forum

PUBLISHED BY THE
METROPOLITAN SERVICE DISTRICT

Energy Possible From Garbage Gas

What do french fries, cement, steel castings, roofing shingles, electronic games, and the garbage at St. Johns and Rossman's Landfills have in common?

Answer: "Methane," says John LaRiviere, Metro Senior Planner.

If Metro is successful in developing its methane recovery project at St. Johns, one or several manufacturers in the Rivergate area may use landfill methane in their production processes. Methane gas may also be used to produce electricity to be fed into the PGE supply system.

Metro has contracted with Gas Recovery Systems, Inc. to conduct a feasibility and marketing study which should be available in July. The study, funded in part by the U. S. Department of Energy, indicates that commercial volumes of methane could be recovered from St. Johns Landfill as early as 1984.

Methane can be generated 24 hours a day, 365 days a year. The more refuse in the landfill, the more methane produced. Peak recovery rate could reach one million cubic feet of methane per day (one billion BTUs)—the equivalent of more than 63,000 barrels of oil per year. The estimated production life of St. Johns is 11 years, after which the landfill will reach refuse capacity and be closed.

Commercial recovery of methane at St. Johns does have some problems. Compared to other methane recovery landfills, the St. Johns Landfill is very shallow and has a lot of water in it, so different methods must be used when extracting methane from the landfill. Tests at St. Johns evaluated the use of collection trenches rather than the usual vertical wells. The trenches performed satisfactorily in the pilot studies as the slope of the collection pipe permits the extraction of liquids if they become a barrier to methane collection.

Problems also exist in marketing methane once it is collected. Landfill methane must be processed to remove moisture and to purify the gas. The amount of processing depends on the end use, and the more processing required, the greater the cost. The effectiveness of the project—including collection, processing and transmission costs—influences the marketability of the methane. Alternative fuel costs set the ceiling price.

These factors are addressed in the Gas Recovery Systems, Inc. report. The Metro solid waste staff, along with the City of Portland Bureau of Refuse Disposal, will be reviewing the conclusions of this report and developing a recommendation regarding the St. Johns project later this summer.

St. John's Landfill could produce enough methane to equal the energy of 63,000 barrels of oil a year.

Continued on page four

RECYCLER'S PROFILE

Environmental Learning Center

Jerry Herrmann (right) and a co-worker sort recycled paper at Inskeep Environmental Learning Center.

Each spring the John Inskeep Environmental Learning Center (ELC), located on the Clackamas Community College Campus, celebrates its birthday. "This year the ELC is seven springs old," says Project Director Jerry Herrmann. This uncommon way of recording the Center's age is indicative of the operation itself—it is unique. Named in honor of former State Senator and longtime Clackamas County Extension Agent John Inskeep, the ELC is a nonprofit organization supported by grants, donations and fund-raising activities.

Housed on three-and-a-half acres of what was once the site of a Smucker's berry processing plant, the Center was a campus project when it began operation in 1975. Using volunteers, CETA and Clackamas County Corrections Program participants, the Center has since expanded its services to include a recycling depot and information center.

Five years ago, as part of the overall conservation ethic, the ELC initiated an on-campus recycling program that saves the college $2,000 per year in garbage hauling fees alone. That program has since grown to include federal and city agencies in the Oregon City area.

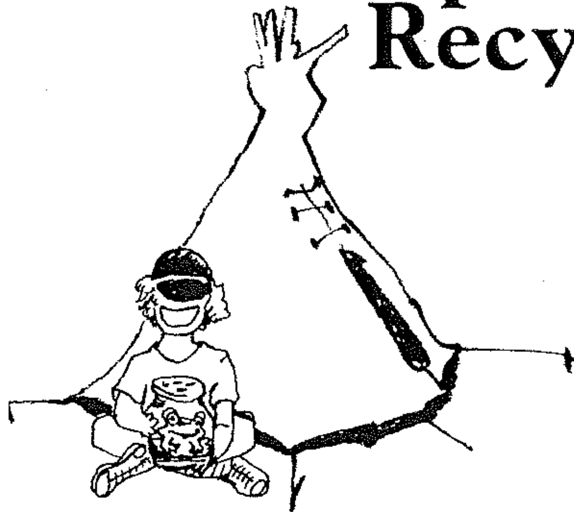
In order to further expand their recycling efforts, the ELC staff applied for and received a recycling Support Fund grant in January, 1982. When school resumes in September, their expanded recycling project proposal will come to fruition. The proposal includes a renovated trailer across from the ELC which will house a full-service recycling depot. This depot will accept glass, scrap metals, tin cans and motor oil in addition to the newspaper, cardboard and ledger presently accepted. The facility will provide training and work experience for disadvantaged youth and handicapped adults.

In addition to providing recycling services, the Center is a model of land reclamation; soil, water, and wildlife conservation; and landscape design for wildlife within an urban environment. Herrmann strives to provide a working, feasible model for communities wanting to start these types of programs themselves. "The ELC demonstrates practical applications of alternative solutions to conservation problems," Herrmann said. For example, solar panels, constructed by CETA workers from recycled materials, heat the Center's water. A remarkably efficient forced air wood-burning furnace provides central heating. An on-site nursery uses a composting system which Herrmann has refined to a 10-15 day cycle.

The ELC welcomes educational tours. An information and exhibit area will provide depot users and facility visitors with an overview of recycling procedures emphasizing the reusability of materials (e.g., reusing glass for canning jars; reusing scrap paper as a compostable material). In keeping with the ELC's focus on conservation, the trailer will incorporate a dual solar heating system, air-to-air panels and an attached greenhouse. "The solar greenhouse will provide 35 percent of the building's heat load," Herrmann said.

Persons wishing to learn more about the ELC and its programs may contact the Center at 657-8400, ext. 351. An Ice Cream Social/Art Show is slated for August 8 at 6:00 p.m. Visitors are welcome.

Campers Hear Recycling Story



Metro's recycling education program for youngsters is continuing during the summer. Cheryl Moralez, public involvement coordinator for solid waste, is touring 20 camps in the Portland metropolitan area this summer to make children aware that they, too, are an essential part of their communities' waste reduction efforts. The presentation features a slide show, a "Garbage I.Q." quiz and a recycling demonstration. Metro is providing take-home packets to the 7,500 youth for their families.

The summer camp presentation continues Metro's school presentation program. Last school year, Sally Magnani, outreach project assistant at Metro, developed the recycling program for fifth, sixth and seventh grade classes in southeast Portland schools. She presented the program to 4,000 students during a two-and-one-half month period.

The presentation stressed source separation, preparation of recyclable materials and the general how-to's, why-for's and what-if's of recycling. It also dealt with shopping habits and organization for an easy in-home recycling program. Teachers were enthusiastic and complimentary about the program.

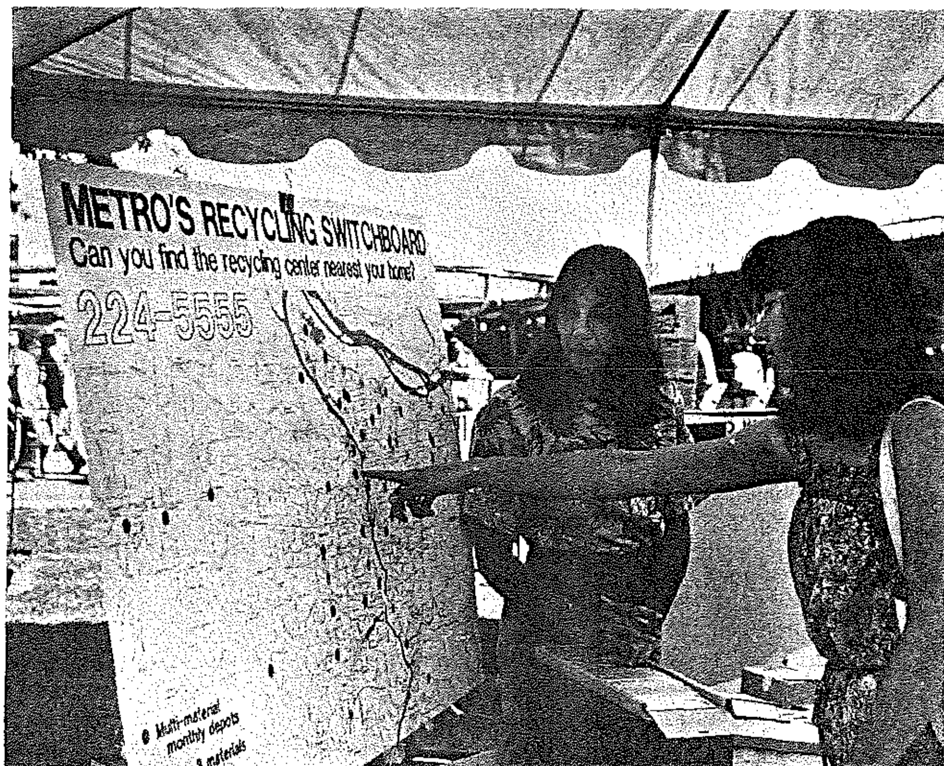
A decision is pending on whether to continue the education program next fall. A task force appointed by Metro to study ways of encouraging recycling in the region will make its recommendation to the Metro Council about whether to extend the schools program.

In the meantime, Metro is considering holding a workshop this fall to familiarize teachers, youth group leaders and camp counselors with the subject of recycling. Metro hopes the workshop will enable these leaders to do their own recycling presentations for their students, drawing from materials Metro has already developed.

Cheryl would like to hear from any teacher or youth group leader interested in such a workshop. Call the Recycling Switchboard at 224-5555 and leave your name and number. Cheryl will contact you with further details. Or, drop a card to Cheryl at Metro, 527 S. W. Hall Street, Portland, 97201.

Market Averages for July 1982

News = $22/ton
Glass = $24.50/ton
Aluminum = 12¢ - 17¢/lb
Ledger (white) = $60/ton
Cans = $25/ton
CPO = $110.50/ton
Tab Cards = $157/ton



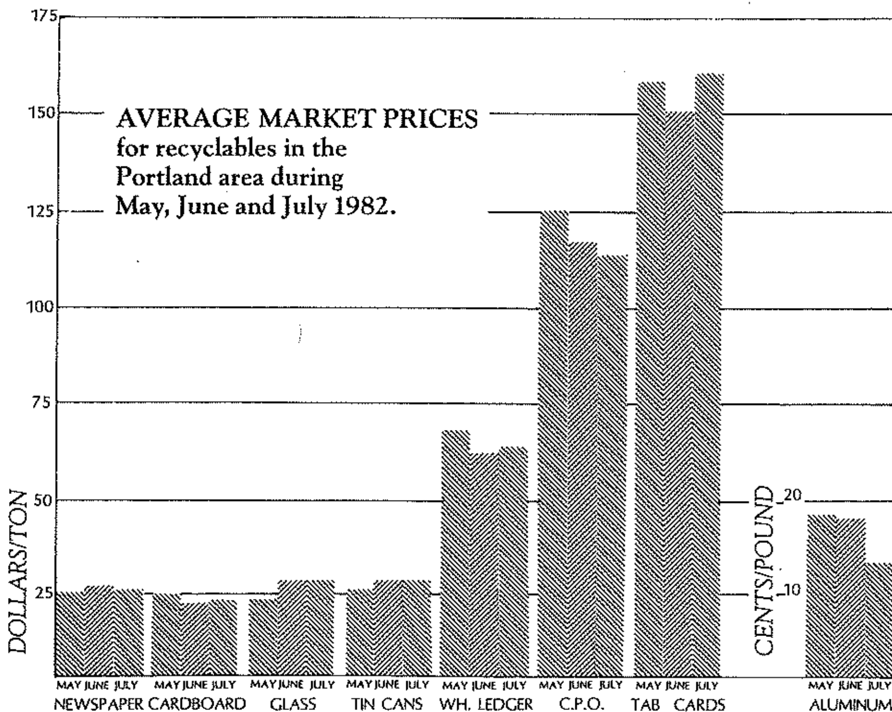
Metro's Trish Del Nero (left) brought the Recycling Switchboard to Neighborfair, where over 150 folks got the details on the recycling service nearest them.

Continued from front page

Meanwhile, the methane recovery project at Rossman's Landfill in Oregon City is facing a funding problem.

In 1981, Clackamas County and Jack Parker, owner of Rossman's Landfill, formed Clackamas Energy Conservation Company (CECC) as a marketing agency for methane generated by the landfill. CECC then submitted an electrical generation grant proposal to the Bonneville Power Administration (BPA). Under this proposal, CECC would put up $3.5 million, via low-interest loans from the Oregon Department of Energy, to construct two gas turbines and related equipment. BPA would then purchase the output from the methane-powered generators. BPA rejected the proposal citing incomplete engineering studies. CECC is currently appealing BPA's decision.

CECC representative Dave Phillips, Clackamas County Solid Waste Administrator, feels the BPA refusal is ill-advised and at odds with the conservation priorities mandated by the Pacific Northwest Electric Power Planning and Conservation Act. According to Phillips: "The methane at this point is being wasted. Most of the work is completed, and the technology worked out. Land use is taken care of. We've identified the end users. We could still have the project on line by February 1983." (Ed. note: the County's Department of Environmental Services building complex near the landfill would be a user.) Once project and funding problems are overcome, methane production at St. Johns and Rossman's Landfills can help the area meet some of the ever-increasing demand for power.



Metro's Recycling Forum

A newsletter published by the Metro Service District as a clearinghouse for recycling information in the region.

Editor, Jo Brooks

METRO SERVICE DISTRICT
527 S.W. Hall St.,
Portland, OR 97201
(503) 221-1646

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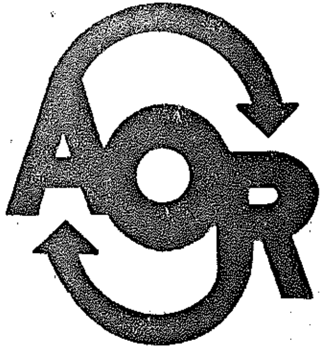

Association of Oregon Recyclers

P.O. BOX 10051
PORTLAND, OREGON 97210
(503) 228-5375

August 26, 1982

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Box 782
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689-7509

Members of the Environmental Quality Commission
c/o Oregon Department of Environmental Quality
522 SW Fifth Avenue
Portland, OR 97205

Dear: Members of the Commission
RE: Item L, the Metro Waste Reduction Program, on the agenda of the Environmental Quality Commission August 27, 1982 meeting, with specific reference to conditions 4,5, & 7 of DEQ Director William H. Young's June 3, 1982 letter to Metro Executive Officer Rick Gustafson.

The Association of Oregon Recyclers (AOR) is a non-profit organization comprised of people involved in the entire spectrum of recycling/waste reduction activities - collectors, educators, brokers, processors, end-users, government officials, and interested citizens. AOR is vitally concerned about the progress of the Metropolitan Service District's (Metro) Waste Reduction Plan as adopted by the Metro Council on January 8, 1981. We are especially sensitive to the recycling/waste reduction aspects of the plan and how they are affected by Metro's proposed energy recovery facility (ERF), which is the major element of the plan.

To begin with, Metro should be commended for seriously addressing the solid waste problem within the region. Specifically, Metro's significant and worthwhile activities in the waste reduction field from January, 1981 through June of 1982 include:

1. distribution of a portion of the $75,000 Recycling Support Fund to assist recycling organizations;

2. transfer from the DEQ and operation of the regional Recycling Switchboard;

3. approximately $110,000 in financial assistance to Portland Recycling Team for operations and improvements;

100% Recycled Paper

4. a publicity program and school education program in Southeast Portland regarding recycling collection services;

5. distribution of promotional literature and presentations to community groups.

Despite these activities however, AOR has serious questions about the future of Metro's waste reduction efforts, and about how the organization defines its responsibilities in this area. Furthermore, we are not convinced that energy recovery through mass incineration can be properly categorized as waste reduction. It is certainly waste utilization and waste transformation, but the proposed ERF in no way will reduce the amount of material in the waste stream and in fact may indirectly be an incentive to do precisely the opposite.

By mislabeling energy recovery as a waste reduction technique and then including recycling and other strategies under the same general heading, Metro makes it appear as if it is devoting adequate resources toward the implementation of its short and long-range goals contained in the Waste Reduction Plan (WRP). As our remaining comments will indicate, this is simply not the case. These remarks are organized according to points 4, 5, & 7 of the June 3 letter from DEQ Director William Young to Metro Executive Officer Rick Gustafson:

4. Adequate resources will be allocated toward implementation of the waste reduction program so as to make it consistent in level and impact with other solid waste management activities of the District.

5. Metro will develop an information base which will determine the starting point for measurement of accomplishment of the goals and objectives set forth in the plan and associated documentation.

7. Any significant modification of the plan or deviation of the program from the direction of the plan must be approved by the Department and incorporated into the Solid Waste Management Plan by the Council.

Point 4

From February 1981-June 1982 Metro allocated about $296,000 and 4 FTE to the recycling/waste reduction component of the WRP. During the coming FY, Metro reduced this level of commitment by 1 FTE and approximately $50,000.

In June of this year, Metro laid off its Recycling Coordinator and Recycling Technician. These two people had the most background and knowledge in waste reduction on the Metro staff and were respected in the recycling community. Only one other person in the entire solid waste division was laid off, thus placing a disproportionate share of budget cuts in the waste reduction program. No public explanation has ever been given for this decision. AOR is curious about how Metro can assert it is vigorously pursuing its recycling goals by allocating fewer personnel with less experience and a reduced budget when compared to previous commitment levels.

In addition, support services have been cut. For example, Metro's Public Affairs Department eliminated two positions, both of whom worked predominately in waste reduction activities.

An even more intriguing set of questions is raised when one looks at the personnel and financial commitments that Metro's own Solid Waste staff proposed as adequate for accomplishing the goals of the WRP within its stated time frames. Material provided the District's Regional Services Committee on December 9, 1980 contained these estimates:

Year	FTE	Total Program Expenditures
1	8.7	$ 514,000
2	6.75	597,200
3	6.65	601,700
4	6.65	578,900
5	6.65	588,500
Five Year Total:		$ 2,880,300

Why is there such a widespread discrepancy between the resources that staff originally recommended for implementation of the WRP and the actual totals for FY 1981-82 and 1982-83? What are the actual expenses for the ERF program vs. those dollars budgeted for the WRP?

Point 5

Again, some history proves illuminating. A Metro Staff Assessment Summary Report, dated September 30, 1980, evaluated the proposed WRP and contained the following revealing comment:

> Intrinsic to the establishment of waste reduction goals (to fulfill S.B. 925) is the ability of Metro to determine whether the goals are being attained. A materials monitoring system of large magnitude would have to be developed to accurately assess the level of recovery in the region. To implement such a system, Metro would need the ability to exercise monitoring authority over local brokers and/or industries which accept recycled materials.

As of today's date, no such monitoring authority has been obtained and no such data-gathering system has been set up. Metro has no way of knowing how much is being recycled in the region. Its ability to quantify the impact of its own actions or those of others on the recycling rate is thus seriously impaired. The last attempt to logically ascertain regional recycling rates and volumes was done by a private consultant for Metro; the findings were published for the year of 1979. Clearly this data needs to be updated annually.

Point 7

For reasons which have yet to be discussed publicly, Metro's recycling program has come to a halt. A Waste Reduction Technical Steering Committee has been meeting over the past few months with the stated purpose of re-evaluating Metro's role in waste reduction and making budget recommendations to the Metro Council. AOR finds this whole process puzzling at best and alarming at worst.

First, AOR wonders why this committee was formed in the first place. Is Metro dissatisfied with its present WRP? If so, in what ways and on what basis? None of these questions have been answered; instead, it appears as if Metro itself is trying to obstruct the implementation of its own WRP.

Secondly, AOR notes that the members of the committee were hand-picked by Metro management and that the committee contains a disproportionate number of representatives from the waste collection industry who have consistently opposed recycling initiatives in the committee.

Thirdly, AOR has learned the committee is proposing that the principal focus of Metro's recycling program be curbside collection and that anywhere from $50,000 to $100,000 be dedicated toward the expansion or establishment of such programs in cities where franchised refuse collectors operate. While AOR applauds this direction, we fail to see why over six months has been wasted in discovering this allegedly new program. A $75,000 Recycling Support Fund has already been established to aid the development of recycling and this change in focus of the fund could have been approved by the Metro Council who favorably discussed this option earlier this year.

In addition, we would point out that as early as February of this year AOR representatives and Metro staff had communicated to the agency's management that several curbside recycling demonstration programs in franchised areas receiving partial financial assistance from Metro would be consistent with the main policy directives of the WRP. Now, months later, this idea again suddenly surfaces as the product of the committee. Metro needs to stop playing politics with its recycling plans and get on with implementing them.

In this regard, AOR wishes to point out that curbside recycling is clearly identified in the existing WRP as a high priority for Metro to support. A committee did not need to be set up in order to determine this. In 1980, an exhaustive public review process was undertaken and a Waste Reduction Task Force was formed. The Task Force spent five months reviewing all waste reduction options and recommended a comprehensive plan for a regional program including Metro's role, program options, goals and objectives. The Metro Council adopted the same plan early in 1981. That Metro would make it appear that all this never took place is highly suspicious and undermines their professed commitment to waste reduction.

Finally, the WRP is the only adopted element of Metro's present solid waste management activities. The ERF, transfer station program and landfill siting process have not been adopted by the Metro Council. The DEQ does not have record of a current adopted Metro Solid Waste Management Plan.

Based on the comments we have presented, AOR recommends the following actions by the EQC and DEQ:

1. Withdraw the provisional approval given by DEQ to Metro's WRP and require Metro to present written documentation to the EQC and DEQ in a timely manner that proves it is satifsying points 4, 5, & 7 in the letter referenced earlier from DEQ to Metro;

2. Suspend DEQ funding of Metro solid waste activities until #1 above is accomplished;

3. Appoint a committee comprised of EQC members and/or interested citizens to act in a watchdog capacity indefinitely to insure that Metro moves forward on the recycling component of the WRP;

4. Require Metro to restore the recycling program to at least its 1981-82 funding and personnel levels (4 FTE and approximately $300,000);

5. Require additional staff with writing and graphic art skills to assist solid waste staff in carrying out the promotion/education aspects of the WRP;

6. Require a systematic, coordinated, multi-media program to promote the services of the Recycling Switchboard and WRP be implemented during FY 1982-83;

7. Require Metro to provide financial assistance to Portland Recycling Team over the next FY so that it may continue to exist while it plans for the orderly transfer of its operations to other vendors;

8. Require Metro, either through its own efforts, those of a consultant, or both, to produce within the next six months a complete update of the recycling rate data collected over two years ago;

9. Require Metro to produce and disseminate to local jurisdictions a model recycling collection ordinance;

10. Require the submittal of an adopted solid waste management plan by the Metro Council and monitor its implementation.

In conclusion, many recyclers and environmentally-concerned people in general would be far less distressed by Metro's actions had the recycling portion of the WRP received fairer treatment and more favorable attention than it has. By claiming that its first priority is recycling, but consistently devoting a distinctly disproportionate share of its time, money, and personnel to the ERF, Metro has undermined the compatibility of the two approaches.

Sincerely,

Daniel A. Smith

Dan Smith
AOR Board of Directors

Item N ~~Bolton~~ Olson

HOMESITES

1002 SOUTH CENTRAL AVENUE, MEDFORD, OREGON 97501 / TELEPHONE 503 / 772-4555

August 3, 1982

D. E. Q.
P. O. Box 1760
Portland, Oregon

Attn: Mr. Bill Young

Gentlemen:

I appeared before the D. E. Q. meeting in Medford this morning in opposition to the increase to $175.00 for septic tank inspections.

I own 64 acres in the Applegate Valley and I am now making application to partition some for home sites.

It is my position that a $175.00 charge is unreasonable and that such service should be included in the services of the D. E. Q. general allocation.

I learned at the hearing they are reducing the inspector staff from six to three. In this case the charge should be reduced and not increased.

Mr. Prior stated the increase would agerage 30%.

With the economy at the lowest point in history it certainly is not timely for such an increase. It just adds to the discouragement of those that would like to build. I feel if we could get more housing starts the general benefit would be more beneficial.

In Medford for the month of June there was one home building permit issued.

If you desire to see a start in home building please don't increase the cost further.

Very truly yours,

Archie Pierce

Archie Pierce

AP/st

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Dept. of Environmental Quality

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