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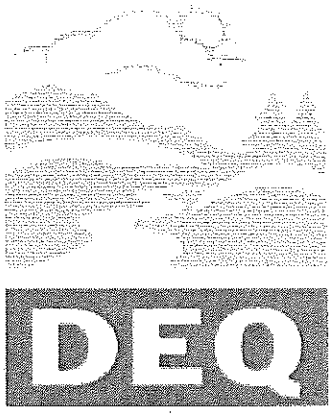
5/20/1983

OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS



State of Oregon
Department of Environmental Quality

OREGON ENVIRONMENTAL QUALITY COMMISSION MEETING

MAY 20, 1983

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.

APPROVED A. Minutes of April 8, 1983, EQC meeting.
w/changes

APPROVED B. Monthly Activity Report for March 1983.

APPROVED 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

APPROVED D. Request for authorization to conduct a public hearing to amend the rules for air pollution emergencies (OAR 340-27) as a revision to the Oregon State Implementation Plan.

APPROVED E. Request for authorization to conduct a public hearing to amend Gasoline Marketing Rule 340-22-110(1)(a) for the Medford AQMA in response to a March 28, 1983, petition from eight bulk gasoline plant operators in the Medford area.

APPROVED F. Request for authorization to conduct a public hearing on modifications to Water Quality Rules related to waste disposal wells, OAR 340, Division 44.

APPROVED G. Request for authorization to conduct a public hearing on the Construction Grants Priority Management System and List for FY84.

ACTION AND INFORMATION ITEMS

Public testimony will be accepted on the following, except items for 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.

(more)

APPROVED I. Proposed modification of rules for hazardous waste storage or treatment by generators, OAR 340-63-215(8) and 304-63-405(1)(a).

APPROVED J. Request for approval of preliminary plan, specifications and schedule for sanitary sewers to serve health hazard annexation area known as Pelican City, contiguous to City of Klamath Falls, Klamath County.

APPROVED w/amendment K. Public hearing to consider a request for a variance from noise control rules for motor sports vehicles and facilities (OAR 340-35-040) at Jackson County Sports Park in White City.

APPROVED * L. Proposed adoption of increase in air contaminant discharge permit fees (OAR 340-20-155, Table 1, and OAR 340-20-165).

APPROVED * M. Proposed adoption of rules amending water quality permit fees to increase revenues for 1983-85 Biennium, OAR 340-45-070, Table 2.

APPROVED * N. Proposed adoption of rules amending the Deschutes Basin Water Quality Management Plan to include a special groundwater quality protection policy for the LaPine Shallow Aquifer, OAR 340-41-580.

APPROVED * O. Proposed adoption of amendments to rules governing on-site sewage disposal, OAR 340-71-100 through 340-71-600 and 340-73-080.

ACCEPTED P. Informational report: DEQ activities for meeting federal requirements to protect visibility in Class I areas.

ACCEPTED Q. Informational report: Beryllium use and waste handling survey requested by the Commission in response to concerns about the hazardous air emission standards for beryllium (OAR 340-25-470(2)(b)).

ACCEPTED R. Informational report: Review of FY 84 State/EPA Agreement and opportunity for public comment.

ACCEPTED S. Informational report: The use of variances.

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 a.m.) at the Portland Motor Hotel, 1414 S.W. Sixth Avenue, Portland; and will lunch at the DEQ Laboratory & Applied Research Division, 1712 S.W. 11th Avenue, Portland.

MW102

OREGON ENVIRONMENTAL QUALITY COMMISSION

May 20, 1983

BREAKFAST AGENDA

1.	Legislative update	Biles
2.	EQC meeting schedule and locations	Shaw

THESE MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

MINUTES OF THE ONE HUNDRED FORTY-EIGHTH MEETING

OF THE

OREGON ENVIRONMENTAL QUALITY COMMISSION

May 20, 1983

On Friday, May 20, 1983, the one hundred forty-eighth meeting of the Oregon Environmental Quality Commission convened at Department of Environmental Quality, Portland, Oregon. Present were Commission members Chairman Joe B. Richards, Mr. Fred J. Burgess, Vice-Chairman; Mr. Wallace B. Brill; Mr. James Petersen; and Commissioner Mary 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

1. Hayworth case: The Director briefed the Commission on the status of the Hayworth case, indicating what options they would have in dealing with the matter. The Commission asked what is the legal status of the Hearing Officer's Order, once appealed, when the Commission doesn't have a majority vote or has a tie vote. Robb Haskins, Assistant Attorney General, said that essentially there was no action without affirmation or overturning of the Order, and the civil penalty could not be collected.

2. Legislative update: Stan Biles, Assistant to the Director, reviewed the status of the Agency's proposed legislation.

3. EQC meeting schedule and locations: Proposed dates for meetings for the remainder of the year were approved. The Commission will generally meet in Portland.

FORMAL MEETING

Commissioners Richards, Burgess, Brill, Petersen, and Bishop were present for the formal meeting.

AGENDA ITEM A: MINUTES OF THE APRIL 8, 1983 EQC MEETING

It was MOVED by Commissioner Burgess, seconded by Commissioner Brill and carried unanimously that the Minutes be approved as amended.

AGENDA ITEM B: MONTHLY ACTIVITY REPORTS FOR MARCH 1983

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

AGENDA ITEM C: TAX CREDITS

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

PUBLIC FORUM

No one chose to appear.

The following four hearing authorizations (Items D, E, F and G) were unanimously approved on a motion by Commissioner Burgess and seconded by Commissioner Brill.

AGENDA ITEM D: REQUEST FOR AUTHORIZATION TO CONDUCT A PUBLIC HEARING TO AMEND THE RULES FOR AIR POLLUTION EMERGENCIES, OAR CHAPTER 340, DIVISION 27, AS A REVISION TO THE OREGON STATE IMPLEMENTATION PLAN.

The existing State plan for dealing with air pollution emergencies, OAR 340-27-005 through OAR 340-27-030, is in need of revision. Changes in the ozone standards since the plan was adopted and staff's experience with the implementation of the plan led the Department to believe that revision of the plan is much needed. This report proposes several changes to streamline the operation of the emergency action plan without sacrificing any effectiveness of the plan.

Director's Recommendation

Based on the Summation, the Director recommends that authorization for public hearing be granted to hear testimony on the proposed amendments and additions to the rules for Air Pollution Emergencies OAR Chapter 340, Division 27. If adopted, all except OAR 340-27-012 would be submitted as a revision to the Oregon State Implementation Plan.

[NOTE: Page 5 of this report was amended.]

AGENDA ITEM E: AUTHORIZATION TO HOLD A HEARING TO AMEND GASOLINE MARKETING RULE OAR 340-22-110(1)(a) FOR THE MEDFORD AQMA IN RESPONSE TO A MARCH 28, 1983 PETITION FROM EIGHT (8) BULK GASOLINE PLANT OPERATORS IN THE MEDFORD AREA.

Eight bulk gasoline plant owners have petitioned the Commission for an exemption for customers with 1,000 gallon or smaller gasoline tanks from adding submerged fill-pipes as required by OAR 340-22-110(1)(a).

The Department recommends that the Commission authorize a hearing to amend the rule as desired by the petitioners since the ozone standard has been attained in the area from controls applied to larger sources and the addition of fill-pipes to very small tanks would be an economic burden to some small businesses.

Director's Recommendation

It is recommended that the Commission accept the petition from the Medford bulk gasoline plant operators and direct the Department to proceed with rulemaking that would exempt small gasoline tanks (1,000 gallons capacity or less) in the Medford AQMA from OAR 340-22-110(1)(a) which requires submerged fill. It is also recommended that the commission authorize a hearing, both to amend the rule as petitioned and also to amend the State Implementation Plan.

AGENDA ITEM F: REQUEST FOR AUTHORIZATION TO HOLD A PUBLIC HEARING ON MODIFICATIONS TO WATER QUALITY RULES RELATED TO WASTE DISPOSAL WELLS, OAR 340, DIVISION 44.

Now that Bend, Redmond and Madras have been sewered and most of the sewage waste disposal wells in Central Oregon have been eliminated, the waste disposal well rules need to be updated and revised from rules which phase out drain holes to rules which specify under what limited conditions they may continue to exist. In addition, the waste disposal well rules need to be modified to address other types of underground injection activities which are not adequately defined. Authorization for a hearing on modification of these rules is being requested.

Director's Recommendation

Based on the Summation, the Director recommends that the Commission authorize the department to hold a public hearing on the proposed changes in the waste disposal well regulations.

AGENDA ITEM G: REQUEST FOR AUTHORIZATION TO HOLD A PUBLIC HEARING ON THE CONSTRUCTION GRANTS PRIORITY MANAGEMENT SYSTEM AND LIST FOR FY '84.

This item is a request for authorization for a public hearing on the FY84 priority list and management system for the wastewater treatment construction grants program. The draft priority list was developed subsequent to the preparation of the staff reports and is available for review by the Commission. Substantial progress has been made in funding to near completion projects like Bend, MWMC and the Tri-City Service District and completion of funding of the public health hazards from previous lists.

Director's Recommendation

Based on the Summation, the Director recommends that the Commission authorize a public hearing on the FY84 priority management system and

priority list, to be held on June 24, 1983. All testimony entered into the record by 5 p.m. on June 29, 1983, will be considered by the Commission.

The above four items (Items D, E, F and G) were unanimously approved.

UNSCHEDULED ITEM: HAYWORTH FARMS APPEAL, CONTESTED CASE NO. 33-AQ-WVR-80-187

At the April EQC meeting, the Commission considered Hayworth Farms' appeal of the hearings officer's contested case decision.

There was some question about the effectiveness of the Commission's two-to-one vote to reverse.

The parties have submitted briefs on that question and are prepared to discuss both the vote and, if appropriate, the merits of the appeal.

Robert Ringo appeared as counsel for Respondent, and Michael Huston, Assistant Attorney General, appeared as counsel for the Department.

In response to a question from the Commission, Robb Haskins, Assistant Attorney General described what obligation a commission has to follow the Attorney General's opinions and what would be the consequences if they chose not to follow his advice. Mr. Haskins noted that a commission tends to be more protected by the law when following advice of counsel. The Chairman asked what would be the legal effect of the Director's imposition of a civil penalty and what would be the effect of the Hearings Officers Opinion once that has been appealed to the full Commission. It was Mr. Haskin's opinion that the Hearings Officer's Opinion, once appealed, has no status without affirmation or reversal by the Commission and that the civil penalty could not be collected.

It was MOVED by Commissioner Brill, seconded by Commissioner Burgess, and passed to grant the appeal. Commissioners Brill, Burgess and Petersen voted yes. Commissioner Bishop and Chairman Richards voted no. The appeal was granted and the civil penalty was disallowed.

Commissioner Petersen strongly recommended that the staff pursue the questions in this matter by gaining legislative clarification of ORS 174.130.

AGENDA ITEM I: PROPOSED MODIFICATION OF RULES FOR HAZARDOUS WASTE STORAGE OR TREATMENT BY GENERATORS, OAR 340-63-215(8) AND 340-63-405(1)(a).

Due to a high potential for human health and environmental damage, hazardous waste requires special management controls. This need has been recognized since 1971, when Oregon initially adopted hazardous waste legislation. However, in 1976, the Resource Conservation and Recovery Act placed hazardous waste management in the federal province but included provisions for EPA to authorize a state program to operate in lieu of the federal program.

The authorization process consists of Interim and Final Authorization. The purpose of Interim Authorization is to give a state time to bring its program into compliance with federal standards. The DEQ is currently preparing major revisions to its rules with that objective in mind.

Interim Authorization likewise consists of two phases. The DEQ received Phase I Interim Authorization on July 16, 1981, and is currently seeking Phase II Interim Authorization. The proposed rules will clear up the program deficiency which is currently an obstacle to the DEQ receiving Phase II Interim Authorization.

Director's Recommendation

Based upon the summation, it is recommended that the Commission adopt the proposed modifications of OAR 340-63-215(8) and 340-63-405(1)(a).

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

AGENDA ITEM J: REQUEST FOR APPROVAL OF PRELIMINARY PLAN, SPECIFICATIONS AND SCHEDULE FOR SANITARY SEWERS TO SERVE HEALTH HAZARD ANNEXATION AREA KNOWN AS PELICAN CITY, CONTIGUOUS TO CITY OF KLAMATH FALLS, KLAMATH COUNTY.

The State Health Division has certified a health hazard to exist as a result of inadequate sewage disposal in an area northwest of the City of Klamath Falls. Pursuant to statute, the City is required to develop plans and a time schedule for alleviation of the hazard and submit them to the EQC for review and certification of adequacy. Upon EQC certification of adequacy, the City is required by law to annex the area and construct a facility.

Director's Recommendation

Based upon the findings in the summation, it is recommended that the Commission approve the proposal of the City of Klamath Falls and certify approval to the City.

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

AGENDA ITEM L: PROPOSED ADOPTION OF INCREASES IN AIR CONTAMINANT DISCHARGE PERMIT FEES (OAR 340-20-155, TABLE 1 AND OAR 340-20-165).

The Department is recommending increases in the fees for Air Contaminant Discharge Permits effective July 1, 1984. The recommendation is for an across-the-board increase of 7.8% (rounded) for the Compliance Determination Fees and a $25 increase in the Filing Fee. These increases are recommended to partially offset inflationary costs sustained in operation of the permit program.

Four letters were received and accepted as testimony during the public hearing process. Three of these letters favored no increase and recommended decreases due to the present economic recession. The fourth letter was an endorsement from the Governor. The proposal was also discussed with the Air Contaminant Discharge Permit Fee Task Force. Although taking no formal position, the Task Force generally felt that any increase was inappropriate at this time.

Director's Recommendation

Based upon the Summation, it is recommended that the Commission adopt the proposed modifications to OAR 340-20-155, Table 1, Air Contaminant Sources and Associated Fee Schedule (Attachment 1), which includes an exemption for small boilers and small non-pathological incinerators, and OAR 340-20-165, Fees. It is also recommended that the Commission direct the Department to submit the rule revision to the EPA as a modification to the State Implementation Plan.

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

AGENDA ITEM M: PROPOSED ADOPTION OF RULES AMENDING WATER QUALITY PERMIT FEES TO INCREASE REVENUES FOR 1983-85 BIENNIUM. OAR 340-45-070, TABLE 2.

On February 25, 1983, the EQC authorized the Water Quality Division to hold a hearing regarding a proposed increase in water quality permit fees. The hearing was held on April 15, 1983. Now the Division is back to request formal adoption.

Director's Recommendation

Based on the Summation, the Director recommends that the Commission adopt the new fee schedule which modifies Table 2 of OAR 340-45-070.

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

AGENDA ITEM N: PROPOSED ADOPTION OF RULES AMENDING THE DESCHUTES BASIN WATER QUALITY MANAGEMENT PLAN TO INCLUDE A SPECIAL GROUNDWATER QUALITY PROTECTION POLICY FOR THE LaPINE SHALLOW AQUIFER, OAR 340-41-580.

During the past two and a half years, Deschutes County completed a 208 Water Quality Planning Study in the LaPine area. The study concluded that the groundwater in the LaPine core area was significantly affected by nitrate-nitrogen contamination from on-site waste disposal systems. Using the study findings, the County developed and adopted an aquifer management plan which recommends several management actions including sewering the LaPine core area; developing a community drinking water system; utilizing

the current on-site waste disposal rules; and encouraging periodic monitoring of well water and underground liquid storage tanks.

Staff has developed the proposed rule supporting the County Aquifer Management Plan and establishing a schedule for planning and providing sewerage facilities in the LaPine core area. The proposed rule also supports the other management plan recommendations by encouraging well water and underground liquid storage tank testing and development of a safe drinking water supply.

On February 25, 1983, the EQC authorized the Department to conduct a public rule-making hearing. The hearing was held on April 18, 1983. Based on the 208 study findings, Deschutes County actions, and the hearing testimony, the Department requests the EQC adopt rules amending the Deschutes Basin Water Quality Management Plan to include a special groundwater quality protection policy for the LaPine Shallow Aquifer, OAR 340-41-580.

Director's Recommendation

Based on the Summation, it is recommended that the Commission amend the Deschutes Basin Water Quality Management Plan to include a special groundwater quality protection policy for the LaPine shallow aquifer, OAR 340-41-580 (Attachment A).

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

AGENDA ITEM K: PUBLIC HEARING ON A REQUEST FOR A VARIANCE FROM NOISE CONTROL RULES FOR MOTOR SPORTS VEHICLES AND FACILITIES (OAR 340-35-040) AT JACKSON COUNTY SPORTS PARK IN WHITE CITY.

The Jackson County Parks and Recreation Department owns and operates a drag-racing strip located near White City. The County has requested a variance from the portion of the noise control rule requiring the installation of mufflers on drag-racing vehicles.

The County believes a variance is justified as a noise suppression berm at their facility reduces noise into the neighborhood and thus vehicle mufflers may not be necessary. In addition, the County believes the mandatory muffler rule would cause a significant economic burden due to the reluctance of out-of-state participants to comply with muffler requirements.

The County believes the noise control rules should be amended in such a way as to accept the noise berm as an alternative to vehicle mufflers. They propose a study during the 1983 racing season to evaluate their berm with the hope of Department support for future rule amendments exempting their facility from the muffler requirement. Thus, a variance from the muffler requirement is requested for this time period.

The Department believes a time-limited variance is warranted based on the available data. Thus, it is recommended that the variance be granted for the 1983 racing season and staff will gather additional data on these issues to be made available at the end of this year.

Director's Recommendation

Based upon the findings in the Summation, it is recommended that the Jackson County Sports Park be granted a variance from the muffler requirements of OAR 340-35-040(2)(a) for drag race vehicles operated on the Park's drag strip. This variance shall be subject to the following conditions:

1. A study to be conducted by Department staff, with cooperation from Jackson County staff, will assess the following during the 1983 racing season:

   a) The effectiveness of the Jackson County Sports Park noise suppression berm.

   b) The effectiveness of other external noise control devices that may be incorporated into motor racing facilities.

   c) The noise impact of drag race activities at the Sports Park on noise sensitive property in the vicinity of the track.

   d) The economic impact of mufflers on race competitors.

   e) The economic impact to Oregon facilities due to the reluctance of Oregon and non-Oregon competitors to comply with the muffler requirements.

2. This variance shall expire at the end of the 1983 racing season (October 31, 1983.)

3. A report, documenting the study described in Item 1 above, shall be available to the Commission prior to December 31, 1983. This report shall also contain recommendations on:

   a) The need for rule amendments to recognize the benefits of external noise control devices at motor race facilities.

   b) The need for rule relaxation to address any severe adverse economic impacts.

   c) The need for continued variances at the Jackson County Sports Park.

It was MOVED by Commissioner Burgess to amend the Director's Recommendation No. 2 to read:

"2. This variance shall be in effect from sunrise until 10:00 p.m. and shall expire..."

[Underlined language is added.]

The motion failed for lack of a second.

It was MOVED by Commissioner Brill, seconded by Commissioner Burgess, that the Director's Recommendation be approved. Commissioners Brill and Burgess voted yes. Commissioners Petersen, Bishop, and Chairman Richards voted no. The motion failed.

It was MOVED by Commissioner Bishop, seconded by Commissioner Petersen, to amend No. 2 in the Director's Recommendation to read:

> "2. This variance shall be in effect from sunrise until one-half hour after sunset and shall expire..."
>
> [Underlined language is added.]

It was MOVED by Commissioner Bishop, seconded by Commissioner Petersen, to approve the Director's Recommendation as amended. The motion passed unanimously.

AGENDA ITEM O: PROPOSED ADOPTION OF AMENDMENTS TO RULES GOVERNING ON-SITE SEWAGE DISPOSAL, OAR 340-71-100 THROUGH 340-71-600 AND 340-73-080.

At the February 25, 1983, meeting, the Commission authorized public hearings to be held on several proposed amendments to the On-Site Sewage Disposal rules. Five hearings were conducted on April 5, 1983, in Portland, Newport, Medford, Pendleton, and Bend. After completing the hearings, staff reviewed the testimony and revised some of the proposed amendments in the fee schedule.

Director's Recommendation

Based on the Summation, it is recommended that the Commission adopt the proposed amendments to OAR 340-71-100 through 340-71-600 and OAR 340-73-080, as set forth in Attachment "C."

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

AGENDA ITEM P: INFORMATIONAL REPORT - DEQ ACTIVITIES FOR MEETING FEDERAL REQUIREMENTS TO PROTECT VISIBILITY IN CLASS I AREAS.

At the April 16, 1983, EQC meeting, the Commission supported the Department's recommendation that the Department should monitor visibility during the summer of 1982 but that no action should be taken to develop a visibility SIP at that time. Instead, the Commission asked that the matter be brought before them by June 1, 1983, so that they could review recent events and set a course of action for the future. The Department is recommending a specific course of action for development of a visibility SIP in this report.

Director's Recommendation

This is an informational report and no formal action by the Commission is necessary. However, the Director recommends that the Commission

confirm the Department's proposed course of action with respect to meeting Federal requirements to protect visibility in Class I areas, which is:

1. Continue monitoring during 1983 to better characterize visibility, determine what sources are impacting visibility, and determine if the impacts are significant.

2. Hold informational hearings after the 1983 visibility data is analyzed to acquaint all concerned parties with the results of the monitoring program and solicit input on the contents of an Oregon visibility SIP.

3. Develop a new SIP with a target date of July 1, 1984, taking into consideration the monitoring data and the status of EPA's resolution of the petitions to reconsider their regulation.

The report was accepted by the Commission.

AGENDA ITEM Q: INFORMATIONAL REPORT - BERYLLIUM USE AND WASTE HANDLING SURVEY REQUESTED BY THE COMMISSION IN RESPONSE TO CONCERNS ABOUT THE HAZARDOUS AIR EMISSION STANDARDS FOR BERYLLIUM (OAR 340-25-470(2)(b)).

When the Commission adopted amendments to Hazardous Air Contaminants Rules last fall, they noticed concern by a Portland lung specialist over one of those rules permitting beryllium to be burned in an incinerator. The Commission requested the staff to do a survey of beryllium use in Oregon, researching whether any is burned in incinerators, and to respond to Dr. Lawyer's concerns about potentially harmful exposure from smoke produced by burning beryllium-containing wastes. The informational report before the Commission indicates that the Department's rules which limit beryllium emissions are adequate and there should be no public health hazard from beryllium handling in Oregon.

Dr. Lawyer has sent a recent letter to the Commission commenting on this report. A copy of this letter and a Department response was sent to the Commission this week as an addendum to their staff report.

Director's Recommendation

Based on the Summation it is recommended that the Commission take no further action at this time on regulating beryllium use in Oregon.

The report was accepted by the Commission.

AGENDA ITEM R: INFORMATIONAL REPORT - REVIEW OF FY84 STATE/EPA AGREEMENT AND OPPORTUNITY FOR PUBLIC COMMENT.

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

At this time the Department is asking for comment form the Commission and the public on 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.

[Commissioner Petersen had to leave the meeting at this point.]

John Charles, Oregon Environmental Council, outlined some suggestions for improving on the goals intended in the draft S/EA

Chairman Richards praised the S/EA document as an extremely helpful tool and as a complete and concise statement of the direction of the Department.

The Report was accepted by the Commission.

AGENDA ITEM S: THE USE OF VARIANCES

The Commission has acted on several variance requests at its last few meetings. This information report reviews the Commission's legal basis for granting variances, along with other methods currently in practice for granting time extensions or waivers. It also reviews the present status of all existing variances.

The Department recommends that the Commission concur in the revised procedures for evaluating air quality variances and note that the federal regulations regarding the continued use of open-burning dumps in Eastern Oregon is uncertain. Because of the Commission's direct involvement in granting variances, the Department recommends that this type of informational report be prepared for the Commission every year. Staff is also prepared to develop any additional information or analysis on specific variance programs.

Director's Recommendation

The Commission should concur in the revised procedures for processing air quality variances. A clearer direction should be sought from the federal Environmental Protection Agency regarding the section of the Resource Conservation and Recovery Act requiring the closure of open-burning dumps. If the federal law requires that all open-burning dumps be closed in the future regardless of environmental impact, discussions and additional planning should commence with those eastern Oregon communities which currently rely on open-burning dumps for waste disposal.

Due to the Commission's direct action in variance requests, the Commission should receive a variance status report annually. In addition, those variances which do not comply with scheduled deadlines should be highlighted in the Commission's monthly activity reports.

The report was accepted.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Jan Shaw

Jan Shaw
EQC Assistant

~~THESE MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC~~

MINUTES OF THE ONE HUNDRED FORTY-SEVENTH MEETING

OF THE

OREGON ENVIRONMENTAL QUALITY COMMISSION

April 8, 1983

On Friday, April 8, 1983, the one hundred forty-seventh meeting of the Oregon Environmental Quality Commission convened at Willamette University, Salem, Oregon. Present were Commission members Chairman Joe B. Richards, Mr. Fred J. Burgess, Vice-Chairman; Mr. Wallace B. Brill; and Mr. James Petersen. Commissioner Mary Bishop was absent. 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.

There was no breakfast meeting.

FORMAL MEETING

Commissioners Richards, Burgess, Brill, and Petersen were present for the formal meeting. Commissioner Bishop was absent.

AGENDA ITEM A: MINUTES OF THE FEBRUARY 25, 1983 EQC MEETING

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

AGENDA ITEM B: MONTHLY ACTIVITY REPORTS FOR JANUARY AND FEBRUARY 1983

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

AGENDA ITEM C: TAX CREDITS

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

PUBLIC FORUM

No one chose to appear.

AGENDA ITEM D: REQUEST FOR AUTHORIZATION TO CONDUCT A PUBLIC HEARING ON THE MODIFICATION OF RULES FOR HAZARDOUS WASTE STORAGE OR TREATMENT BY GENERATORS, OAR 340-63-215(8) and 340-63-405(1)(a).

Due to a high potential for human health and environmental damage, hazardous waste requires special management controls. This need has been recognized since 1971, when Oregon initially adopted hazardous waste legislation. However, in 1976, the Resource Conservation and Recovery Act made hazardous waste managment a federal activity but included provisions for EPA to authorize a state program to operate in lieu of the federal program.

The authorization process consists of Interim and Final Authorization. The purpose of Interim Authorization is to give a state time to bring its program into compliance with federal standards. The DEQ is currently preparing major revisions to its rules with that objective in mind.

Interim Authorization also consists of two phases. The DEQ received Phase I Interim Authorization on July 16, 1981, and is currently seeking Phase II Interim Authorization. The proposed rules will clear up a program deficiency which is currently an obstacle to the DEQ receiving Phase II Interim Authorization.

Director's Recommendation

Based upon the Summation, it is recommended that the Commission authorize a public hearing to take testimony on the proposed modifications of OAR 340-63-215(8) and 340-63-405(1)(a).

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

AGENDA ITEM O: PETITION BY OREGON ENVIRONMENTAL COUNCIL FOR DECLARATORY RULING REGARDING DEQ JURISDICTION OVER SPRAYING OF THE PESTICIDE SEVIN INTO TILLAMOOK BAY.

The Oregon Environmental Council has, by petition, asked the Commission to issue a Declaratory Ruling to the effect that various provisions of ORS Chapter 468 and OAR Chapter 340 require the DEQ to assume jurisdiction over pest control spraying on oyster beds in Tillamook Bay and require that permits be obtained from DEQ prior to any such spraying.

The Department has excercised its administrative authority and elected not to require such permits because ORS 509.140 specifically gives control of such activities to the Fish and Wildlife Commission.

Since the statutory authority of the Department is quite broad, the Department believes it is appropriate for the Commission to consider the matter and issue a Declaratory Ruling.

The Department recommended that the Commission assign the petition to its hearings officer to hear and propose a ruling for its consideration at a later meeting (Option 2).

Director's Recommendation

It is recommended that the Commission accept the petition and assign it to the Commission's Hearings Officer for hearing and preparation of a proposed ruling in accordance with Option 2 above.

John Charles, OEC, had no new testimony but supported the Director's Recommendation. He thinks there is a jurisdictional gap and wants DEQ to act as the lead agency in the water quality aspect of this matter.

David Rhoten, attorney for the oyster growers, claimed that the mid-May spraying date is of a critical nature which, if not met, could cripple or destroy the oyster industry in Oregon.

It was MOVED by Commissioner Burgess, seconded by Commissioner Brill, and passed that the petition be denied.

Commissioner Burgess said he thought it would be useful to review the mechanisms by which state agencies exchange information in their decision-making process. He moved to request staff to put together an appropriate study of the Department's interaction with other agencies to assure that there is adequate information exchange to avoid jurisdictional conflicts in matters like these. Commissioner Brill seconded the motion. Chairman Richards voted no. The motion passed.

AGENDA ITEM Q: STATUS OF MARION COUNTY SOLID WASTE PROGRAM AND REQUEST FOR EXTENSION ON CLOSURE OF BROWN'S ISLAND LANDFILL.

Marion County has been trying to locate a new regional landfill to replace Brown's Island since January 1974. The Commission ordered Brown's Island closed by no later than July 1983 and asked for annual progress reports beginning in 1978. Marion County has made considerable progress, but the energy and landfill alternatives are currently before the Court of Appeals on land-use matters and no energy contract has been signed. Fortunately, there is considerable unused space remaining at Brown's Island, space that was expected to be used by 1983. Marion County wants permission to use the space until their alternatives are in place but no later than 1986. Failure to grant this request might force a request for mandatory landfill siting pursuant to ORS 459.047 to .057 (SB-925).

Director's Recommendation

Based on the Summation, it is recommended that the Commission approve Marion County's March 11, 1983 extension request, modified as follows:

1. The Department may favorably respond to a request from either Marion County or Brown's Island, Inc., to amend the current Solid Waste Disposal Permit to allow continued disposal of municipal solid waste at Brown's Island until a replacement facility is available or May 29, 1986, whichever comes first, provided current lease agreements at Brown's Island are extended.

2. After May 29, 1986, demolition waste and other approved materials may be accepted at Brown's Island subject to appropriate environmental conditions and until grades prescribed in Department approved site operation and closure plans are achieved. This action neither prohibits nor allows energy facility ash residues at the site.

3. Approvable engineering plans to assure continuing protection against flood hazards and repair of resulting erosion shall be submitted by not later than September 1983 for Department review.

4. A modified site operation and closure plan shall be submitted for Department review and approval by no later than six (6) months before municipal solid waste is delivered to facilities other than Brown's Island.

It is further recommended that Marion County continue to submit annual progress reports on August 1 of each year which show progress toward replacement of Brown's Island and development of a long-range solid waste management program. If at any time it is deemed by the Director that sufficient progress is not being made by the County, the Director should bring it to the immediate attention of the Commission.

Randy Franke, Chairman, Marion County Commission, gave a brief chronology of events in this matter and said that they hoped to begin construction in the fall of this year.

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

AGENDA ITEM M: DEQ v. HAYWORTH, APPEAL OF THE HEARINGS OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER NO. 33-AQ-WVR-80-187.

This is an appeal of a hearings officer's order affirming a $4,660 civil penalty for unauthorized open field burning. Respondent has challenged several aspects of the hearings officer's decision.

James Walton, Respondent's attorney, was present to argue his client's position. The Department was represented by Michael Huston, Assistant Attorney General.

The Commission was provided with the parties' briefs and a copy of the transcript of the hearing.

James Walton, attorney for respondents, described the informal practices which he claims the respondent followed and which were tacitly approved by the Department.

Michael Huston, Assistant Attorney General representing the Department, concurred with the hearing officer's opinion.

It was MOVED by Commissioner Petersen and seconded by Commissioner Burgess to accept the respondent's Exceptions 2 and 3 and deny all other exceptions, basically granting the appeal. Commissioners Petersen and Burgess voted

yes. Chairman Richards voted no; Commissioner Brill abstained. The motion failed for lack of a majority vote.

It was MOVED by Commissioner Brill and seconded by Commissioner Burgess to schedule another hearing of the matter before the Commission. Chairman Richards and Commissioner Petersen voted no. The motion failed for lack of a majority, and no action was taken.

The matter was rescheduled for the Work Session at the end of the meeting.

AGENDA ITEM I: PROPOSED ADOPTION OF AMENDMENTS TO VENEER DRYER EMISSION LIMITATIONS (OAR 340-30-020) AND REVISED PARTICULATE NONATTAINMENT AREA BOUNDARIES WITHIN THE MEDFORD-ASHLAND AQMA.

This agenda item continues the discussion from the last EQC meeting on two portions of the Medford particulate control strategy. At the last meeting, the Commission deferred action on proposed revisions to:

- The Medford particulate nonattainment area boundaries; and
- The Medford veneer dryer rule.

Since the last EQC meeting, the Department has discussed these items with the local Air Quality Advisory Committee in two meetings. The Committee's comments from its first meeting are outlined in the staff report.

Director's Recommendation

The Director's recommendation outlined in the staff report remains unchanged. The Commission should be aware, however, that the Department is not strongly opposed to the alternative (to the proposed veneer dryer rule revision) supported by the Jackson County Air Quality Advisory Committee.

Henry Rust, Timber Products, Medford, opposed the Director's Recommendation.

John L. Smith, Secretary/Manager, SOTIA, and Jackson County Air Quality Committee, read into the record a letter from Medford Mayor Lou Hannum which requested a revision to the Medford Particulate Plan which would change to April 1, 1988, the date by which to consider additional control measures to attain and maintain state ambient particulate standards. Mr. Smith opposed Director's Recommendation No. 1 and strongly recommended that the Commission consider Alternative No. 2.

It was MOVED by Commissioner Brill, seconded by Commissioner Burgess, and passed unanimously that Alternative No. 2 (set out below) of the amended staff report and retention of the AQMA boundaries be approved.

2. Revise the Medford Particulate Plan to indicate that a hearing will be held no later than April 1, 1988 to determine and adopt additional control measures which are needed to attain and maintain compliance with state ambient particulate standards (Attachment 4).

AGENDA ITEM E: PROPOSED ADOPTION OF AMENDMENTS TO NOISE CONTROL RULES: OAR 340-35-015, 35-025, 35-030, 35-035, 35-040 AND 35-045 AND PROCEDURE MANUALS: 1, 2, 21, AND 35.

Staff has developed general amendments to the noise control rules and procedure manuals to improve their effectiveness, eliminate misinterpretations, and streamline their implementation. The desired result of these proposed amendments is to ease the implementation of the noise rules by both Department staff and other jurisdictions that are enforcing the state standards. Also, it is hoped that those controlled by these rules will find them more understandable and thus reduce their burden on them and our staff. The proposed amendments were the subject of public hearings in Portland and Medford and were modified as the result of the hearings process.

Director's Recommendation

Based on the Summation, it is recommended that the Commission adopt Attachment B as a permanent rule. Attachment B includes:

a) Proposed Amended Definition, OAR 340-35-015.
b) Proposed Amended Noise Control Regulations for the Sale of New Motor Vehicles, OAR 340-35-030.
c) Proposed Amended Noise Control Regulations for In-Use Motor Vehicles, OAR 340-35-030.
d) Proposed Amended Noise Control Regulations for Industry and Commerce, OAR 340-35-035.
e) Proposed Amended Noise Control Regulations for Motor Sports Vehicles and Facilities, OAR 340-35-040.
f) Proposed Amended Noise Control Regulations for Airports, OAR 340-35-040.
g) Proposed Amended Sound Measurement Procedure Manual, NPCS-1.
h) Proposed Amended Requirements for Sound Measuring Equipment and Personnel, NPCS-2.
i) Proposed Amended Motor Vehicle Sound Measurement Procedures Manual, NPCS-21.
j) Proposed Amended Motor Race Vehicles and Facility Sound Measurement and Procedure Manual, NPCS-35.

Bill Paulus, West Coast Grocers, spoke in opposition to the Director's Recommendation and described noise problems inherent in grocery facilities.

Ken Anderson, neighbor of West Coast Grocers facility in Salem, complained of high decibel readings in his residence from idling trucks which also affects three other residences in that area.

Dick Huntley, Operations Manager of West Coast, described the uses of the facility's areas adjacent to the noise-sensitive residences.

The Department received a telegram from the Motorcycle Industry Council with some proposed changes to the proposed Table 4's moving test limits for off-road recreational vehicles, and it was submitted to the Commission for their consideration.

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

AGENDA ITEM F: ADOPTION OF PROPOSED CHANGES IN THE NEW SOURCE REVIEW, HOT MIX ASPHALT PLANT, VOLATILE ORGANIC COMPOUND AND STACK HEIGHT RULES IN THE STATE IMPLEMENTATION PLAN.

The Department is proposing several changes in the New Source Review, Hot Mix Asphalt Plant, Volatile Organic Compound, and Stack Height rules. These proposed changes are of a minor nature, and the Department feels that these changes will have no significant impact on air quality or sources. A public hearing was held on the proposed rule revisions on January 17, 1983. Several minor changes were made in response to the comments received, and it is now recommended that the proposed rule revisions be adopted.

Director's Recommendation

Based on the above Summation and after considering the public comments that were submitted, it is recommended that the Commission adopt the proposed rule changes shown in Attachment 5 and incorporate them into the State Implementation Plan.

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

AGENDA ITEM G: REQUEST FOR ADOPTION OF RULES FOR THE NORTH FLORENCE DUNAL AQUIFER IN LANE COUNTY THAT WOULD:
(1) MODIFY GEOGRAPHIC AREA RULE OAR 340-7-400(2) FOR THE GENERAL NORTH FLORENCE AQUIFER; AND
(2) ESTABLISH SPECIAL WATER QUALITY PROTECTION FOR CLEAR LAKE AND ITS WATERSHED BY ADDING A SPECIAL PROTECTION CLAUSE TO THE MID-COAST BASIN WATER QUALITY MANAGMENT PLAN, OAR 340-41-270 AND ESTABLISH A MORATORIUM ON NEW ON-SITE WASTE DISPOSAL SYSTEMS, OAR 340-71-460(6)(f).

The 208 project is now complete and the Commission is being requested to take action to protect water quality in the Clear Lake watershed and the North Florence dunal aquifer area. The watershed and the aquifer area are two distinct hydrological units, and somewhat different control strategies are being requested for each unit.

By way of background, the Commission adopted a geographic area rule to protect the dunal aquifer on an interim basis in September 1980, pending completion of the study. The Lane County Commissioners, after completion of the study, and after numerous public meetings and a hearing, adopted an order on October 27, 1982: 1) establishing a land division and construction moratorium within Clear Lake watershed; and 2) petitioning the EQC to amend the geographic area rule.

On December 3, 1982, the EQC authorized the Department to conduct a public hearing. The hearing was held on February 16, 1983. Based on the 208 study recommendation, Lane County actions, and the testimony given at the hearing, the Department is requesting EQC action to:

1. Modify the geographic area rule (Attachment 1) to protect North Florence dunal aquifer area.

2. Amend the Mid-Coast Basin Water Quality Management Plan (Attachment B) and adopt a new moratorium rule (Attachment C) to protect the Clear Lake watershed to maintain it as a pristine domestic water supply.

Director's Recommendation

Based on the findings in the Summation, it is recommended that the Commission:

1. Amend the North Florence Geographic Area Rule, OAR 340-71-400(2) by deleting the current rule language and adopt the new language contained in Attachment A.

2. Amend the Mid-Coast Basin Water Quality Management Plan, by adopting a Special Policies and Guidelines section, OAR 340-41-270, (Attachment B).

3. Adopt the Clear Lake Watershed Specific Moratorium Rule, OAR 340-71-460(6)(f), (Attachment C).

Roy Burns, Lane County, answered questions from the Commission regarding the boundaries of the aquifer. He suggested new language be included in Attachment C of the proposed moratorium rule.

Tom Nicholson, Nicholson & Clark, Attorneys, Florence, representing residents in the moratorium area, supports Roy Burns' April 6 memorandum regarding a two-year time limitation. They oppose the moratorium because there are no time limitations in place.

It was MOVED by Commissioner Burgess, seconded by Commissioner Petersen, and passed unanimously that the Director's Recommendation be approved with the following added language:

"A new moratorium area rule to remain in effect until July 1, 1985, OAR 340-71-460(6)(f), is hereby adopted as follows:"

(Underlined language is added.)

AGENDA ITEM H: PROPOSED REPEAL OF MID-WILLAMETTE AREA NUISANCE RULE, OAR 340-29-020, IN RESPONSE TO COMMENTS BY LEGISLATIVE COUNSEL.

The Commission adopted an air pollution nuisance rule (340-29-020) on June 11, 1982. A Legislative Counsel Committee's October 22, 1982 letter and report singled out the rule as not being within the cited enabling legislation and as being too vague to be constitutional.

A hearing in February authorized by the Commission did not receive any testimony on this matter.

After evaluating the arguments for repealing, repairing, or retaining the rule, the Department is now recommending that the Commission repeal the rule.

Director's Recommendation

Based on the Summation, it is recommended that the Commission repeal OAR 340-29-020.

It was MOVED by Commissioner Petersen, seconded by Commissioner Burgess, and passed unanimously that the Director's Recommendation be approved. The staff was further directed to look into the possibility of proposing a rule which would cover those situations in which the public health was not necessarily endangered but which would be considered a public nuisance situation.

AGENDA ITEM J: REQUEST FOR AN ADDITIONAL EXTENSION OF A VARIANCE FROM OAR 340-25-315(1)(b), DRYER EMISSION LIMITS, BY MT. MAZAMA PLYWOOD COMPANY, SUPPLEMENTARY REPORT TO THE DECEMBER 3, 1982 EQC MEETING.

This is a request by Mt. Mazama Plywood Company for an additional time extension on a variance from veneer dryer emission standards for their mill located in Sutherlin. An interim time extension was granted by the Commission on December 3, 1982. The company has proposed a schedule to achieve compliance by August 1984.

The Department is recommending a compliance schedule to complete emission controls at an earlier date than has been proposed by the company.

Director's Recommendation

Based on the Summation, it is recommended that the Commission grant an extension to the variance with final compliance and incremental progress steps for Mt. Mazama Plywood Company as follows:

1. By July 1, 1983, issue purchase orders for all major emission control equipment components.

2. By December 1, 1983, begin construction and/or installation of the emission control equipment.

3. By May 1, 1984, complete installation of emission control equipment and demonstrate compliance with both mass emission and visible standards.

James Klein, Mt. Mazama Plywood, reiterated his company's position on this matter which is that the company would unquestionably shut down if they are required to comply with the Department's recommendation.

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

AGENDA ITEM K: REQUEST FOR A VARIANCE FROM OAR 340-21-015(2)(b), VISUAL EMISSION LIMITS, OAR 340-21-060(2), FUGITIVE EMISSIONS FOR OREGON SUN RANCH, INC., PRINEVILLE.

Oregon Sun Ranch operates a cat litter packaging plant northwest of the city of Prineville. Dust from unloading bulk bentonite creates a serious nuisance for neighbors. The company has failed to meet specific dates for purchasing dust-control equipment and has submitted another schedule which could result in compliance by mid-May. The company would like a variance encompassing this compliance schedule.

Director's Recommendation

Based upon the findings in the Summation, it is recommended that the Commission deny the original variance from OAR 340-21-015(2)(b), OAR 340-21-030(2) and OAR 340-21-060(2) as requested by Oregon Sun Ranch, Inc.; it is also recommended that the Commission approve a variance from the above rules to May 2, 1983 and if final design and construction drawings are submitted to the Department on this date, extend the variance to May 9, 1983 and if construction begins on this date, extend the variance to May 16, 1983. If any of these dates are not met, the variance is automatically terminated. If these dates are not met and the facility continues to operate, the Department be directed to take appropriate enforcement action to achieve compliance at the Prineville facility.

Chester Christ, representing neighbors of Oregon Sun Ranch, Prineville, questioned the accuracy of the company's unaudited financial statement and described some pictures of the alleged dust clouds from the plant.

Barbara Haslinger, attorney for Oregon Sun Ranch, asked for a ten-day grace period to be included after any possible termination date of the variance. She claimed that the company is committed to the suggested system even though it is a financial hardship.

Bob Danko, DEQ Bend office, in answer to a question from the Commission, replied that he thought the company was on a good compliance pattern.

It was MOVED by Commissioner Burgess, seconded by Commissioner Brill, and passed that the Director's Recommendation from the amended staff report be approved. The word "revoked" in that Recommendation was changed to "terminated." Commissioner Petersen voted no.

Chairman Richards left the meeting room at this point and returned later in the meeting.

AGENDA ITEM L: APPEAL OF GAILEN ADAMS FROM HEARINGS OFFICER'S DECISION IN CASE NO. 31-SS-NWR-82-51.

The Department assessed a $100 civil penalty against Gailen Adams for installing a portion of a subsurface sewage disposal system without first obtaining the required permit, and Mr. Adams requested a hearing to challenge the penalty. The hearing officer found, in part, that the work performed by Mr. Adams, a licensed installer, constituted unpermitted installation of a portion of a system and affirmed the penalty. Mr. Adams now asks the Commission to review the hearings officer's decision.

Gailen Adams, Rt 1, Box 172, Otis, described the circumstances under which he began backhoe work on Ronald Cook's property, which unpermitted work is the subject of this civil penalty. He claimed he was told by Cook that Cook had a permit, but he did not see that permit.

Ronald Cook, property owner, confirmed what Adams had said.

It was MOVED by Commissioner Brill, seconded by Commissioner Petersen, and passed unanimously that the hearing officer's decision be upheld. The appeal was denied.

Chairman Richards had returned by this time but abstained from voting on this matter.

AGENDA ITEM N: REQUEST FOR RECONSIDERATION OR REHEARING ON DALE MOORE ON-SITE SEWAGE SYSTEM VARIANCE APPEAL.

At the October 15, 1982 EQC meeting, the Commission affirmed the variance officer's decision to deny a requested variance from on-site sewage disposal rules by Dale Moore for property located in Tillamook County.

Mr. Moore has petitioned the Commission to reconsider its denial and refer the matter back to the variance officer with instructions to articulate his concerns about the applicant's proposed design and give the applicant an opportunity to satisfy those concerns.

This matter was initially scheduled for the January 14, 1983 meeting but was deferred at the request of the applicant.

As indicated in the January 14, 1983 staff report, the Department believes the variance officer has properly rendered a decision and recommends that the Commission let stand its prior decision on the appeal.

Jonathan Hoffman, attorney for the applicant, described his client's reasons for a request for reconsideration of this matter.

Steve Wilson, Earth Sciences, Inc., answered technical questions from the Commission.

It was MOVED by Commissioner Petersen, seconded by Commissioner Brill, and passed unanimously that the variance be granted. The Commission voted not to rehear the matter but to reconsider its earlier position and grant the variance request. The matter was remanded to the variance officer to prepare the variance.

AGENDA ITEM M (continued):

James Walton, requested to be released from any previous agreement with the Commission to remand the previous vote to the consideration of the fifth (and absent) member of the Commission. The Commission agreed that they would not hold Mr. Walton to this agreement. He will submit a brief and the Department will file an Answer on the dispute regarding the validity of the previous vote.

Chairman Richards left the meeting at this point.

AGENDA ITEM S: INFORMATIONAL REPORT ON THE MOTOR VEHICLE EMISSION INSPECTION PROGRAM 1981-1982

This is an informational report on the operation of the Motor Vehicle Emission Inspection Program. The purpose of this report is to provide the Commisssion a summary and update on the program's operation during 1981 and 1982. The report contains an overview summary followed by various appendices, which describe legislative history, program operations, emission characteristics of vehicles, air quality discussion and other support documentation about the program.

Director's Recommendation

It is recommended that the Commission accept this informational report on the motor vehicle emission inspection program.

Bill Jasper, Vehicle Inspection Division, reviewed the accomplishments of the VIP program for the 1981-82 period.

It was MOVED by Commissioner Petersen, seconded by Commissioner Brill, and passed unanimously that the report be accepted.

AGENDA ITEM U: INFORMATIONAL REPORT: CONTESTED CASE STATUS.

In response to Chairman's Richards request at the last EQC meeting on April 8, EQC Hearing Officer Linda Zucker prepared a report on the status of some long-time contested cases and presented it to the Commission.

The report was accepted.

It was MOVED by Commissioner Brill, seconded by Commissioner Petersen, and passed unanimously that the meeting be adjourned and to move into a work session for further field burning discussion.

WORK SESSION

Sean O'Connell, Manager of the Field Burning Program, outlined at length for the Commission the changes and improvements which have been made since this 1980 case in the field burning program and described how unlikely it is that misunderstanding of the rules or perceived accepted methods could occur now. The Commission will await Mr. Walton's brief and the Department's Answer on the question of the validity of the previous votes of the Commission in this matter. When that question is resolved, the Commission may reconsider the Hayworth Farm's appeal at a future meeting.

There being no further discussion, the group adjourned.

Respectfully submitted,

Jan Shaw

Jan Shaw
EQC Assistant

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, May 20, 1983, EQC Meeting

March, 1983 Program Activity Report

Discussion

Attached is the March, 1983 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.

William H. Young
Director

M. Downs:k
229-6485
March 17, 1982
Attachments
MK616 (1)

DEPARTMENT OF ENVIRONMENTAL QUALITY

Monthly Activity Report

March, 1983

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MK367 (2)

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

AQ, WQ, SW Divisions (Reporting Unit) — March 1983 (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	52	8	57	1	1	14
Small Gasoline Storage Tanks Vapor Controls	0	0	0	0	0	0	0
Total	9	52	8	57	1	1	14
Water							
Municipal	14	126	6	115	0	3	19
Industrial	4	43	7	56	0	0	2
Total	18	169	13	171	0	3	21
Solid Waste							
Gen. Refuse	2	16	2	11	0	0	5
Demolition	1	1	1	1	0	0	1
Industrial	4	17	2	13	0	0	8
Sludge	1	9	1	9	0	0	1
Total	8	43	6	34	0	0	15
Hazardous Wastes	-	-	-	-	-	-	-
GRAND TOTAL	35	264	27	262	1	4	50

MAR.2 (1/83) MK1884

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	876	OREGON SAW CHAIN	INERTIAL SCRUBBER	03/31/83	APPROVED
BAKER	880	OREGON PORTLAND CEMENT	ADDITIONAL SCREEN	03/23/83	APPROVED
BAKER	881	OREGON PORTLAND CEMENT	LIMEROCK TRANSFER SYSTEM	03/21/83	APPROVED
HOOD RIVER	882	CASCADE LOCKS LUMBER CO.	PLANER SHAVE TRSFR SYS MOD	03/28/83	APPROVED
LAKE	884	OIL-DRI PRODUCTION CO.	DUCON CYCLONE INSTAL	03/17/83	APPROVED
WASHINGTON	885	TEKTRONIX INC	MULTICLONE INSTAL	03/09/83	APPROVED
HOOD RIVER	886	ROGERS & TULLAR FARM	WIND MACHINE	03/22/83	DENIED
HOOD RIVER	888	WESLEY W SWYERS	ORCHARD FANS	03/24/83	APPROVED
CROOK	891	OREGON SUN RANCH, INC	BAGHOUSE	04/01/83	APPROVED

TOTAL NUMBER QUICK LOOK REPORT LINES 9

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — March, 1983 (Month and Year)

SUMMARY OF AIR PERMIT ACTIONS

	Permit Actions Received Month	Permit Actions Received FY	Permit Actions Completed Month	Permit Actions Completed FY	Permit Actions Pending	Sources Under Permits	Sources Reqr'g Permits
Direct Sources							
New	0	23	4	24	12		
Existing	0	6	0	16	15		
Renewals	10	114	45	129	67		
Modifications	2	27	3	31	14		
Total	12	170	52	200	108	1737	1764
Indirect Sources							
New	0	3	0	4	2		
Existing	0	0	0	0	0		
Renewals	0	0	0	0	0		
Modifications	1	4	2	4	0		
Total	1	7	2	8	2	206	208
GRAND TOTALS	13	177	54	208	110	1943	1972

Number of Pending Permits	Comments
20	To be reviewed by Northwest Region
11	To be reviewed by Willamette Valley Region
12	To be reviewed by Southwest Region
6	To be reviewed by Central Region
2	To be reviewed by Eastern Region
10	To be reviewed by Program Operations
17	To be reviewed by Planning & Development
16	Awaiting Public Notice
14	Awaiting End of 30-day Notice
108	

MAR.5 (8/79)
AZ193

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
MULTNOMAH	WORTHINGTON APARTMENTS	26 0313	12/13/82	PERMIT ISSUED	02/25/83	RNW	
MULTNOMAH	FLANDERS APTS	26 0551	12/08/82	PERMIT ISSUED	02/25/83	RNW	
MULTNOMAH	IRVING MANOR APTS	26 0686	02/02/83	PERMIT ISSUED	02/25/83	RNW	
MULTNOMAH	NORTHRUP APARTMENTS	26 0827	01/10/83	PERMIT ISSUED	02/25/83	RNW	
MULTNOMAH	GLENDEN APTS	26 1091	12/23/82	PERMIT ISSUED	02/25/83	RNW	
MULTNOMAH	ST FRANCIS APTS	26 1094	12/15/82	PERMIT ISSUED	02/25/83	RNW	
MULTNOMAH	FRIENDLY HOUSE INC	26 2570	12/23/82	PERMIT ISSUED	02/25/83	RNW	
MULTNOMAH	NORTHWEST SERVICE CENTER	26 2593	01/19/83	PERMIT ISSUED	02/25/83	RNW	
MULTNOMAH	EOFF ELECTRIC CO	26 2727	12/14/82	PERMIT ISSUED	02/25/83	RNW	
MULTNOMAH	RAPID TRANSFER & STORAGE	26 2734	12/10/82	PERMIT ISSUED	02/25/83	RNW	
MULTNOMAH	EAST TEXAS MTR FREIGHTLN	26 2737	12/13/82	PERMIT ISSUED	02/25/83	RNW	
MULTNOMAH	CHASE BAG CO	26 2924	12/23/82	PERMIT ISSUED	02/25/83	RNW	
MULTNOMAH	GOOD SAMARITAN HOSPITAL	26 2926	01/06/83	PERMIT ISSUED	02/25/83	RNW	
MULTNOMAH	I LAYTON CREATIONS	26 2961	02/09/83	PERMIT ISSUED	02/25/83	RNW	
UMATILLA	ST ANTHONY HOSPITAL	30 0059	10/05/82	PERMIT ISSUED	02/25/83	RNW	
MULTNOMAH	UNION OIL CO. OF CALIF.	26 3015	12/29/82	PERMIT ISSUED	02/28/83	MOD	
WASHINGTON	OREGON ROSES, INC	34 2633	11/16/81	PERMIT ISSUED	02/28/83	RNW	
WASHINGTON	OREGON ROSES	34 2641	11/06/81	PERMIT ISSUED	02/28/83	RNW	
YAMHILL	NEWBERG RIVER ROCK PROD	36 6008	02/03/83	PERMIT ISSUED	02/28/83	RNW	
PORT.SOURCE	DESCHUTES READY MIX S & G	37 0026	02/08/83	PERMIT ISSUED	02/28/83	RNW	
PORT.SOURCE	TILLAMOOK CNTY RD DEPT	37 0034	12/16/82	PERMIT ISSUED	02/28/83	RNW	
PORT.SOURCE	M-P MATERIALS	37 0078	12/10/82	PERMIT ISSUED	02/28/83	RNW	
PORT.SOURCE	E.H. ITSCHNER CO.	37 0163	12/09/82	PERMIT ISSUED	02/28/83	RNW	
PORT.SOURCE	SUPERIOR ASPHALT & CONCRE	37 0166	12/21/82	PERMIT ISSUED	02/28/83	RNW	
PORT.SOURCE	BAKER REDI-MIX, INC	37 0168	01/03/83	PERMIT ISSUED	02/28/83	RNW	Y
PORT.SOURCE	LININGER & SONS	37 0191	02/14/83	PERMIT ISSUED	02/28/83	RNW	
PORT.SOURCE	QUALITY ASPHALT PAVING	37 0195	01/03/83	PERMIT ISSUED	02/28/83	RNW	
PORT.SOURCE	DESCHUTES READY MIX SRG	37 0207	02/08/83	PERMIT ISSUED	02/28/83	RNW	
JACKSON	ENERGY RELIANCE GROUP	15 0159	00/00/00	PERMIT ISSUED	03/01/83	MOD	
CROOK	OREGON SUN RANCH, INC	07 0020	11/12/82	PERMIT ISSUED	03/03/83	NEW	
DOUGLAS	UMPQUA EXCAVATION CO	10 0006	11/04/82	PERMIT ISSUED	03/03/83	RNW	
DOUGLAS	PRE-MIX CONCRETE PIPE	10 0096	12/01/82	PERMIT ISSUED	03/03/83	RNW	
HOOD RIVER	HOOD RIVER SND&GRVL	14 0016	12/01/82	PERMIT ISSUED	03/03/83	RNW	N
LINN	MORSE BROS INC	22 7141	11/19/82	PERMIT ISSUED	03/03/83	RNW	
MULTNOMAH	REIMANN AND MCKENNEY INC	26 2572	09/18/81	PERMIT ISSUED	03/03/83	RNW	
WASHINGTON	TEKTRONIX, INC	34 2678	07/02/82	PERMIT ISSUED	03/03/83	NEW	
PORT.SOURCE	BAKER REDI-MIX, INC.	37 0020	12/02/82	PERMIT ISSUED	03/03/83	RNW	
PORT.SOURCE	HARNEY ROCK & PAVING	37 0059	12/06/82	PERMIT ISSUED	03/03/83	RNW	
PORT.SOURCE	EUCON CORP	37 0068	12/01/82	PERMIT ISSUED	03/03/83	RNW	
PORT.SOURCE	L.W. VAIL CO	37 0192	12/01/82	PERMIT ISSUED	03/03/83	RNW	
PORT.SOURCE	TRU MIX LEASING CO.	37 0249	11/16/82	PERMIT ISSUED	03/03/83	RNW	
PORT.SOURCE	BRACELIN & YEAGER ASPLT	37 0299	12/01/82	PERMIT ISSUED	03/03/83	RNW	Y
KLAMATH	WEYERHAEUSER COMPANY	18 0013	06/30/81	PERMIT ISSUED	03/09/83	RNW	
BENTON	PERMAWOOD PRODUCTS, INC	02 7071	11/02/82	PERMIT ISSUED	03/15/83	NEW	
CLATSOP	COLUMBIA MEMORIAL HOSP	04 0039	12/14/82	PERMIT ISSUED	03/15/83	RNW	
DOUGLAS	DEER CREEK PELLET MILL	10 0040	12/13/82	PERMIT ISSUED	03/15/83	RNW	
JACKSON	MEDFORD READY MIX CONCRET	15 0103	12/28/82	PERMIT ISSUED	03/15/83	RNW	

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
KLAMATH	STUKEL ROCK & PAVING INC	18 0042	12/10/82	PERMIT ISSUED	03/15/83	RNW	
LINN	HARRISBURG SEED CO	22 2502	10/18/82	PERMIT ISSUED	03/15/83	RNW	
MARION	BOISE CASCADE CORP	24 4981	12/16/82	PERMIT ISSUED	03/15/83	NEW	
MULTNOMAH	UNIVERSITY HOSPITAL NORTH	26 2050	12/01/82	PERMIT ISSUED	03/15/83	MOD	
PORT-SOURCE	J C COMPTON CO	37 0173	12/01/82	PERMIT ISSUED	03/15/83	RNW	

TOTAL NUMBER QUICK LOOK REPORT LINES 52

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — March, 1983 (Month and Year)

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Indirect Sources			
Multnomah	Banfield Transitway, Addendum No. 3, File No. 26-8012	03/14/83	Final Permit Addendum Issued
Multnomah	Portland International Airport, Addendum No. 1 File No. 26-7908	03/30/83	Final Permit Addendum Issued

MAR.6 (5/79)
AZ189

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality Division (Reporting Unit) — March, 1983 (Month and Year)

PLAN ACTIONS COMPLETED 13

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
MUNICIPAL WASTE SOURCES 6			
Lane	City of Cottage Grove STP Expansion	3/14/83	Final Comments to City Engineer
Clatsop	City of Seaside STP Expansion	3/14/83	Final Comments to Engineer
Douglas	Winston-Green S.D. Planning/Irrigation for STP	3/16/83	Approved
Deschutes	Hillman Sanitary District Subsurface System Terrebonne Estates	3/17/83	Final Comments to Region on Revised Plans
Columbia	Columbia Co. Fairgrounds Subsurface System for Fairgrounds	3/18/83	Comments to Designer
Clackamas	Oak Lodge S.D. Witt Estates Sewerage System Milwaukie	4/7/83	P.A.

MAR.3 (5/79) WG2228

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality Division (Reporting Unit) — March 1983 (Month and Year)

PLAN ACTIONS COMPLETED 13

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
INDUSTRIAL WASTE SOURCES 7			
Marion	Morrow Electronics, Inc. Pretreatment System for Metals Removal Salem	1/17/83	Withdrawn
Tillamook	Gienger Farms, Inc. Manure Control System Tillamook	3/15/83	Approved
Tillamook	Wilson View Dairy Manure Control System Tillamook	3/15/83	Approved
Marion	Stayton Canning 1-HP Aqua-Vac Aerator Stayton	3/29/83	Approved
Tillamook	William Slavens Dairy Animal Manure Control Beaver	4/1/83	Approved
Tillamook	Bohren Brothers Dairy Animal Manure Control Tillamook	4/1/83	Approved
Tillamook	Morrison Dairy Manure control System Tillamook	4/7/83	Approved

MAR.3 (5/79) WL2455.B

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality Division (Reporting Unit) — March, 1983 (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	2	/0	3	/12	0	/0	1	/18	3	/6		
Existing	0	/0	0	/0	0	/0	0	/0	0	/0		
Renewals	0	/2	49	/12	6	/0	46	/9	34	/8		
Modifications	0	/1	3	/3	1	/1	2	/2	1	/1		
Total	2	/3	55	/27	7	/1	49	/29	38	/15	239/126	242/132
Industrial												
New	0	/0	5	/7	0	/1	4	/5	4	/5		
Existing	0	/0	0	/0	0	/0	0	/0	0	/1		
Renewals	2	/1	31	/30	2	/2	21	/19	45	/23		
Modifications	0	/0	3	/0	0	/0	5	/0	0	/0		
Total	2	/1	39	/37	2	/3	30	/24	49	/29	384/193	388/199
Agricultural (Hatcheries, Dairies, etc.)												
New	0	/0	0	/0	0	/0	1	/0	1	/0		
Existing	0	/0	0	/0	0	/0	0	/0	0	/0		
Renewals	0	/0	0	/3	0	/0	0	/1	0	/3		
Modifications	0	/0	0	/0	0	/0	0	/1	0	/0		
Total	0	/0	0	/3	0	/0	1	/2	1	/3	61 /15	62 /15
GRAND TOTALS	4	/4	94	/67	9	/4	80	/55	88	/47	684/334	692/346

* NPDES Permits
** State Permits

WG2215

MAR.5W (8/79)

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality Division (Reporting Unit) — March, 1983 (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 (8)			
Clatsop	Cannon Beach, STP	3-7-83	Permit Renewed
Lane	Eugene River Avenue STP	3-7-83	Permit Renewed
Union	North Powder, STP	3-7-83	Permit Renewed
Lincoln	Lincoln City, STP	3-22-83	Permit Renewed
Lincoln	Salishan Sanitary District STP	3-22-83	Permit Renewed
Hood River	Hood River, STP	3-24-83	Permit Renewed
Lane	Lane Plywood, Inc. Contaminated Yard Runoff and Log Pond Overflow Facility Eugene	3-24-83	Permit Renewed
Lane	The Murphy Co. Steam Vat Condensate Facility Veneer - Florence	3-24-83	Permit Renewed
MUNICIPAL AND INDUSTRIAL SOURCES - STATE PERMITS (3)			
Lane	MWMC Agripac - Seasonal Cannery Waste Disposal Facility Eugene	3-4-83	Permit Issued
Multnomah	Columbia Steel Casting Cooling Water Disposal Portland	3-24-83	Permit Renewed
Coos	Ocean Spray Cranberries, Inc. Berry washing wastewater disposal Bandon	3-29-83	Permit Renewed

MAR.6 (5/79) WG1800

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality Division (Reporting Unit) — March, 1983 (Month and Year)

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
MUNICIPAL AND INDUSTRIAL SOURCES - MODIFICATIONS (1)			
Clackamas	USFS Timberline Lodge Mt. Hood, STP	3-31-83	Addendum #1
Marion	Silverton, STP	3-24-83	Addendum #1
MUNICIPAL AND INDUSTRIAL SOURCES - GENERAL PERMITS (7)			
Small Placer Mines, Permit 0600, File 34580 (5)			
Josephine	Macfarlane & Priebs Merlin, Sexton Mine	3-1-83	General Permit Issued
Josephine	Maverick Resources, Inc. Lucky Kay Mine Josephine County	3-1-83	General Permit Issued
Josephine	Wesley Pieren Rich Gulch Mine Merlin	3-17-83	General Permit Issued
Josephine	Wesley Pieren Blanchard Gulch Mine Merlin	3-17-83	General Permit Issued
Josephine	Walt Freeman Placer Mine Cave Junction	3-21-83	General Permit Issued
Portable Suction Dredge, Permit 0700J, File 34547 (1)			
General	David Malsed Palouse, WA (3" suction dredge - waters of Oregon)	3-23-83	General Permit Issued
Gravel Processing, Permit 1000J, File 32565 (1)			
Jackson	Modock Rock Eagle Point	3-1-83	General Permit Issued

MAR.6 (5/79) WG1800

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Solid Waste Division (Reporting Unit) — March 1983 (Month and Year)

SUMMARY OF SOLID AND HAZARDOUS WASTE PERMIT ACTIONS

	Permit Actions Received		Permit Actions Completed		Permit Actions Pending	Sites Under Permits	Sites Reqr'g Permits
	Month	FY	Month	FY			
General Refuse							
New	-	3	-	3	1		
Existing	-	-	-	-	-		
Renewals	13	25	1	23	10		
Modifications	1	8	-	7	1		
Total	14	36	1	33	12	176	176
Demolition							
New	-	-	-	1	-		
Existing	-	-	-	-	-		
Renewals	-	1	-	1	-		
Modifications	2	5	1	4	1		
Total	2	6	1	6	1	21	21
Industrial							
New	3	7	-	9	5		
Existing	-	-	-	-	-		
Renewals	2	18	-	7	16		
Modifications	-	3	-	-	2		
Total	5	28	0	16	23	101	101
Sludge Disposal							
New	1	7	-	7	1		
Existing	-	-	-	-	-		
Renewals	-	2	-	2	-		
Modifications	-	2	-	3	-		
Total	1	11	0	12	1	17	17
Hazardous Waste							
New	-	-	-	-	-		
Authorizations	67	524	67	524	-		
Renewals	-	-	-	-	-		
Modifications	-	-	-	-	-		
Total	67	524	67	524	0	-	-
GRAND TOTALS	89	605	69	591	36	315	315

SC915.A
MAR.5S (4/79)

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Solid Waste Division (Reporting Unit) — March 1983 (Month and Year)

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Multnomah	Killingsworth Disposal Existing landfill	3/10/83	Permit amended
Curry	Port Orford Landfill Existing facility	3/15/83	Permit renewed

SC915.D
MAR.6 (5/79)

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Solid Waste Division (Reporting Unit) — March 1983 (Month and Year)

HAZARDOUS WASTE DISPOSAL REQUESTS

CHEM-SECURITY SYSTEMS, INC., GILLIAM CO.

WASTE DESCRIPTION

Date	Type	Source	Quantity	
			Present	Future

TOTAL DISPOSAL REQUESTS GRANTED - 67

OREGON - 11

3/8	Oil-contaminated glass, dirt, etc.	Glass manuf.	0	20 cu.yd.
3/8	Paint sludge	Structural steel	56 cu.yd.	35 drums
3/8	Obsolete paint products & thinner	Structural steel	256 cu.ft.	0
3/10	PCB transformers	Plywood mill	425 gal.	0
3/10	PCB capacitors	Plywood mill	0	30 units
3/17	Paint sludge	Heavy equip.	0	10 drums
3/17	Sulfuric acid	Battery recy.	0	1,000,000 gal.
3/17	Petroleum-contaminated water	Oil co.	4,000 gal.	0
3/17	Creosote-contaminated dirt	Site cleanup	0	500 cu.ft.
3/17	Laboratory chemicals	City gov't.	125 cu.ft.	0
3/22	Caustic oven cleaner	Grocery store	2,000 lb.	0

WASHINGTON - 47

3/8	PCB-contaminated dirt	Paper co.	0	3 drums

SC915.E
MAR.15 (1/82)

Date	Type	Source	Quantity	
			Present	Future
3/8	Fungicide	Chemical co.	2,500 lb.	0
3/8	Ignitable still bottoms	Solvent recy.	0	200,000 lb.
3/15	Pesticide-tainted soil	Chemical co.	200 tons	0
3/15	Methyl ethyl ketone/ paint sludge	Electronic co.	0	200 gal.
3/15	Trichloroethylene solvent sludge	Electronic co.	0	200 gal.
3/15	Paint stripping soln.	Electronic co.	0	50 gal.
3/15	Chromic acid/mineral acid	Electronic co.	0	400 gal.
3/15	Phosphoric acid	Electronic co.	0	100 gal.
3/15	Fluoridated phosphoric acid	Electronic co.	0	400 gal.
3/15	Hydrofluoric/chromic/ nitric acid solutions	Electronic co.	0	200 gal.
3/15	Methylene chloride/ acetone-contaminated water	Solvent recycling	0	40 drums
3/15	Nitric/hydrofluoric/ other mineral acids	Electronic co.	0	200 gal.
3/15	Aluminum hydroxide sludge	Electronic co.	0	800 gal.
3/17	Heavy metal sludge	Electroplating	0	25 drums
3/17	Zinc/phosphoric acid	Chemical co.	0	8 drums
3/17	Creosoted railroad ties	" "	0	2,700 cu.ft.
3/17	PCB capacitors	County gov't.	0	3,000 lb.
3/17	Sulfuric acid	Farm equip.	0	12,000 gal.
3/21	Methylene chloride still bottoms	Solvent recycling	0	6 drums
3/21	Ethanol still bottoms	Solvent recy.	0	50 drums

Date	Type	Source	Quantity	
			Present	Future
3/21	Trichloroethane still bottoms	Solvent recy.	0	10 drums
3/21	Potassium persulfate	Research fac.	3,900 lb.	0
3/21	Lead nitrate	Research fac.	5,300 lb.	0
3/21	Ferric nitrate	Research fac.	1,125 lb.	0
3/21	Aluminum nitrate	Research fac.	600 lb.	0
3/21	Chromium nitrate	Research fac.	130 lb.	0
3/29	Sodium aluminate soln.	Research fac.	0	300 gal.
3/29	Fungicide	Research fac.	0	4 drums
3/29	Dibutyl butyl phosphonate	Research fac.	0	7,000 lb.
3/29	Nickel-contaminated filters	Waste treat.	0	20 drums
3/29	Hydraulic oil-contaminated soil	Waste treat.	0	100 drums
3/29	Nitrilotriacetic acid	Research fac.	0	3,200 lb.
3/29	Ignitable paint sludge	Paint manuf.	0	8 drums
3/29	Contaminated trichloroethane	Chemical co.	0	30 drums
3/29	Contaminated trichloroethylene	Chemical co.	0	30 drums
3/29	Contaminated perchloroethylene	Research fac.	0	2 drums
3/29	Contaminated trichlorobenzene	Research fac.	0	300 lb.
3/29	Phenol/chloroform/ dichloromethane, etc., solvents	Cancer research	0	20 drums
3/29	Benzene/formaldehyde/ other flammable toxic solvents	Cancer research	0	20 drums

SC915.E
MAR.15 (1/82)

Date	Type	Source	Quantity Present	Quantity Future
3/29	Sulfuric acid/hydrochloric acid/etc.	Cancer research	0	3 drums
3/30	Acetone still bottoms	Solvent recy.	0	16 drums
3/30	Acid-contaminated absorbents	Waste treat.	0	20 drums
3/30	Treated cyanide tank bottoms	Waste treat.	0	25 drums
3/30	Baghouse dust w/ heavy metals	Steel prod.	0	250 tons
3/30	Phenolic/urea-formaldehyde resins	Solvent recy.	0	40 drums
3/30	Pesticide rinse water	Pesticide application	0	15,000 gal.
OTHER STATES - 9				
3/8	Arsenic-contaminated oil	Electronic (Idaho)	0	10 drums
3/29	Chromium-contaminated groundwater	Site cleanup (B.C.)	13 drums	0
3/30	PCB-contaminated transformers	State agency (Montana)	0	6 units
3/30	PCB transformers	State agency (Montana)	0	200 gal.
3/30	Transformers w/ less than 50 ppm PCBs	State agency (Montana)	0	200 gal.
3/30	PCB-contaminated soil/rags, etc.	State agency (Montana)	0	6 drums
3/30	PCB-contaminated rags/dirt, etc.	Manuf. heavy equip. (Idaho)	0	15 drums
3/30	Trichloroethane/methylene chloride	Manuf. heavy equip. (Idaho)	0	350 gal.
3/30	PCB-contaminated filtration equipment	Manuf. heavy equip. (Idaho)	0	10 drums

SC915.E
MAR.15 (1/82)

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Noise Control Program (Reporting Unit) — March, 1983 (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	7	60	8	65	99	100
Airports				9	1	1

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Noise Control Program (Reporting Unit) — March, 1983 (Month and Year)

FINAL NOISE CONTROL ACTIONS COMPLETED

County	Name of Source and Location	Date	Action
Clackamas	Atlas Bakery Equipment, Inc. Tualatin	03/83	No Violation
Multnomah	Ace Auto Parts Portland	03/83	In Compliance
Multnomah	Cummins Diesel Portland	03/83	No Violation
Multnomah	Fulton Provision Company Portland	03/83	In Compliance
Multnomah	General Recycling, Inc. Portland	03/83	In Compliance
Multnomah	Leavitt Nu Pacific Rock Quarry Fairview	03/83	In Compliance
Multnomah	Skookum Company Portland	03/83	No Violation
Multnomah	Unknown Source N. W. Portland	03/83	Noise Discontinued

CIVIL PENALTY ASSESSMENTS

DEPARTMENT OF ENVIRONMENTAL QUALITY
1983

CIVIL PENALTIES ASSESSED DURING MONTH OF MARCH, 1983:

Name and Location of Violation	Case No. & Type of Violation	Date Issued	Amount	Status
Oil-Dri Corporation of America Lake County	AQ-CR-83-21 Failure to meet permit compliance schedule.	3-2-83	$500	Paid 3-30-83.
Thomas Ruedy Milwaukie, Oregon	AQOB-NWR-83-27 Open burned yard debris during a period when such burning was prohibited.	3-2-83	$50	Paid 3-16-83
Oregon Sun Ranch, Inc. Prineville, Oregon	AQ-CR-83-33 Excessive dust emissions.	3-16-83	$500	Hearing request and answer filed 4-7-83.
Richard Hill, Jr. Gaston, Oregon	AQOB-CR-83-22 Open burned prohibited materials.	3-17-83	$250	In default.
Roy Nelson Coos Bay, Oregon	SS-SWR-83-29 Installed an on-site SDS without being licensed.	3-17-83	$250	Awaiting response to notice.

GB2067

MARCH 1983
DEQ/EQC Contested Case Log

ACTIONS	LAST MONTH	PRESENT
Preliminary Issues	7	7
Discovery	1	1
Settlement Action	0	0
Hearing to be scheduled	6	6
Hearing scheduled	2	1
HO's Decision Due	2	2
Briefing	0	0
Inactive	4	4
SUBTOTAL of cases before hearings officer.	22	21
HO's Decision Out/Option for EQC Appeal	0	1
Appealed to EQC	4	3
EQC Appeal Complete/Option for Court Review	0	1
Court Review Option Pending or Taken	0	0
Case Closed	5	0
TOTAL Cases	31	26

15-AQ-NWR-81-178	15th Hearing Section case in 1981 involving Air Quality Division violation in Northwest Region jurisdiction in 1981; 178th enforcement action in Northwest Region in 1981.
ACDP	Air Contaminant Discharge Permit
AG1	Attorney General 1
AQ	Air Quality Division
AQOB	Air Quality, Open Burning
CR	Central Region
DEC Date	Date of either a proposed decision of hearings officer or a decision by Commission
$	Civil Penalty Amount
ER	Eastern Region
FB	Field Burning
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
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

CONTES.B (2)

March 1983

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	DEQ Atty	Hrng Date	Resp Code	Case Type & No.	Case Status
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	03-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	Prtys	33-AQ-WVR-80-187 FB Civil Penalty of $4,660	EQC to consider appeal of hrgs officer's decision 4/8/83.
PULLEN, Arthur W. dba/Foley Lakes Mobile Home Park	07/15/81	07/15/81	RLH		Prtys	16-WQ-CR-81-60 Violation of EQC Order, Civil Penalty of $500	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	Resp	19-AQ-FB-81-05 FB Civil Penalty of $1,000	Decision issued 3/25/83.
GATES, Clifford	10/06/81		LMS	05/03/83	Prtys	21-SS-SWR-81-90 SS Civil Penalty of $275	Hearing scheduled.
SPERLING, Wendell dba/Sperling Farms	11/25/81	11/25/81	LMS	03/17/83	Hrgs	23-AQ-FB-81-15 FB Civil Penalty of $3,000	Decision due.
NOFZIGER, Leo	12/15/81	01/06/82	LMS	06/29/82	Hrgs	26-AQ-FB-81-18 FB Civil Penalty of $1,500	Decision due.
PULLEN, Arthur dba/Foley Lakes Mobile Home Park	03/16/82		RLH		Prtys	28-WQ-CR-82-16 Violation of EQC Order, Civil Penalty of $4,500	See companion case above.
BOWERS EXCAVATING & FENCING, INC.	05/20/82		LMS	06/08/83	Prtys	30-SW-CR-82-34 SW Civil Penalty of $1,000	Hrg scheduled 6/08/83.
ADAMS, Gailen			VAK	08/25/82	Prtys	31-SS-NWR-82-51 SS Civil Penalty of $100	EQC to consider appeal of hearings officer's decision 4/8/83.
OLINGER, Bill Inc.	09/10/82	09/13/82	RLH		Prtys	33-WQ-NWR-82-73 WQ Civil Penalty of $1,500	Discovery.
TOEDTEMEIER, Norman	09/10/82	09/13/82	LMS	07/14/83 (tentative)	Hrgs	34-AQOB-WVR-82-65 OB Civil Penalty of $250	To be scheduled.
SYLER, Richard E.	09/20/82	09/28/82	VAK	05/24/83	Prtys	35-AQOB-WVR-82-76 OB Civil Penalty of $100.	Hrg scheduled 5/24/83.
FIREBALL CONSTRUCTION CORP. & Glenn Dorsey	09/27/82		RLH		Dept	38-SS-SWR-82-85 Remedial Action Order	Preliminary Issues
MOORE, Dale	12/06/82	12/08/82		01/14/82	Prtys	40-SS-NWR-82 Appeal of Variance Denial	To be before EQC at April 8, 1983 meeting.
TIPPET, James	12/02/82	12/06/82	LMS	07/20/83 (tentative)	Hrgs	39-AQ-FB-82-AG1 Ag. Burning Civil Penalty of $50	To be scheduled.
GIANELLA, Vermont	12/17/82		VAK	06/29/83 (tentative)	Hrgs	41-AQ-FB-82-08 FB Civil Penalty of $1,000	To be scheduled.
SCHLEGEL, George L.	12/30/82	01/03/83	VAK	09/21/83 (tentative)	Hrgs	43-AQ-FB-82-05 FB Civil Penalty of $400	To be scheduled.

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. C, May 20, 1983, EQC Meeting

TAX CREDIT APPLICATIONS

Director's Recommendation

It is recommended the Commission take the following actions.

1. Approve tax relief applications:

Appl. No.	Applicant	Facility
T-1539	Precision Castparts Corp.	Dust and/or fume collection systems
T-1579	Tektronix, Inc.	Waste acetone collection and storage facility
T-1599	The Boeing Company	Heavy metals pretreatment system
T-1600	The Boeing Company	Waste chemical storage building
T-1602	The Boeing Company	Electroplating wastewater treatment system
T-1606	Trojan Nuclear Project	Dechlorination system
T-1607	Owens-Illinois, Inc.	Baghouse
T-1609	Pohlschneider Farms, Inc.	Straw storage building
T-1610	McCloskey Varnish Co.	Vapor condensers

2. Deny Preliminary Certification for Tax Credit to Rogers & Tullar Farm (see attached review report).

Bill

William H. Young

CASplettstaszer
229-6484
4/28/83
Attachments

PROPOSED MAY 1983 TOTALS

Air Quality	$ 347,589
Water Quality	1,254,248
Solid/Hazardous Waste	-0-
Noise	-0-
	$ 1,601,837

CALENDAR YEAR TOTALS TO DATE

Air Quality	$ 5,842,816
Water Quality	22,997,678
Solid/Hazardous Waste	1,329,526
Noise	-0-
	$29,170,020

Application No. T-1539

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Precision Castparts Corporation
4600 S.E. Harney Drive
Portland, OR 97206

The applicant owns and operates a foundry for the production of steel and stainless steel castings at 1324 S.E. Eighth 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 nine (9) 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: $137,072.78 (Accountant's Certification was provided).

3. Evaluation of Application

The claimed facility, consisting of one scrubber installation, one electrostatic precipitator, two (2) filter systems, and five (5) dust collection systems, are used to control emissions from noted departments at the new small parts plant. A breakdown of the individual systems, their cost, and the departments served is noted below.

System 6	$38,681.87	-	Wax Department
System 7	39,845.93	-	Wax Assembly Department
System 9	11,459.00	-	Zyglo (spray oil penetrant/black light crack inspection area)
System 18	5,062.00	-	Foundry Department
System 19	17,904.31	-	Sandblast Department
System 20	9,361.94	-	Packing Department
System 21	5,451.00	-	Zyglo Department
System 22	3,701.71	-	Cleaning Department
System 23	5,605.02	-	Metal Preparation
TOTAL	$137,072.78		

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 reports that the following material is collected by the claimed facility, neutralized if applicable, and disposed of by transporting to a local landfill.

System 6	-	Sulfuric Acid	- 1,680 gal/yr
System 7	-	Wax	- 300 lbs/yr
System 9	-	Oil	- 5.55 tons/yr
System 18	-	Oil	- 0.46 tons/yr
System 19	-	Blast Dust & Refractory Material	- 3.9 tons/yr
System 20	-	Refractory Material	- 500 lbs/yr
System 21	-	Aluminum & Talc Powder	- 720 lbs/yr
System 22	-	Blast Dust & Refractory Material	- 3.9 tons/yr
System 23	-	Metallic Dust	- 1.3 tons/yr

The applicant derives some benefit from reduced space heating cost by discharging the cleaned air from System 7 and System 23 back into the building. The annual savings in space heating costs are as follows:

System 7	- $2,027/yr
System 23	- 443/yr
TOTAL	$2,470/yr

The rate of return on investment for the two systems was computed in accordance with the "Tax Credit Guidance Handbook". The percent of return on investment (% ROI) based on a ten (10) year life for these two systems are as follows:

	% ROI
System 7	- < 1%
System 23	- < 1%

Therefore, since the % ROI for System 7 and System 23 is less than 1%, there is no reduction in the percent of actual cost allocable to pollution control for these two (2) systems and 80% or more of the claimed facility cost is allocable to pollution control.

The application was received on June 5, 1982, additional information was received on September 9, 1982 and March 22, 1983, and the application was considered complete on March 22, 1983.

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 $137,072.78 with 80% or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1539.

W.J. FULLER:a
AA3230
(503) 229-5749
April 15, 1983

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Tektronix, Inc.
P. O. Box 500
Beaverton, OR 97077

The applicant owns and operates an electronic equipment manufacturing facility at Beaverton.

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 waste acetone collection and storage facility consisting of an outside room which houses 5 drums and piping.

Request for Preliminary Certification for Tax Credit was made August 5, 1981, and approved October 19, 1981. Construction was initiated on the claimed facility October 31, 1981, completed March 24, 1982 and the facility was placed into operation March 29, 1982.

Facility Cost: $15,497.98.

3. Evaluation of Application

Prior to installation of the claimed facility, waste acetone from the cathode ray tube line was dumped into 3 sinks. The acetone passed through the industrial waste treatment system at Tektronix which showed up as chemical oxygen demand discharged to the Unified Sewerage Agency's Durham Treatment Plant. Waste acetone from the 3 sinks is now plumbed to a manifold system in the outside room which sequentially fills the 5 drums.

As the drums are filled, they are transported to the hazardous waste storage area at the industrial complex. The recovered acetone is currently sold to a reclaim vendor for $0.25 per gallon. Tektronix is currently generating 220 gallons per month in this period of recession, but normally generates approximately 1,000 gallons per month. At 1,000 gallons per month, the annual income from the sale of recovered acetone is $3,000. Based on a factor of internal rate

of return of 5.166 ($15,497.98 ÷ 3,000) and a useful life of 10 years, one obtains a rate of return of 14.25 percent using Table II on Page VI-9 of the Department's Tax Credit Program Guidance Handbook. Table I on Page VI-3 of the Handbook then corresponds to a range of the facility cost allocable to pollution control of 40 percent or more but less than 60 percent.

Tektronix has not realized any reduction of sewer charges as a result of this project. They have been removing organic materials from their industrial sewers with the hope of eventually diverting a portion of their treated effluent to Beaverton Creek.

Tektronix could have removed the acetone by storing it in tanks under the sinks and periodically pumping it to a tanker for shipment. However, the storage of the liquid inside the building would have been a violation of the fire code.

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 40 percent or more but less than 60 percent.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $15,497.98 with 40 percent or more but less than 60 percent allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1579.

Charles K. Ashbaker:g
WG2134
(503) 229-5374
March 3, 1983

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

The Boeing Company
Boeing of Portland, Fabrication Division
P. O. Box 20487
Portland, OR 97220

The applicant owns and operates an aircraft parts machining and surface conditioning facility near Gresham.

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

2. Description of Claimed Facility

The facility described in this application consists of:

1. A 100' long by 40' wide by 26' high precast concrete slab extension to an existing building;

2. A 16' x 8' x 10' high concrete building;

3. 4 Permutit pressure filters and associated backwash equipment;

4. Piping, valves, electrical control equipment; and

5. Landscaping.

Request for Preliminary Certification for Tax Credit was made June 25, 1980, and approved July 9, 1980. Construction was initiated on the claimed facility October 15, 1980, completed November 23, 1981, and the facility was placed into operation December 3, 1981.

Facility Cost: $341,558 (Accountant's Certification was provided).

The accountant's certified facility cost was for a total of $606,804. However, the applicant specified that only 35 percent of the 40 by 100 foot long building is used for housing pollution control equipment and therefore has requested tax relief based on a revised facility cost of $366,687. (100% of sand filter system = $198,734, 35% of building cost - $369,410 x 0.35 = $129,293, 100% of landscaping = $38,660.)

However, since only 35 percent of the building's cost is eligible for pollution control tax relief, only 35 percent of the building's landscaping cost should be eligible.

($198,734 + $129,293 + $38,660 x 0.35 = $341,558)

3. Evaluation of Application

Boeing of Portland had an existing heavy metals pretreatment system at the Gresham facility. To provide a higher degree of treatment, they installed a sand filter polishing system to remove those metal particulates which aren't readily removed in the gravity clarifier. The sand filters are housed in the 40 by 100 foot long building. In addition, cyanide in the wastewater is destroyed with the use of chlorine. An 8 by 10 foot long building was constructed to house ten 150 pound chlorine bottles. Solids removed from this system are hauled to the Arlington hazardous waste disposal site. There is no return on investment from this facility.

Although landscaping costs are generally not eligible for pollution control tax relief, the Multnomah County Division of Planning required that 15 percent of the lot area be provided with landscaping. Since this was a requirement for construction of the facility, the costs have been included in the facility cost.

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 $341,558 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1599.

Larry D. Patterson:g
WG2250
(503) 229-5325
April 13, 1983

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

The Boeing Company
Boeing of Portland, Fabrication Division
P.O. Box 20487
Portland, OR 97220

The applicant owns and operates a facility that machines and surface conditions aircraft parts at Gresham.

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 concrete block waste chemical storage building (14'-8" X 46'-8") consisting of four compartments each with a separate spill collection sump.

Request for Preliminary Certification for Tax Credit was made December 6, 1979, and approved December 19, 1979. Construction was initiated on the claimed facility December 10, 1979, completed February 15, 1980, and the facility was placed into operation February 18, 1980.

Facility Cost: $35,359 (Accountant's Certification was provided).

3. Evaluation of Application

The waste chemical storage building was designed with four compartments to store (1) waste water treatment caustic, cyanide, and ferrous sulfide sludge, (2) spent oxidizers, (3) acids, and (4) waste solvents. Prior to installing the claimed facility the chemicals were stored at various places around the plant site. The new facility provides an isolated storage location where the potential for spills has been lessened and spill control facilities had been provided. These wastes are periodically hauled to an approved hazardous waste disposal facility. There is no return on investment from the claimed facility.

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 $35,359 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1600.

Larry D. Patterson:l
(503) 229-5374
April 15, 1983

WL2448

Application No. T-1602

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

The Boeing Company
Boeing of Portland, Fabrication Division
P. O. Box 20487
Portland, OR 97220

The applicant owns and operates a facility which machines and surface conditions aircraft parts at Gresham.

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

2. Description of Claimed Facility

The facility described in this application is an electroplating wastewater treatment system consisting of:

a. An 80' x 40' concrete slab building;
b. A cyanide destruction unit;
c. A Permutit precipitator and polymer feed system;
d. A sludge filter press;
e. Hydrogen and chlorine gas monitors; and
f. An electrical control panel.

Request for Preliminary Certification for Tax Credit was made March 14, 1978, and approved May 25, 1978. Construction was initiated on the claimed facility July 1978, completed June 26, 1981, and the facility was placed into operation August 10, 1981.

Facility Cost: $625,927.99 (Accountant's Certification was provided).

3. Evaluation of Application

Prior to installation of the claimed facility, electroplating rinse waters were released to the City of Gresham's sewerage system untreated. The new pretreatment system provides a high degree of removal of heavy metals and destroys any cyanide present in the wastewater. The 40' x 80' building houses the wastewater control equipment. Sludges generated by the treatment process are disposed of at the Arlington hazardous waste disposal area. There has been no return on investment from this facility.

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 $625,927.99 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1602.

Larry D. Patterson:g
WG2251
(503) 229-5374
April 13, 1983

Application No. T-1606

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Trojan Nuclear Project
121 S.W. Salmon St.
Portland, OR 97204

The applicant owns and operates a nuclear fueled electrical generating unit at Prescott.

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 dechlorination system consisting of 2 sampler pumps, 2 pH sampler pumps, sulfite injection equipment, an instrument panel, piping, valves, and instruments.

Notice of Intent to Construct and Preliminary Certification for Tax Credit not required.

Construction was initiated on the claimed facility March 1971, completed December 1975, and the facility was placed into operation December 1975.

Facility Cost: $210,778 (Accountant's Certification was provided).

3. Evaluation of Application

Recirculation cooling water systems generally add chlorine periodically to control biological slime growth on pipes and heat exchange surfaces. The applicant was required by the Department to control the Trojan plant effluent such that no detectable quantities of chlorine would be in the discharge. The applicant chose to install a sulfite injection system which converts chlorine to salt (sodium chloride). This system has worked very well with no detectable levels of chlorine discharged to the Columbia River. There is no return on investment from this facility.

4. Summation

a. Facility was not required to have prior approval to construct or 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 $210,778 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1606.

Charles K. Ashbaker:l
WL2403
(503) 229-5325
March 21, 1983

Application No. T-1607

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Owens-Illinois, Inc.
Glass Container Division
5850 N.E. 92nd Drive
Portland, OR 97220

The applicant owns and operates a glass manufacturing plant at 5850 N.E. 92nd Drive, Portland, OR.

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

2. Description of Claimed Facility

The facility described in this application consists of a baghouse installation with liquid ammonia vaporization and injection systems.

Request for Preliminary Certification for Tax Credit was made on October 2, 1981 and approved on December 7, 1981.

Construction was initiated on the claimed facility on February 1, 1982, completed on September 1, 1982, and the facility was placed into operation on September 7, 1982.

Facility Cost: $141,439 (Accountant's Certification was provided).

3. Evaluation of Application

The claimed facility, consisting of a baghouse with liquid ammonia vaporization and injection systems, is used to neutralize acid chlorides in the stannic chloride bottle surface treatment. To accomplish this, anhydrous liquid ammonia is vaporized then injected into the ductwork carrying the fumes away from the treatment hoods. The ammonia reacts with the stannic chloride vapor to form a dry white particulate which is then collected in the baghouse portion of the facility. The collected material is then mixed with water to form a slurry which is shipped to a recycling center located out of state to recover the tin content.

The facility, which was installed to prevent venting stannic chloride fumes to the atmosphere, has been inspected by Department personnel and has been found to be operating in compliance with regulations and permit conditions. In addition, it is reported that visible emissions have been almost completely eliminated.

The annual income derived from the tin content in the recycled slurry consists of $26,390. The annual operating expenses, before taxes, exclusive of depreciation, is approximately $22,205. This amount is broken down as follows:

Labor	-	$10,000
Utilities	-	5,075
Maintenance	-	6,785
Insurance	-	345
Total		$22,205

The annual value of the tin content in the recycled material exceeds the annual operating expenses by $4,185. The factor of the internal rate of return was computed in accordance with the "Tax Credit Guidance Handbook" and is equal to 33.8. The resulting percent of return on investment (% ROI) based on a ten (10) year life is less than 1%. Therefore, since the % ROI is less than 1%, there is no reduction in the percent of actual cost allocable to pollution control and 80% or more of the facility cost is allocable to pollution control.

The application was received on February 8, 1983 and the application was considered complete on February 8, 1983.

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 $141,439.00 with 80% or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1607.

W. J. Fuller:a
AA3250
(503) 229-5749
April 20, 1983

Application No. T-1609

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Pohlschneider Farms, Inc.
17904 French Prairie Road NE
St. Paul, OR 97137

The applicant owns and operates a straw storage shed located in St. Paul, Oregon.

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

2. Description of Claimed Facility

The facility described in this application is a 11,060 sq. ft., 24 ft. high straw storage building (pole building) with full roof and enclosed on three sides. The function of the building is to provide covered storage for baled grass straw for year-round use.

Request for Preliminary Certification for Tax Credit was made on May 31, 1982, and approved on June 8, 1982.

Construction was initiated on the claimed facility on June 1982, completed on July 1982, and the facility was placed into operation on July 1982.

Facility Cost: $50,269.21 (Accountant's Certification was provided).

3. Evaluation of Application

The straw storage structure complies with the provisions of OAR 340-26-030(2)(b)(B) as an Approved Alternative (field burning) Facility eligible for pollution control tax credit. The facility will be used solely and completely for straw storage. The calculated return on investment is less than 1%, therefore, 100% of the cost is properly allocable to pollution control.

The application was received on February 14, 1983, additional information was received on April 7, 1983, and the application was considered complete on April 7, 1983.

4. Summation

a. Facility was constructed in accordance with the requirements of ORS 468.175, regarding preliminary certification.

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

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

d. The portion of the facility cost that is properly allocable to pollution control is 100 percent.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $50,269.21 with 80% or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1609.

MK1861
SKO'Connell:k
(503)686-7837
4/18/83

Application No. T-1610

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

McCloskey Varnish Company of the Northwest
4155 N.W. Yeon Avenue
Portland, OR 97210

The applicant owns and operates a plant manufacturing resins and emulsions for use in paint and coatings. The plant is located at 4155 N.W. Yeon Avenue, Portland, 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 vapor condensers installed in the vents of three mixing tanks used to mix materials with hot solvents.

Request for Preliminary Certification for Tax Credit was made on 9-22-82, and approved on 11-2-82.

Construction was initiated on the claimed facility on 12-20-82, completed on 1-25-83, and the facility was placed into operation on 1-26-83.

Facility Cost: $18,809 (Complete Documentation by copies of invoices was provided).

3. Evaluation of Application

The applicant added vapor condensers to three mixing tank vents to reduce solvent losses as suggested by the Department. The tanks are used to mix hot resins with volatile solvents. The solvents in the mixing tanks are heated to above their boiling points.

The condensers are fin and tube coil type condensers manufactured by Xchanger, Inc., for installation on storage tank vents. Cold water from an existing source is pumped through the coils and the condensed vapors fall back into the mixing tanks. Approximately 2.1 tons of solvent per year is recovered. The value of the recovered solvent results in less than 1% return on investment; therefore, 80% or more of the claimed facility cost is allocated to pollution control.

The application was received on 3-1-83 and the application was considered complete on 4-15-83.

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 $18,809 with 80% or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1610.

Ray Potts:a
AA3238
(503) 229-6093
April 18, 1983

Date 3-22-83

State of Oregon
Department of Environmental Quality

PRELIMINARY CERTIFICATION REVIEW REPORT

1. Applicant

Floyd D. Rogers, Rogers & Tullar Farm
7014 S.E. Wilshire
Portland, OR 97222

The applicant leases and operates a fruit orchard at the Rogers Tullar Farm, 3071 Highway 35, Hood River, OR 97031.

Preliminary certification is required for an air pollution control facility.

2. Description of Claimed Facility

The facility described in this application is one Tropic Breeze wind machine at a cost of $14,000. The wind machine will replace propane gas fired heaters used to protect against crop loss due to frost.

3. Evaluation of Application

This wind machine will replace propane gas fired heaters, see attached copy of submitted request. In the past, propane gas systems received air pollution tax credit because of the reduction in emissions compared to using diesel oil fired heaters.

The leasee, Russ Swyers, was informed by telephone on or about 3-16-83 that the Department would recommend denial because the wind machine replaces propane gas fired heaters which are considered clean burning.

Historically, the Commission denied a similar request, Tax Credit Application No. T-1266R.

The Department recommends that the Preliminary Certification 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.

4. Summation

The Department has determined that the erection, construction, or installation does not comply with the applicable provisions of ORS Chapter 468 and the applicable rules or standards adopted pursuant thereto; therefore, the facility is not eligible for tax credit certification.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that the Commission issue an order denying the applicant's request for Preliminary Certification.

Ray Potts:a
(503) 229-6093
March 22, 1983
AA3127

Submit copy of application and exhibits to:

DEPARTMENT OF ENVIRONMENTAL QUALITY
MANAGEMENT SERVICES DIVISION
POST OFFICE BOX 1760
PORTLAND, OREGON 97207

FOR DEQ USE ONLY
Date Rec'd 2-24-83
Request No. AC-IBP05
File No. 26-9735

State of Oregon DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
FEB 24 1983
AIR QUALITY CONTROL

NOTICE OF INTENT TO CONSTRUCT
AND
REQUEST FOR PRELIMINARY CERTIFICATION FOR TAX CREDIT

ALL APPLICANTS COMPLETE

(1) If Notice of Intent to Construct and Request for Construction Approval, indicate type of facility by placing check (✓) in appropriate box.

☒ Air Contaminant Source ☐ Confined Animal Feeding or Holding Operation

(2) If request for Preliminary Certification, indicate type of pollution control or waste utilization facility proposed by placing check (✓) in appropriate box.

☒ Air ☐ Noise ☒ Water ☐ Solid Waste ☐ Hazardous Wastes ☐ Used Oil

(3) Official Name of Applicant

Floyd D. Rogers, Rogers & Tullar Farm
Official Name

7014 SE Wilshire Portland, Or. 97222
Mailing Address, City, State, Zip Code

(4) Location of Facility

Rogers Tullar Farm
3071 Hwy 35 Hood River, Or. 97031
Business Name or Division

Street Address

Hood River, Hood River
City County

(5) Person to Contact for Additional Details

Russ Swyers
Name

Leasee
Title

2100 Eastside Rd
Address

Hood River 97031 386-1783
City Zip Code Phone No.

(6) Briefly describe nature of business where facility will be located and whether business is new or new at this location.

Fruit Orchard, Business is not new Purchased in 1973

(7) Provide a brief technical description of the proposed facility and its function. Attach process flow diagram and plot plan as appropriate.

Proposed facility is a tropic breeze wind machine
Primary function to protect against crop loss due to frost. Also to avoid burning fossil fuels to prevent fruit loss to frost.

(8) Briefly describe pollution control or waste utilization equipment to be incorporated and/or utilized in facility.

None

NOTE: Tax credit law (ORS 468.175) requires that a request for preliminary certification be on file with the Department before commencing on a project in order to be eligible for consideration for tax credit certification upon completion of the project.

ALL APPLICANTS COMPLETE

(9) List types and amounts of pollutants discharged or produced and/or wastes utilized before installation of facility. Also indicate how wastes are disposed.
Propane Heaters are now used in a small area, approx. 8 acres. 16 acres of propane heaters have been removed from the orchard due to high fuel cost. Propane is now used in the amount of 1000 gal. a year.

(10) List types and amounts of pollutants discharged, produced or reduced and/or wastes utilized after installation of facility. Also indicate how wastes are disposed.
Amount of pollutants discharged after installation of wind machine should be minimal possibly eliminated.

(11) Estimated total cost of facility: $14,000.00

Estimated cost of pollution control or waste utilization equipment: $13,800.00

(12) Date construction estimated to begin 3-20-83/___.

Date construction estimated to end 3/30/83.

(13) Has a statement of compatibility with local comprehensive land use plans been obtained from appropriate local jurisdictions? (see instructions)

Yes _____, please attach. No No, please attach explanation. Neighboring wind machines in the area have not been objectional.

COMPLETE ONLY IF REQUESTING PRELIMINARY CERTIFICATION

(14) If facility is solid waste, hazardous wastes, or used oil facility, describe what usable source of power or other item of real economic value is produced and its value.

Not Applicable

(15) Has facility, or any portion of it, previously been certified for tax credit, or is a tax credit application pending?

Yes _____, please attach explanation. No No.

(16) Has facility or any portion of it, previously been certified as an energy conservation facility by the Oregon Department of Energy, or is an application pending?

Yes _____, please attach explanation. No No.

APPLICANT SIGNATURE

I hereby certify that I have completed this application to the best of my ability and that the information provided herein and in the attached exhibits is true and correct to the best of my knowledge.

Signature John Russell Simpson Title LEASEE Date 2/21/83

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. D, May 20 1983, EQC Meeting

Request for Authorization to conduct a public hearing to Amend the Rules for Air Pollution Emergencies, OAR Chapter 340, Division 27, as a Revision to the Oregon State Implementation Plan.

Background and Problem Statement

Need for Revision

The Emergency Action Plan (EAP), OAR Chapter 34, Division 27, was adopted in 1972 when State Implementation Plans (SIP's) were first required as a result of the 1970 Amendments to the Clean Air Act (CAA). Subsequent amendments to the CAA, changes in the implementing Code of Federal Regulations (CFR's) and operational experience with the EAP, demonstrate the current EAP to be obsolete and in need of revision. The proposed new rules would provide this needed revision.

Source Emission Reduction Plans

An element of the EAP requires source emission reduction plans (SERP's) from operators of point sources and from governmental agencies. SERP's are individual source plans to be put into effect during serious episodes. The present State rules fail to stipulate limits of emission or location to which the SERP requirement applies. Therefore, SERP's may be required of persons responsible for sources having little or no significance to potential pollution episodes. For example, consider the Portland General Electric power plant near Boardman or the city of Pendleton. There is no expectation of air pollution episodes significantly affecting the areas of Boardman or Pendleton but SERP's could be required of PGE or the City of Pendleton. Extending this example to smaller sources and cities makes the determination of exactly who is required to have a SERP very awkward. Amendments to the CFR's make it possible to eliminate a large number of unnecessary SERP's. The proposed rules would make use of these CFR provisions to limit the sources and areas where SERP's are required to the larger sources in areas where episodes are more likely.

Episode Stages

Federal regulations require emergency action plans to specify two or more stages of episode criteria to initiate actions to prevent reaching the

levels of significant harm which are listed in the proposed rules, OAR 340-27-005, Attachment 1. The exisitng Oregon EAP uses four stages of episode criteria which have been called Forecast, Alert, Warning, and Emergency. Actions called for at the lower two stages of episodes criteria require a considerable amount of staff effort which does not contribute to a noticeable improvement of ambient pollution levels or reduction in emissions.

The implementation of the EAP would be considerably improved if the Forecast stage were eliminated, using the Alert stage as a time for public notice and preparation for possible further action in worsening air quality conditions.

In the proposed rules, three active episode stages would be used. They are Alert, Warning and Emergency. The Alert stage would then be used for preliminary notice and preparation for emission curtailment as necessary if conditions worsen and a Warning stage is reached.

The pre-episode condition, Standby, is identified in the proposed rules but no control actions would take place in this condition. It would be defined as the condition for normal activity and ambient monitoring. It would be used to identify normal, every day conditions and would assure that emergency action plan considerations are not forgotten when ambient monitoring reveals development of increasing pollution levels.

Non-regulatory EAP Procedures

The federal regulations, 40 CFR Part 51.16, identify six requirements which need to be addressed in an EAP. Table 1 identifies the six federal requirements with cross references to the source of the federal requirement and the OAR reference in the proposed rules where each requirement is addressed.

The existing State regulation addresses only requirements 1 and 3 listed in Table 1. The remaining four requirements are non-regulatory in nature in that they do not impose any obligations on the public. They do, however, require the Department to provide for communication procedures to gather and disseminate information. To satisfy requirements 2, 4, 5, and 6, listed in Table 1, it has been necessary for the Department to provide extensive additional information to EPA to obtain SIP approval. This additional information must be frequently revised.

OAR 340-27-035 in the proposed rules would be a major new addition to the EAP to respond to all requirements of federal regulations. It would make it unnecessary to provide EPA with extensive additional material to obtain an approvable SIP submittal. The proposed new OAR would establish the non-regulatory elements required by the CFR's and would stipulate that these elements be maintained in an operations manual. The operations manual would not be regulatory in nature and is not part of the rule package. It is, however, available for public inspection.

Table 1

Oregon Implementation Of
Federal Emergency Action Requirements for Air Pollution Episodes

	Requirement	Federal Reference In 40 CFR Part 51	Oregon Proposed Rule Reference
1.	Specify two or more stages of episode criteria.	Part 51.16(b)(1) [Example-Appendix L]	OAR 340-27-010
2.	Provide for public announcement whenever any episode stage has been determined to exist.	Part 51.16(b)(2)	OAR 340-27-035(2)
3.	Specify adequate emission control actions taken at each episode stage.	Part 51.16(b)(3) [Example-Appendix L]	OAR 340-27-015 OAR 340-27 Tables I, II and III
	Control actions to be consistent with extent of episode stage and applicable to source causing the pollution.	Part 51.16(d)	
4.	Provide for prompt acquisition of atmospheric stagnation and updates issued by the National Weather Service.	Part 51.16(e)(1)	OAR 340-27-035(3)
5.	Provide for inspection of sources to ascertain compliance with emission control action requirements.	Part 51.16(e)(2)	OAR 340-27-035(4)
6.	Provide for communication procedures transmitting status reports and orders for control actions to be taken during an episode stage to public officials, major emission sources, public health, safety, and emergency agencies and news media.	Part 51.16(e)(3)	OAR 340-27-035(2)

Ozone Episodes

In January 1982, the State ozone standard was changed from 160 ug/m^3 to 235 ug/m^3 for a 1 hour average. Unless the ozone alert level (currently 200 ug/m^3) is also changed, the established alert level would be more restrictive than the ozone standard. The proposed new rule, OAR 340-27010(2)(b), would establish a new ozone alert level of 400 ug/m^3 for a one hour average.

Because of public concern expressed when the ozone standard was changed, the proposed rules provide for an "ozone advisory" which would be issued if the ozone levels were greater than 235 ug/m^3 but less than the alert level of 400 ug/m^3. The provision for an ozone advisory is not relevant, however, to CFR requirements for SIP's. This provision, along with other items not relevant to SIP's, would be in a proposed "special conditions" rule, OAR 340-27-012. It is proposed that this rule not be included in the SIP since it contains items of interest to Oregon but irrelevant to the SIP requirements.

During the past decade, the relationship between ozone and VOC (Volatile Organic Compounds) has become better understood. While automobile traffic has a significant infuence on ozone precursors, other sources of VOC also have a substantial effect on ozone production. Because of the newly recognized need to consider non-automotive VOC sources for ozone control, curtailment of these sources has been added to EAP actions required at the Warning level for ozone. This is a new requirement and will affect petroleum bulk transfers, gasoline sales, dry cleaning (except perchlorethylene) process, paper coating plants and spray painting should ozone levels reach 800 ug/m^3.

Particulate Episodes Due to Volcanic Ash and Dust Storms

During the 1980 eruption of Mt. St. Helens, extremely high levels of particulate from fallout were measured with 24 hour average values, reaching more than 3000 ug/m^3in the Portland area and estimated at ten times that amount in eastern Washington. The significant harm level for particulate is 1000 ug/m3. Since volcanic fallout and dust from native soils as contained in particulate from dust storms has not been exposed to contamination by industrial fallout or subjected to adsorption of urban gaseous pollutants, particulate from these sources are not generally considered to have as high a toxicity level as particulate originating in an urban, industrial environment. These issues are discussed in Attachment 2. Clearly, the EAP was not designed to meet conditions resulting from volcanic eruption or dust storms. To avoid stopping industrial and commercial activity due to high but unharmful particulate levels from volcanic fallout during the St. Helens episode, the Department followed best judgment and advice from the local medical community and did not declare an emergency episode.

The proposed rule would establish a special category of particulate levels resulting from volcanic activity and dust storms. Emergency action levels in this special category are contained in OAR 340-27-012 of the proposed rules. They are 800 ug/m^3 for Alert, 2000 ug/m^3 for Warning and 5000 ug/m^3 for Emergency. The values are for a 24 hour average total suspended particulate sample and are justified in Attachment 2.

The legal authority for the proposed rule change is listed in Attachment 3.

Alternatives and Evaluation

Since the proposed rules would replace existing rules, the most obvious alternative would be to do nothing and leave the existing rules as they are. The consequences of the "do nothing" alternative would be the continued existence of the problems already described. Two of the more serious consequences of such action concern an inappropriate ozone alert level and undefined requirements for SERP submissions.

First, if the alert level for ozone is not changed, we will continue to face the dilemma of calling an alert for ozone at levels less than the established ambient air quality standard. The proposed EAP would establish a new alert level of 400 ug/m^3. The warning level of 800 ug/m^3 and emergency level of 1000 ug/m^3 would remain the same as they are in the existing rules. An added feature of the proposed new rule (OAR 340-27-012) would provide an "ozone advisory" when ozone levels exceed the ambient air quality standards (235 ug/m^3) but are less than 400 ug/m^3.

Second, the "do nothing" option would continue the administrative uncertainty concerning SERP requirements. In existing rules, SERP's are required from responsible persons when requested by the Department but the plant size and location are not specified. In such cases, the Department must decide who should submit SERP's (OAR 340-27-020) using its best judgment. The proposed rules would avoid potential ambiguity. In OAR 340-27-015, plant emissions and location limits would be specified for SERP requirements.

A third consequence of the "do nothing" option would be the continued potential of confusion in the event of particulate fallout from volcanic activity or dust storms. On the several occasions that Oregon was dusted with volcanic ash during 1980, special procedures were necessary to respond to the excessive levels of particulate from ash.

The proposed rule would establish a separate category of episodes for suspended particulate when the particulate is primarily fallout from volcanic activity or dust storm. For this category of particulate, the emergency action levels would be 800 ug/m^3 for Alert, 2000 ug/m^3 for Warning and 5000 ug/m^3 for Emergency. Attachment 2 is a short technical justification for these numbers. Failure to adopt the proposal change will leave the EAP without an adeuqate response in the event of a volcanic eruption or dust storm.

Rule Development

The proposed rule was initiated by Headquarters staff as an outgrowth of SERP review and an identified need for updating both the SERP file and the rule. Input and review into the revision process drew primarily on the operational experience of Headquarters staff and EPA Region X contacts. Attachment 4 indicates general agreement between EPA staff and DEQ staff. The proposed EAP has been discussed with DEQ Regional staff. The effect of the proposed revisions is to decrease the requirements on the affected public during lower level episodes without changing the ultimate goals, purpose or actions of the EAP. There are no known areas of disagreement with the proposals presented.

Summation

1. Changing federal requirements and operational experience over the past decade have shown the existing Emegency Action Plan to be obsolete and in need of revision.

2. The proposed rules would clarify the requirement to develop and file Source Emission Reduction Plans with the Department.

3. The proposed rules would delete the "forecast" episode stage and defer most emission curtailment to episodes at the Warning and Emergency stages. A standby condition for normal everyday operations is defined to provide Emergency Action Plan continuity at all times.

4. The proposed rules would provide implementation for all specific Environmental Protection Agency requirements for an Emergency Action Plan as outlined in Table 1.

5. The proposed rules would change the Alert level for ozone from 200 ug/m^3 to 400 ug/m^3, 1 hour average. An "ozone advisory" would be issued when ozone levels are greater than 235 ug/m^3 but less than 400 ug/m^3 for a 1 hour average.

6. The proposed rules would establish separate emergency action levels for Total Suspended Particulate which is primarily fallout from volcanic activity or dust storms.

7. The proposed rules are fully supported by legislative authority.

8. If adopted, the proposed OAR 340-27-005, 340-27-010, and 340-27-015 through 340-27-035 with Tables 1, 2, 3, and 4 would be submitted to the Environmental Protection Agency as a change to the State Implementation Plan. OAR 340-27-012 would not be included with the State Implementation Plan as this rule is not a federal requirement.

Director's Recommendation

Based on the Summation, the Director recommends that authorization for public hearing be granted to hear testimony on the proposed amendments and additions to the rules for Air Pollution Emergencies, OAR Chapter 340, Division 27. If adopted, all except OAR 340-27-012 would be submitted as a revision to the Oregon State Implementation Plan.

Bill

William H. Young

Attachments:
1. Proposed Comprehensive Plan for Air Pollution Emergencies, OAR 340-27-005 through 340-27-035.
2. Technical Report On Total Suspended Particulate Which Is Primarily Fallout From Volcanic Activity or Dust Storms.
3. Legal Authority
4. Letter from EPA to DEQ, dated January 19, 1983.
5. Public Notice and Statement of Need.

L.D. Brannock:a
229-5836
April 15, 1983
AA3002

OREGON ADMINISTRATIVE RULES
CHAPTER 340, DIVISION 27
DEPARTMENT OF ENVIRONMENTAL QUALITY

COMPREHENSIVE PLAN FOR AIR POLLUTION EMERGENCIES

Introduction

340-27-005 OAR 340-27-010, 340-27-015 and 340-27-025 are effective within priority I and II air quality control regions (AQCR) designated in 40 CFR Part 52 subpart MM, when the AQCR contains a nonattainment area listed in 40 CFR Part 81. All other rules in this Division 27 are equally applicable to all areas of the state. Notwithstanding any other regulation or standard, these emergency rules are designed to prevent the excessive accumulation of air contaminants during periods of atmospheric stagnation or at any other time, which if allowed to continue to accumulate unchecked could result in concentrations of these contaminants reaching levels which could cause significant harm to the health of persons. [thereby preventing the occurrence of an emergency due to the effects of these contaminants on public health.] These rules establish criteria for identifying and declaring air pollution episodes at levels below the level of significant harm and are adopted pursuant to [Chapter 420, Oregon Laws 1971 (House Bill 1504); Chapter 424, Oregon Laws 1971 (House Bill 1574); and ORS 449.800.] the requirements of the Federal Clean Air Act as amended and 40 CFR Part 51.16. Legislative authority for these rules is contained in Oregon Revised Statutes including ORS 468.020, 468.095, 468.115, 468.280, 468.285, 468.305 and 468.410. Levels of significant harm for various pollutants listed in 40 CFR Part 51.16 are:

(1) For sulfur dioxide (SO_2) - 2,620 micrograms per cubic meter, 24-hour average.

(2) For particulate matter (TSP) - 1000 micrograms per cubic meter, 24-hour average.

(3) For the product of sulfur dioxide and particulate matter - 490×10^3 micrograms squared per cubic meter squared, 24-hour average.

(4) For carbon monoxide (CO) -
   a. 57.5 milligrams per cubic meter, 8-hour average.
   b. 86.3 milligrams per cubic meter, 4-hour average.
   c. 144 milligrams per cubic meter, 1-hour average.

(5) For ozone (O_3) - 1,200 micrograms per cubic meter, 1-hour average.

(6) For nitrogen dioxide (NO_2) -
   a. 3,750 micrograms per cubic meter, 1-hour average.
   b. 938 micrograms per cubic meter, 24-hour average.

Stat. Auth: ORS Ch 468 including 468.020, 468.280, 468.285, 468.305

Episode Stage Criteria For Air Pollution Emergencies

340-27-010 Three stages of air pollution episode conditions and a pre-episode standby condition are established to inform the public of the general air pollution status and provide a management structure to require preplanned actions designed to prevent continued accumulation of air pollutants to the level of significant harm. The three episode stages are: Alert, Warning, and Emergency. The Department shall be responsible to enforce the provisions of these rules which require actions to reduce and control emissions during air pollution episode conditions.

An air pollution alert or air pollution warning shall be declared by the Director or appointed representative when the appropriate air pollution conditions are deemed to exist. When conditions exist which are appropriate to an air pollution emergency, the Department shall notify the Governor and declare an air pollution emergency pursuant to ORS 468.115. The statement declaring an air pollution Alert, Warning or Emergency shall define the area affected by the air pollution episode where corrective actions are required. Conditions justifying the proclamation of an air pollution alert, air pollution warning, or air pollution emergency shall be deemed to exist whenever the Department determines that the accumulation of air contaminants in any place is [attaining or has attained] increasing or has increased to levels which could, if such [levels] increases are sustained or exceeded, lead to a threat to the health of the public. In making this the determination, the Department will be guided by the following criteria for each pollutant and episode stage as listed in this rule.

(1) ["Air pollution forecast". An internal watch by the Department of Environmental Quality shall be actuated by a National Weather Service advisory that atmospheric stagnation advisory is in effect or by the equivalent local forecast of stagnant atmospheric conditions.] "Pre-episode Standby" condition, indicates that ambient levels of air pollutants are within standards or only moderately exceed standards. In this condition, there is no imminent danger of any ambient pollutant concentrations reaching levels of significant harm. The Department shall maintain at least a normal monitoring schedule but may conduct additional monitoring. An air stagnation advisory issued by the National Weather Service, an equivalent local forecast of air stagnation or observed ambient air levels in excess of ambient air standards may be used to indicate the need for increased sampling frequency. The air pollution standby condition is the lowest possible air pollution episode condition and may not be terminated.

(2) "Air Pollution Alert" [The alert level is that concentration of pollutants at which first stage control action is to begin.] condition indicates that air pollution levels are significantly above standards but there is no immediate danger of reaching the level of significant harm. Monitoring should be intensified and readiness to implement abatement actions should be

reviewed. At the Air Pollution Alert level the public is to be kept informed of the air pollution conditions and of potential activities to be curtailed should it be necessary to declare a warning or higher condition. An Air Pollution Alert condition is a state of readiness. An Air Pollution Alert will be declared when [any one of the following levels is reached at any monitoring site] the conditions in both (a) and (b) below are met.

(a) Stagnant meteorological conditions exist and are expected to remain essentially the same or worsen during the next twelve (12) or more hours.

(b) Monitored pollutant levels at any monitoring site exceed:

(A) [(a)] Sulfur dioxide - 800 ug/m^3 [(0.3 ppm)] - 24 hour average.

(B) [(b)] Total Suspended Particulate - [3.0 COHs or] 375 ug/m^3 24 hour average, except when the particulate is primarily from volcanic activity or dust storms.

(C) [(c)] Sulfur dioxide and total suspended particulate product (not including suspended particulate which is primarily from volcanic activity or dust storms). [combined - 24 hour average product of sulfur dioxide and particulate equal to:]

[(A) 525 (ug/m^3) (COH); or]

[(B) 0.2 (ppm) (COH); or]

[(C)] 65 x 103 (ug/m^3)2 [(ug/m^3)] - 24 hour average.

(D) [(d)] Carbon monoxide - 17 mg/m^3 [(15 ppm)] - 8 hour average.

(E) [(e) Photochemical oxident] ozone - 400 [200] ug/m^3 [(0.1) ppm)] - 1 hour average.

(F) [(f)] Nitrogen dioxide:

(i) [(A)] 1130 ug/m^3 [(0.6 ppm),] - 1 hour average; or

(ii) [(B)] 282 ug/m^3 [(0.15 ppm),] - 24 hour average [and meteorological conditions are such that this condition can be expected to continue for twelve (12) or more hours.]

(3) "Air Pollution Warning" [The warning level] condition indicates that [air quality is continuing to degrade] pollution levels are very high and that [additional] abatement actions are necessary to prevent these levels from approaching the level of significant harm. At the Air Pollution Warning level substantial restrictions may be required limiting motor vehicle use and industrial and commercial activities. [A] An Air Pollution Warning will be declared by the Director when [any one of the following levels is reached at any monitoring site:] the conditions in both (a) and (b) below are met.

(a) Stagnant meterological conditions exist and are expected to remain essentially the same or worsen during the next twelve (12) or more hours.

(b) Monitored pollutant levels at any monitoring site exceed:

(A) [(a)] Sulfur dioxide - 1600 ug/m^3 [(0.6 ppm)] - 24 hour average.

(B) [(b)] Particulate - [5.0 COHs or] 625 ug/m^3- 24 hour average, except when the particulate is primarily from volcanic activity or dust storms.

(C) [(c) Combined] Sulfur dioxide and [COHs] total suspended particulate product (not including suspended particulate which is primarily from volcanic activity or dust storms) [24 hour average product of sulfur dioxide and particulate equal to]

[(A) 2100 (ug/m^3) (COH); or]

[(B) 0.8 (ppm) (COH); or]

[(C)] 261 x 10^3 (ug/m^3)^2 [(ug/m^3)] - 24 hour average.

(D) [(d)] Carbon monoxide - 34 mg/m^3 [(30 ppm)] - 8 hour average.

(E) [(e) Photochemical oxidant] Ozone - 800 ug/m^3 [(0.4 ppm)] - 1 average.

(F) [(f)] Nitrogen dioxide:

(i) [(A)] 2260 ug/m^3 [(1.2 ppm)] - 1 hour average; or

(ii) [(B)] 565 ug/m^3 [(0.3 ppm)] - 24 hour average [and meterological conditions are such that this condition can be expected to continue for twelve (12) or more hours.]

(4) "Air Pollution Emergency" [The emergency level) condition indicates that air pollutants have reached an alarming level requiring the most stringent actions to prevent these levels from reaching the [quality is continuing to degrade toward a] level of significant harm to the health of persons. [and that the most stringent control actions are necessary.]

At the Air Pollution Emergency level extreme measures may be necessary involving the closure of all manufacturing, business operations and vehicle traffic not directly related to emergency services.

Pursuant to ORS 468.115, an air pollution emergency will be declared by the Department when [any one of the following levels is reached at any monitoring site.] the conditions in both (a) and (b) below are met.

(a) Stagnant meteorological conditions exist and are expected to remain essentially the same or to worsen during the next twelve (12) or more hours.

(b) Monitored pollutant levels at any monitoring site exceed:

(A) [(a)] Sulfur dioxide - 2100 ug/m^3 [(0.8 ppm)] - 24 hour average.

(B) [(b)] Particulate - [7 COH or] 875 ug/m^3 - 24 hour average, except when the particulate is primarily fallout from volcanic activity or dust storms.

(C) [(c)] Combined] Sulfur dioxide and total suspended particulate [- 24 hour average] product (not including suspended particulate which is primarily from volcanic activity or dust storms) [of sulfur dioxide and particulate equal to:]

[(A) 3144 (ug/m^3) (CHO);]

[(B) 1.2 (ppm) (CHO); or]

[(C)] 393 x 103 (ug/m^3)^2 [(ug/m^3)] - 24 hour average.

(D) [(d)] Carbon monoxide; -

(i) [(A)] 46 mg/m^3 [(40 ppm)] - 8 hour average; or

(ii) [(B)] 69 mg/m^3 [(60 ppm)] - 4 hour average; or

(iii)[(C)] 115 mg/m^3 [(100 ppm)] - 1 hour average.

(E) [(e) Photochemical oxident;] Ozone - 1000 ug/m^3

[(A) 1200 ug/m^3 (0.60 ppm)] - 1 hour average; [or]

[(B) 960 ug/m^3 (0.48 ppm) - 2 hour average; or]

[(C) 640 ug/m^3 9.032 ppm) - 4 hour average.]

(F) [(f)] Nitrogen dioxide;

(i) [(A)] 3000 ug/m^3 [(1.6 ppm)] - 1 hour average; or

(ii) [(B)] 750 ug/m^3 [(0.4 ppm)] - 24 hour average [and meterological conditions are such that this condition can be expected to remain at the above levels for twelve (12) or more hours.]

(5) "Termination" [Once declared, any status reached by application of these criteria will remain in effect until the criteria for that level are no longer met, at which time the next lower status will be assumed, until termination is declared.] Any air pollution episode condition (Alert, Warning or Emergency) established by these criteria may be reduced to the next lower condition when the elements required for establishing the higher condition are no longer observed.

Stat. Auth: ORS Ch 468 including 468.020, 468.115, 468.280, 468.285, 468.305, 468.410

Special Conditions

340-27-012 (1) The Department shall issue an "Ozone Advisory" to the public when monitored ozone values at any site exceed the ambient air quality standard of 235 ug/m^3 but are less than 400 ug/m^3 for a 1 hour average. The ozone advisory shall clearly identify the area where the ozone values have exceeded the ambient air standard and shall state that significant health effects are not expected at these levels, however, sensitive individuals may be on the threshhold of slight health effects.

(2) Where particulate is primarily soil from windblown dust or fallout from volcanic activity, episodes dealing with such conditions must be treated differently than particulate episodes caused by other controllable sources. In making a declaration of air pollution alert, warning, or emergency for such particulate, the Department shall be guided by the following criteria:

(a) "Air Pollution Alert for Particulate from Volcanic Fallout or Windblown Dust" means total suspended particulate values are significantly above standard but the source is volcanic eruption or dust storm. In this condition there is no significant danger to public health but there may be a public nuisance created from the dusty conditions. It may be advisable under these circumstances to voluntarily restrict traffic volume and/or speed limits on major thoroughfares and institute cleanup procedures. The Department will declare an air pollution alert for particulate from volcanic fallout or wind-blown dust when total suspended particulate values at any monitoring site exceed and are projected to continue to exceed 800 ug/m^3 - 24 hour average and the suspended particulate is primarily from volcanic activity or dust storms, meteorological conditions not withstanding.

(b) "Air Pollution Warning for Particulate from Volcanic Fallout or Wind-blown Dust" means total suspended particulate values are very high but the source is volcanic eruption or dust storm. Prolonged exposure over several days at or above these levels may produce respiratory distress in some people. Under these conditions staggered work hours in metropolitan areas, mandated traffic reduction, speed limits and cleanup procedures may be required. The Department will declare an air pollution warning for particulate from volcanic fallout or wind-blown dust when total suspended particulate values at any monitoring site exceed and are expected to continue to exceed 2000 ug/m^3 - 24 hour average and the suspended particulate is primarily from volcanic activity or dust storms, meteorological condtions not withstanding.

(c) "Air Pollution Emergency for Particulate from Volcanic Fallout or Wind-blown Dust" means total suspended particulate values are extremely high but the source is volcanic eruption or dust storm. Prolonged exposure over several days at or above these levels may produce respiratory distress in a significant number of people. Under these conditions cleaning procedures must be accomplished before normal traffic can be permitted. An air pollution emergency for particulate from volcanic fallout or wind-blown dust will be declared by the Director, who shall keep the Governor advised of the situation, when total suspended particulate values at any monitoring site exceed and are expected to continue to exceed 5000 ug/m^3 - 24 hour average and the suspended particulate is primarily from volcanic activity or dust storms, meteorological conditions notwithstanding.

(3) Termination: Any air pollution condition for particulate established by these criteria may be reduced to declare the next lower condition when the criteria for establishing the higher condition are no longer observed.

(4) Action: Municipal and county governments or other governmental agency having jurisdiction in areas affected by an air pollution Alert, Warning or Emergency for particulate from volcanic fallout or windblown dust shall place into effect the actions pertaining to such episodes which are described in Table 4.

Stat. Auth: ORS Ch 468 including 468.020, 468.115, 468.280, 468.285, 468.305, 468.410

Source Emission Reduction Plans

340-27-015 (1) Tables 1, 2, and 3 of [this] these air pollution emergency rules set forth specific [special] emission reduction measures which [that] shall be taken upon the declaration of an air pollution alert, air pollution warning, or air pollution emergency [respectively]. Any person responsible for a source of air contamination within a priority I AQCR shall, upon declaration of any [such] air pollution episode condition affecting the locality of the air contamination source, take all appropriate actions specified in the applicable table and shall [particularly put into effect the preplanned abatement strategy for such condition.] take appropriate actions specified in an approved source emission reduction plan which has been submitted and is on file with the Department.

(2) Any person responsible for the operation of any point source of air pollution which is -a. located in a Priority I AQCR, -b. located within an Air Quality Maintenance Area (AQMA) or nonattainment area listed in 40 CFR Part 81, and -c. emits 100 tons or more of any air pollutant specified by this paragraph; shall file a Source Emission Reduction Plan (SERP) with the Department in accordance with the schedule described in paragraph (4) of this rule. Persons responsible for other point sources of air pollution located in a Priority I AQCR may optionally file a SERP with the Department for approval. Such plans shall specify procedures to implement the actions required by Tables 1, 2, and 3 of these rules and shall be consistent with good engineering practice and safe operating procedures. Source emission reduction plans specified by this paragraph are mandatory only for those sources which:

(a) Emit 100 tons per year or more of any pollutant for which the nonattainment area, AQMA, or any portion of the AQMA is designated nonattainment, or

(b) Emit 100 tons per year or more of volatile organic compounds when the nonattainment area, AQMA or any portion of the AQMA is designated nonattainment for ozone.

(3) Municipal and county governments or other governmental body having jurisdiction in nonattainment areas where ambient levels of carbon monoxide, ozone or nitrogen dioxide qualify for Priority I AQCR classification, shall cooperate with the Department in developing a traffic control plan to be implemented during air pollution episodes of motor vehicle related emissions. Such plans shall implement the actions required by Tables 1, 2 and 3 of these rules and shall be consistent with good traffic management practice and public safety.

(4) The Department shall periodically review the source emission reduction plans to assure that they meet the requirements of these rules. If deficiencies are found, the Department shall notify the persons responsible for the source. Within 60 days of such notice the person responsible for the source shall prepare a corrected plan for approval by the Department. Source emission reduction plans shall not be effective until approved by the Department.

(5) During an air pollution alert, warning or emergency episode, source emission reduction plans required by this rule shall be available on the source premises for inspection by any person authorized to enforce the provisions of these rules.

Stat. Auth: ORS Ch 468 including 468.020, 468.095, 468.115, 468.280, 468.285, 468.305, 468.410

[Repeal OAR 340-27-020]

[**Preplanned Abatement Strategies**

340-27-020 (1) Any person responsible for the operation or control of a source of air contamination shall, when requested by the Department or regional air pollution authority in writing, prepare preplanned strategies consistent with good industrial practice and safe operating procedures, for reducing the emission of air contaminants into the outdoor atmosphere during periods of an air pollution alert, air pollution warning, and air pollution emergency. Standby plans shall be designed to reduce or eliminate emissions of air contaminants into the outdoor atmosphere in accordance with objectives set forth in Tables 1-3.

(2) Preplanned strategies as required by this rule shall be in writing and describe the source of air contamination, contaminants, and a brief description of the manner and amount in which the reduction will be achieved during an air pollution alert, air pollution warning, and air pollution emergency.

(3) During a condition of air pollution alert, air pollution warning, and air pollution emergency, preplanned strategies as required by this rule shall be made available on the premises to any person authorized to enforce the provisions of these rules.

(4) Preplanned strategies as required by this rule shall be submitted to the Department or regional air pollution authority upon request within thirty (30) days of the receipt of such request; such preplanned strategies shall be subject to review and approval by the Department or regional authority. Matters of dispute in developing preplanned strategies shall, if necessary, be brought before the Environmental Quality Commission or Board of Directors of a regional authority, for decision.

(5) Municipal and county government, or other appropriate governmental bodies, shall, when requested by the Department of Environmental Quality or regional air pollution authority in writing, prepare preplanned strategies consistent with good traffic management practice and public safety, for reducing the use of motor vehicles or aircraft within designated areas during periods of an air pollution alert, air pollution warning, and air pollution emergency. Standby plans shall be designed to reduce or eliminate emissions of air contaminants from motor vehicles in accordance with the objectives set forth in Tables 1-3, and shall be prepared and submitted for review and approval by the Department in accordance with sections (2), (3), and (4) of this rule. In reviewing the standby plans for local governments in counties within the territorial jurisdiction of a regional air pollution authority, the Department shall consult with said regional authority in determining the adequacy and practicability of the standby plans.]

Regional Air Pollution Authorities

340-27-025 (1) The Department of Environmental Quality and the regional air pollution authorities shall cooperate to the fullest extent possible to insure uniformity of enforcement and administrative action necessary to implement these rules. With the exception of sources of air contamination where jurisdiction has been retained by the Department of Environmental Quality, all persons within the territorial jurisdiction of a regional air pollution authority shall submit the source emission reduction plans [preplanned abatement strategies] prescribed in rule [340-27-020] 340-27-015 to the regional air pollution authority. The regional air pollution authority shall submit [summaries] copies of [the abatement strategies] approved source emission reduction plans to the Department of Environmental Quality.

(2) Declarations of air pollution alert, air pollution warning, and air pollution emergency shall be made by the appropriate regional authority, with the concurrence of the Department of Environmental Quality. In the event such a declaration is not made by the regional authority, the Department of Environmental Quality shall issue the declaration and the regional authority shall take appropriate remedial actions as set forth in these rules.

(3) Additional responsibilities of the regional authorities shall include, but are not limited to:

(a) Securing acceptable [preplanned abatement strategies;] source emission reduction plans;

(b) Measurement and reporting of air quality data to the Department of Environmental Quality;

(c) Informing the public, news media, and persons responsible for air contaminant sources of the various levels set forth in these rules and required actions to be taken to maintain air quality and public health;

(d) Surveillance and enforcement of [emergency] source emission reduction plans.

Stat. Auth.: ORS Ch 468 including 468.020, 468.305, 468.535

[Repeal OAR 340-37-030]

[**Effective Date**

340-27-030 All provisions of this regulation shall be effective September 1, 1972, provided however, that:

(1) Emergency actions authorized by Chapter 424, Oregon Laws 1971 shall be immediately available.

(2) Requests for preplanned abatement strategies authorized by rule 340-27-020 may be made at any time after the date of adoption of this rule.]

Operations Manual

340-27-035 The Department shall maintain an operations manual to administer the provisions of these air pollution emergency rules. This manual shall be available to the Department Emergency Action office at all times. At a minimum the Operations Manual shall contain the following elements:

(1) A copy of these rules.

(2) A chapter on communications which shall include:

(A) Telephone lists naming public officials, public health and safety agencies, local government agencies, major emission sources, news media agencies and individuals who need to be informed about the episode status and information updates. These telephone lists shall be specific to episode conditions and will be used when declaring and cancelling episode conditions.

(B) Example and sample messages to be released to the news media for declaring or modifying an episode status.

(3) A chapter on data gathering and evaluation which shall include:

(A) A description of ambient air monitoring activities to be conducted at each episode stage including "Standby".

(B) Assignment of responsibilities and duties for ascertaining ambient air levels of specified pollutants and notification when levels reach the predetermined episode levels.

(C) Assignment of responsibilities and duties for monitoring meteorological developments from teletype reports and National Weather Service contacts. Part of this responsibility shall be to evaluate the meteorological conditions for their potential to affect ambient air pollutant levels.

(4) A chapter defining responsibilities and duties for conducting appropriate source compliance inspections during episode stages requiring curtailment of pollutant emissions.

(5) A chapter establishing the duties and responsibilities of the emergency action center personnel to assure coordinated operation during an air pollution episode established in accordance with these rules.

(6) An appendix containing individual source emission reduction plans required by these rules plus any approved voluntary plans.

Stat. Auth: ORS Ch 468 including 468.020, 468.095, 468.115, 468.280, 468.285, 468.305, 468.410

Delete entire text of Tables 1, 2 & 3 and replace with the following text.

Table 1

Air Polluton Episode
ALERT Conditions
Source Emission Reduction Plan

Emission Control Actions to be Taken
as Appropriate in Alert Episode Area

Part A - General Pollution Conditions - Particulate

a. There shall be no open burning of any material in the designated area.

b. Sources having Emission Reduction Plans, review plans and assure readiness to put them into effect if conditions worsen.

Part B - Motor Vehicle Related Conditions - Carbon Monoxide, Ozone

a. All persons operating motor vehicles voluntarily reduce or eliminate unnecessary operations within the designated alert area.

b. Governmental and other agencies, review actions to be taken in the event of an air pollution warning.

Table 2

Air Pollution Episode
WARNING Conditions
Emission Reduction Plan

Part A - General Pollution Conditions - Particulate

Source	Emission control action to be taken as appropriate in warning area.
a. General (all sources and general public)	a. Continue alert procedures. b. Public requested to refrain from using wood heating devices where other heating methods are available. c. The use of incinerators for disposal of solid or liquid waste is prohibited. d. Reduce emissions as much as possible consistent with safety to people and prevention of irrepairable damage to equipment. e. Prepare for procedures to be followed if an emergency episode develops.
b. Specific additional general requirements for coal, oil or wood-fired electric power or steam generating facilities.	a. Effect a maximum reduction in emissions by switching to fuels having the lowest available ash and sulfur content. b. Switch to electric power sources located outside the Air Pollution Warning area or to noncombustion sources (hydro, themonuclear). c. Cease operation of facilities not related to safety or protection of equipment or delivery of priority power.
c. Specific additional general requirements for manufacturing industries including: Petroleum Refining, Chemical, Primary Metals, Glass, Paper and Allied Products, Mineral Processing, Grain and	a. Reduce process heat load demand to the minimum possible consistent with safety and protection of equipment. b. Reduce emission of air contaminants from manufacturing by closing, postponing or deferring production to the maximum extent possible without causing injury to persons or damage to

Table 2 (Continued)

Air Pollution Episode
WARNING Conditions
Emission Reduction Plan

Wood Processing	equipment. In so doing, assume reasonable economic hardships. Do not commence new cooks, batches or furnace changes in batch operation. Reduce continuous operations to minimum operating level where practicable. c. Defer trade waste disposal operations which emit solid particles, gases, vapors or malodorous substances.

Part B - Motor Vehicles Related Pollution Conditions - Carbon Monoxide, Ozone: control actions to be taken as appropriate in warning area.

a. All operators of motor vehicles continue alert procedures.

b. Operation of motor vehicles carrying fewer than three persons shall be requested to avoid designated areas from 6 AM to 11 AM and 2 PM to 7 PM or other hours as may be specified by the Department. Exempted from this request are:

1. Emergency vehicles
2. Public transportation
3. Commercial vehicles
4. Through traffic remaining on Interstate or primary highways
5. Traffic controlled by a preplanned strategy

c. In accordance with a traffic control plan prepared pursuant to OAR 340-27-015(3), public transportation operators shall provide the additional service necessary to minimize the public inconvenience resulting from actions taken in accordance with paragraph b. above.

d. For ozone episodes there shall be:

1. No bulk transfer of gasoline without vapor recovery from 2 AM to 2 PM.
2. No service station pumping sales of gasoline from 2 AM to 2 PM.
3. No operation of paper coating plants from 2 AM to 2 PM.
4. No architectural painting or auto refinishing.
5. No venting of dry cleaning solvents from 2 AM to 2 PM, (except perchloroethylene).

Table 3

Air Pollution Episode
EMERGENCY Conditions
Emission Reduction Plan

Actions to be Taken as Appropriate in Emergency Episode Area	
Source	Emission Control Action to be Taken as Appropriate in Emergency Area
a. General Actions for all sources and general public.	a. Continue emission reduction measures taken under warning conditions. b. All places of employment, commerce, trade, public gatherings, government, industry, business, or manufacture shall immediately cease operations where practicable. c. Paragraph b. above does not apply to: 1. Police, fire, medical and other emergency services. 2. Utility and communication services. 3. Governmental functioning necessary for civil control and safety. 4. Operations necessary to prevent injury to persons. 5. Food stores, drug stores and operations necessary for their supply. 6. Operations necessary for evacuation of persons leaving the area. 7. Operations conducted in accordance with an approved Source Emission Reduction Plan on file with the Department. d. The operation of motor vehicles is prohibited except for the conduct of the functions exempted in paragraph c. above. e. Reduce heat and power loads to a minimum by maintaining heated occupied spaces no higher than 65°F and turning off heat to all other spaces.

		f. No one shall use coal or wood for domestic heating unless no other heating method is available.
b.	Specific additional requirements for coal, oil or wood-fired electric power generating facilities operating under an approved source emission plan.	a. Maintain operation at the lowest level possible consistent with prevention of damage to equipment and power production no higher than is required to supply power which cannot be obtained elsewhere for essential services.
c.	Specific additional requirements for coal, oil or wood-fired steam generating facilities operating under an approved source emission reduction plan.	a. Reduce operation to lowest level possible consistent with preventing damage to equipment.
d.	Specific additional requirements for industries operating under an approved source emission reduction plan including: Petroleum Refining Chemical Primary Metals Glass Paper and Allied Products Mineral Processing Grain Wood Processing	a. Cease all trade waste disposal operations. b. If meteorological conditions are expected to persist for 24 hours or more, cease all operations not required for safety and protection of equipment.

Table 4

Air Pollution Episode Conditions Due to Particulate
Which is Primarily Fallout From
Volcanic Activity
or
Dust Storm

Ambient Particulate Control Measures to be Taken
as Appropriate in Episode Area

Part A - ALERT Condition Actions

1. Traffic reduction by voluntary route control in contaminated areas.
2. Voluntary motor vehicle speed limits in dusty or fallout areas.
3. Voluntary street sweeping.
4. Voluntary wash down of traffic areas.

Part B - WARNING Condition Actions

1. Continue and intensify alert procedures.
2. Mandated speed limits and route control in contaminated areas.
3. Mandate wash down of exposed horizontal surfaces where feasible.
4. Request businesses to stagger work hours where possible as a means of avoiding heavy traffic.

Part C - EMERGENCY Condition Actions

1. Continue Warning level procedures, expanding applicable area if necessary.
2. Prohibit all except emergency traffic on major roads and thoroughfares until the area has been cleaned.
3. Other measures may be required at the discretion of the Governor.

Attachment 2

Total Suspended Particulate Concentration Levels for Emergency Action When the Particulate is Primarily Fallout From Volcanic Activity or Dust Storms

Oregon Department of Environmental Quality
April, 1983

Air pollution "levels of significant harm" are established by the Environmental Protection Agency (EPA) with reference to air pollution generated by man. Emergency Action Plans (EAP's) are developed by the states to establish emergency measures to be taken to prevent pollution levels from reaching the level of significant harm. With respect to total suspended particulate (TSP) levels, the EPA established level of significant harm is 1000 ug/m^3 for a 24 hour sample.

Naturally occurring and uncontrollable sources of air pollution such as fallout from volcanic activity and dust storm, are capable of producing TSP levels well above the national level of significant harm. It is prudent to see if the established significant harm level for TSP is really applicable in such cases.

Through internal policy statements, the EPA has recognized a fundamental difference between dust from native soil in rural areas and dust from urban areas, and has recognized rural areas as being in attainment, even though TSP samples sometimes exceed the primary or secondary ambient air standards. In the EPA "Fugitive Dust Policy Guidance for SIPs and New Source Review", August, 1977, one finds this statement:

> "Briefly, efforts should begin to control fugitive dust from all major sources in urban areas, with little or no attention to natural or non-industrial (i.e., unpaved roads, agricultural activities) related fugitive dust sources in rural areas. Exclusion of rural areas from control efforts at this time is based upon the belief that the toxic fraction of fugitive dust in areas without the impact of man-made pollutants is likely to be small. Fugitive dust sources in such areas include dust from deserts, arid lands, sparsely vegetated land, exposed but vacant lots in rural communities, dust from sparsely traveled, unpaved roads and unpaved residential driveways, and other such conditions endemic to rural America. It is generally not exposed to potential contamination by industrial fallout or subject to adsorption of gaseous pollutants, which commonly occur in urban atmospheres".

From these statements it is clear that concern for the toxicity of TSP is centered in urban contamination. Dust from natural rural soils or from volcanic origin has not been subjected to urban contamination so real health and significant harm levels might be expected to be much higher than the established standards.

The eruption of Mt. St. Helens in 1980 and the resulting population exposure to higher levels of suspended particulate in the downwind distribution of ash, provides a basis for assessing some physiological effects of such high level particulate sources.

Volcanic particulate from Mount St. Helens resulted in some 24 hour average ambient particulate samples in the Portland, Oregon area between 1000 and 3000 ug/m^3. Short term samples (3 to 12 hour averages) at places like Yakima and Spokane, Washington were used to estimate 24 hour averages as high as 20,000 to 30,000 ug/m^3 for up to a 5 day period.

Table I summarizes the available data for hospital emergency room visits and admissions for respiratory ailments and TSP data during the first few eruptions of Mt. St. Helens. The major eruptions occurred on May 18, affecting mainly Eastern Washington; May 25, affecting Southwestern Washington and Portland; and June 12, affecting Portland.

The TSP data in Table I reflects, in a general way, the ambient levels of ash at various locations in the ash fallout areas. A significant rise in TSP values is observed following an eruption and ashfall.

These data are not, however, directly comparable because the sampling period is not equivalent for all samples. The highest of several sampling locations were considered for Longview and Portland data but only one sampling location was used for Yakima and Spokane.

The hospital visits and admissions due to respiratory illnesses also roughly follow the ash-fall sequence indicated by the TSP values but there is not a strong quantitative relationship. The hospital visits for Longview and Portland appear to be particularly insensitive to the eruptions and TSP values. The hospital diagnoses are related to respiratory type complaints and are at best only suggestive of problems from inhaling ash. The types of complaints tabulated include asthma, wheezing, cough, acute bronchitis, chronic obstruction pulmonary disease and hyperventilation.

The particulate data in Table I comes from the Oregon Department of Environmental Quality, Washington Department of Ecology, and the Spokane County Air Pollution Control Authority. The hospital emergency room visits and admission data is from a paper by Baxter et.al., Center for Disease Control, Atlanta, Ref. 1.

Evidence from the St. Helens incident seems to indicate that some health effects may be detected in the high-risk population in the 1000 to 3000 ug/m^3 range, based upon hospital emergency visit and admission records. Significant increases in hospital admissions appeared to occur when volcanic ash particulate from fallout and resuspension were measured at levels in excess of 10,000 ug/m^3 for several days in a row.

Some of the data suggest that hospital admissions for pulmonary disease may begin to increase when TSP measurements in the volcanic ash areas approach 2000 ug/m^3 for several consecutive days. In Eastern Washington, pulmonary

TABLE I

Respiratory Diseases
Emergency Room Visits (ERV) and Hospital Admissions (HA) at various hospitals during Mt. St. Helens eruptions.
Weekly totals ERV/HA by location (No. of hospitals)

1980 Date	TSP LEVELS ug/m³ Yakima	Spokane Health Center	Longview+	Portland** Area	Ritzville Moses Lake Othello (3)	Yakima (2)	Pullman, Soap Lake, Ellens-burg, Ephrata (4)	Spokane (2)	Centralia, Chehalis (2)	Longview (2)	Portland (3)
5/11 to 5/17					14/12	49/15	14/6	15/9	19/6	62/31	59/-
5/18	33,402*	11,790*									
19	13,609*	20,870*	62	52							
20	5,863*	6,997*	61	73	72/35	150/83	27/7	55/17	31/7	54/14	68/-
21	13,273*	5,910*	31	126							
22	28,465*	1,005*	28								
23	9,848*	869*									
24	1,773*	782*	720	137							
5/25	3,372*	85*	702	808							
26	248	351		342							
27	226	190	1420	1098	31/12	99/19	15/14	61/14	62/9	85/25	81/-
28	334	162*	1987	544							
29	689	291*	2600	821							
30	255	159*		658							
31		168*	782	408							
6/1		1169*	1499	509							
2	236	398*	1119	277							
3	180	170*	473	189	14/8	101/21	18/8	45/9	33/5	51/16	75/-
4	188	290*	499	342							
5	178	270*	298	175							
6	102	246*		256							
7	219	449*	510								
6/8	248	281*	986	74							
9	164	278*	244	70							
10	175	107*	312		14/8	102/16	13/10	36/16	27/6	53/16	69/-
11	254	186*	364	64							
12	184	126*	192								
13	59	41*		2006							
14	168	85	92	2132							
6/15	78	43	162	2673							
16	149	90	183	1994							
17	107	141	361	3327		46/-			16/-		79/-
18	144	151	340	1117							
19	180	149	271	818							
20	239	165	341	776							
21	215	124	180	432							

* Composite sample or less than 24 hr period

\+ Some values may be less than 24 hour average

** Highest value of several available sites in the Portland area

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disease admissions may have doubled from a normal average of about 42 patients to about 92 patients during the week after the May 18th eruption when TSP levels in ash fallout areas were measured at 10,000 to 30,000 ug/m^3 for up to 5 days. The exposure and medical history of the patients is not known so it is impossible to draw specific conclusions. Given the size of the exposed population and the measured levels, it is significant that hospital admissions were not much higher than reported.

After the St. Helens incident, the EPA started a cooperative effort with the Center for Disease Control and the National Institute of Occupational Safety and Health to establish appropriate acute and chronic exposure levels for health standard for the St. Helens type of ash. That project has not been completed.

Dr. Sonya Buist of the Oregon Health Sciences Center recently published a summary of what is known about the effects of volcanic ash with medical judgments of the physiological effects on the population. Aside from the trauma deaths associated with the initial May 18th eruption, the known effects are limited to the respiratory complaints already described. Dr. Buist states, "The main reasons for the increase in emergency room visits seem to have been airways-related problems, such as bronchitis and exacerbations of asthma". She goes on to state there were an appreciable number of complaints related to eye irritation and abrasion, foreign bodies in the eye and conjunctivities.

Dr. Buist cautions against relying heavily on the reported number of clinical visits. She states, "However, it would be a mistake to place too much faith in the actual numbers because the disurption of normal life was so great, with travel very hazardous and many physicians' offices closed, that it is hard to know whether the numbers obtained were in fact an underestimate of the real extent of the problem or an overestimate".

Much of the concern about the toxicity of St. Helens ash related to the silica content, because of its known cytotoxicity in its alpha crystalline form. The consensus of approximately 25 analytical laboratories was that St. Helens ash is about 3 to 7% crystalline silica. Biological assays show the volcanic ash to be relatively inert, however, and it does not exhibit the cytotoxic effects of alpha quartz. Dr. Buist reports one set of workers (Beck et.al.) found that response to St. Helens ash was comparable to "aluminum oxide, which is generally considered to be relatively inert".

Some workers, however, (Martin et.al.) found lung damage in rats which were forced to breathe 100,000 ug/m^3 of volcanic ash six hours per day for ten days. Concerning the results from such massive doses, Dr. Buist states: "Can these apparently conflicting results be reconciled? My interpretation of them would be that they clearly show that the volcanic ash does not have nearly the cytotoxic or fibrogenic potential of alpha quartz but it undoubtedly does have the ability to cause lung injury if deposited in sufficient quantities. In this regard, it is worth pointing out that the exposures in the inhalation studies and the dose instilled intratracheally were very high, much greater than any exposures encountered in an

occupational setting and orders of magnitude greater than environmental exposures. The question of whether lower doses delivered over a longer period will also cause lung injury must still be answered by appropriate studies in animals and humans".

Dr. Buist sums up her paper with the following:

"The advice given at the time of the ashfalls is still appropriate, namely, to minimize exposure to ash by staying indoors when feasible and by using masks approved by the National Institute of Occupational Safety and Health when out in the ash. Jogging and other forms of vigorous outdoor sports should therefore be avoided during and following ashfalls. Outdoor workers who are constantly exposed to the ash should wear adequate respiratory protection and goggles if eye irritation is a problem. Contact lenses should not be worn when dust levels are high".

In considering the available evidence, a proposed emergency level of 5000 ug/m^3 for particulate from volcanic fallout or dust storms would seem to be conservative. At the 2000 to 5000 ug/m^3 levels, the physical and mechanical inconvenience of the dust burden becomes so great that the public and local governments voluntarily start cleanup procedures. The proposed emergency action levels are thus seen as a reinforcement of voluntary effort.

Based on the experience in Oregon and Washington during the Mount St. Helens eruptions in 1980, it is recommended that emergency action levels for Alert, Warning and Emergency episodes be established at 800 ug/m^3, 2000 ug/m^3, and 5,000 ug/m^3 respectively for 24 hour samples when the suspended particulate is primarily from volcanic activity or dust storms.

References:

1. Baxter, P.J., et.al.; Mount St. Helens Eruptions, May 18 to June 12, 1980, An Overview of the Acute Health Impact; JAMA 1981:V246, No.22, 2585-2589.

2. Buist, A.S.; Are Volcanoes Hazardous To Your Health? What Have We Learned From Mount St. Helens?; W. Journal of Med. 1982: V137, NO. 4, 294-301.

L.D. Brannock:a
AA3266

Legal Authority For Consideration of Proposed Revisions and Additions to OAR Chapter 340 Division 27, Air Pollution Emergencies.

Contingency plans to respond to air pollution emergencies are required by federal regulations, 40 CFR 51.16, as a part of the State Implementation Plan (SIP). The proposed new rules, OAR 340-27-005 through 340-27-035 are an Emergency Actin Plan (EAP) which is designed to meet the SIP requirements.

With the exception of the proposed new special conditions rule, OAR 340-27-012, the proposed EAP, OAR 340-27-005 through 340-27-035, would be submitted to the Environmental Protection Agency as a revision of the Oregon SIP. All of the proposed rules in the EAP would become a part of the general comprehensive plan authorized by ORS 468.305. Other Oregon statutes granting legal authority for these proposed rules are:

1. ORS 468.020 - directs the EQC to adopt rules necessary in the performance of its functions.

2. ORS 468.095 - grants the DEQ authority to enter and inspect any public or private property to ascertain compliance or non-compliance with any rule, standard or order within its jurisdiction.

3. ORS 468.115 - directs the Department, in cases of air contamination presenting an imminent and substantial endangerment to health, to enter an order at the direction of the Governor requiring the person or persons to cease from actions causing the contamination.

4. ORS 468.410 - grants authority to the EQC to adopt rules to regulate, limit, control or prohibit traffic as necessary to control air pollution which presents an imminent and substantial endangerment to health.

L.D. Brannock:a
AA3002.3

ATTACHMENT 4

U.S. ENVIRONMENTAL PROTECTION AGENCY

REGION X

1200 SIXTH AVENUE

SEATTLE, WASHINGTON 98101

JAN 19 1983

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
JAN 24 1983
AIR QUALITY CONTROL

REPLY TO ATTN OF: M/S 532

Douglas Brannock, Meteorologist
State of Oregon
Department of Environmental Quality
Post Office Box 1760
Portland, Oregon 97207

Dear Doug:

The draft "Air Pollution Emergency Action Plan" you sent me on January 10 looks good. It reflects considerable improvement over the earlier version. Based on our telephone conversation on Friday (January 14), I see only two significant issues; (1) applicability of the plan being developed, and (2) the concept of "geologic particulates."

In light of EPA's initial confusion regarding applicability of the specific regulations, I would like to reiterate our understanding of the clarification you provided last Friday. First, the subject episode rules apply to all Air Quality Control Regions (AQCRs) which contain a designated nonattainment area. Second, the Oregon Revised Statutes provide the DEQ Director with emergency authority applicable to all other areas of the State as required in Section 110(a)(2)(F) of the Clean Air Act. Finally, the specific requirement for source emission reduction plans (SERPs) under rule 340-27-015 applies only to those sources which (1) are located in a nonattainment area or air quality maintenance area (AQMA), and (2) emit 100 tons per year or more of any pollutant for which the nonattainment area, AQMA, or any portion of the AQMA is designated nonattainment.

With respect to the "geologic particulate" issue, we agree with you that control of particulate matter from volcanic eruptions and wind blown dust should be excluded from the traditional episode action plan requirements. However, we are opposed to the term "geologic particulates" to describe these two uncontrollable sources of TSP. As we discussed on Friday, "geologic particulates" may include particulate matter from sources which are also controllable such as paved and unpaved roads and construction sites. Thus, we recommend the term "volcanic fallout and wind blown dust" as a substitute. Further, we urge you to delete the public health discussions relating to

volcanic fallout and wind blown dust as there appears to be no documented justification for the statements. If the above two changes are made, the special provisions relating to "volcanic fallout and wind blown dust" could be included in your SIP.

Specific recommended changes to the text of the draft "Air Pollution Emergency Action Plan" are provided in the enclosure.

Feel free to call me if you want to discuss any of these comments further.

Sincerely,

Michael Schultz
Environmental Engineer

Enclosure (not included with Attachment 4)

cc: Jim Herlihy, 000

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Air Pollution Emergency Action Plan Public Hearing

Date Prepared: April 15, 1983
Hearing Date: July 6, 1983
Comments Due: July 8, 1983

WHO IS AFFECTED:

All persons working or residing in Oregon would be affected, including commercial and industrial businesses and state and local governments required to take action under the Emergency Action Plan. During ozone warning conditions, new actions would be required of petroleum bulk plants, gasoline service stations, drycleaning plants, papercoating plants and spray paint operations. Small businesses involved in these activities may be required to curtail their activities during ozone Warning episode conditions. Such an episode condition has never been observed in Oregon.

WHAT IS PROPOSED:

The Department of Environmental Quality is proposing to amend OAR 340-27-005 through 340-27-035, Regulations for Air Pollution Emergencies. The proposed changes reduce the actions required at lower levels of air pollution. Actions are more closely limited to Federal requirements as they relate to Oregon circumstances.

WHAT ARE THE HIGHLIGHTS:

The proposed revisions change existing rules to:

1. Clarify requirements for submitting source emission reduction plans.
2. Delete the forecast episode stage and modify actions taken at other episode stages.
3. Specify the requirement for an Operations Manual to assure provision for specific non-regulatory Environmental Protection Agency requirements for emergency action plans.
4. Raise the alert level for ozone to 400 ug/m from 200 ug/m^3.
5. Limit operation of volatile organic carbon sources during ozone Warning episodes.
6. Establish separate episode levels for total suspended particulate when the particulate is primarily fallout from volcanic activity or dust storms.

SPECIAL CONDITIONS:

These rules would be part of the Oregon State Clean Air Act Implementation Plan, excluding OAR 340-27-012, which is not a required part of the State Implementation Plan. OAR 340-27-012 establishes episode levels for particulate from dust storms, volcanic ash and an ozone advisory.

P.O. Box 1760
Portland, OR 97207

8/10/82

FOR FURTHER INFORMATION:

Contact the person or division identified in the public notice by calling 229-5696 in the Portland area. To avoid long distance charges from other parts of the state, call 1-800-452-7813, and ask for the Department of Environmental Quality.

HOW TO COMMENT:

Copies of the complete proposed rule package may be obtained from the Air Quality Division in Portland (522 S.W. Fifth Avenue) or the regional office nearest you. The Operations Manual is not part of the rule package but may be inspected at the Air Quality Division in Portland, 522 S.W. 5th. Telephone (503) 229-5836, for further information, toll-free, 1-800-452-7813.

A public hearing will be held before a hearings officer at:

Time: July 6, 1983 10:00 a.m.
Place: Room 1400, 522 S.W. 5th Ave., Portland, OR

Oral and written comments will be accepted at the public hearing. Written comments may be sent to the DEQ Air Quality Division, P.O. Box 1760, Portland, OR 97207, but must be received by no later than July 8, 1983.

WHAT IS THE NEXT STEP:

After the public hearing, the Environmental Quality Commission may adopt rule amendments identical to the proposed amendments, adopt modified rule amendments on the same subject matter, or decline to act. Except for OAR 340-27-012, which governs episodes relating to volcanic activity, dust storms and ozone advisory level (if adopted), the adopted rules will be submitted to the U.S. Environmental Protection Agency as part of the State Clean Air Act Implementation Plan. The Commission's deliberation should come in August as part of the agenda of a regularly scheduled Commission meeting.

A Statement of Need, Fiscal and Economic Impact Statement, and Land Use Consistency Statement are attached to this notice.

AA3231

RULEMAKING STATEMENTS
for
Air Pollution Emergencies
OAR Chapter 340 Division 27

Pursuant to ORS 183.335, these statements provide information on the intended action to amend a rule.

STATEMENT OF NEED:

Legal Authority

This proposal amends OAR 340-27-005 through 340-27-030 and adds OAR 340-27-012 and 340-27-035. It is proposed under authority of ORS Chapter 468 including 468.020, 468.095, 468.115, 468.280, 468.285, 468.305 and 468.410.

Need for the Rule

1. Changing federal requirements and experience with the Emergency Action Plan over the past decade have demonstrated the Emergency Action Plan to be obsolete and in need of revision.
2. Individual agency obligation to submit required source emission reduction plans is not clearly defined in the existing rule.
3. Actions required by the existing rule at Forecast and Alert air pollution episode stages are unnecessary.
4. The existing rule does not address some of the EPA requirements for emergency action plans.
5. The Alert level for ozone needs to be changed to avoid confusion with the ambient air quality standard.
6. Operation of volatile organic compound sources during ozone Warning and higher episodes needs to be limited.
7. Specific separate episode levels are needed for Total Suspended Particulate (TSP) which is primarily fallout from volcanic activity or dust storms.

Principal Documents Relied Upon

Federal Clean Air Act amended August, 1977;
CFR 40 Part 51.16; Annual Air Quality reports, 1976 to 1981, Oregon DEQ; ORS Chapter 468; Fugitive Dust Policy: SIP's and New Source Review, EPA, August 1977; Support document: Total Suspended Particulate Concentration Emergency Action When the Particulate is Primarily Fallout From Volcanic Activity or Dust Storms, DEQ, April, 1983.

FISCAL AND ECONOMIC IMPACT STATEMENT:

The proposed rules will reduce required planning documents and actions of manufacturing firms, businesses, and local governments, reducing the "burden of government" for businesses, and other agencies now required to take actions at low level air pollution episodes. New actions are proposed at the ozone warning level which would partially curtail the business operations of bulk gasoline plants, gasoline service stations, paper coating plants, spray painting operation and dry cleaning plants (except perchloroethylene processes). Small businesses involved in these activities may be required to curtail their activities during ozone Warning episode conditions. The ozone warning level has never been observed in Oregon and is not considered likely to occur in the future. Other small businesses are unaffected by any of the proposed rule changes.

LAND USE CONSISTENCY STATEMENT:

The proposed rule does not affect land use as defined in the Department's coordination program approved by the Land Conservation and Development Commission.

AA3232

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. E, May 20, 1983, EQC Meeting

Authorization to Hold a Hearing to Amend Gasoline Marketing Rule 340-22-110(1)(a) for the Medford AQMA In Response to a March 28, 1983 Petition From 8 Bulk Gasoline Plant Operators in the Medford Area

Background

The eight owners of gasoline bulk plants in the Medford Air Quality Maintenance Area (AQMA) petitioned the Environmental Quality Commission (EQC) to exempt tanks of 1,000 gallon size and smaller, from the submerged fill requirement of OAR 340-22-110(1)(a), in the Medford AQMA. The petition is Attachment 1, with the rule appended.

In 1979, this rule was adopted to lessen the generation of gasoline vapors during the filling of underground service station tanks (and other gasoline tanks), by forbidding splash filling through requiring submerged fill. This is one of the several strategies adopted to lessen emissions of this and other volatile organic compounds (VOC), which on hot summer days were forming levels of ozone above the ambient air standard in the Medford AQMA.

Evaluation of Airshed Effect

The Department responded to the petition by asking for estimates of how much gasoline is moved through these 1000 gallon and less tanks. Using estimates provided by the petitioners, it appears that granting the petition gives up 7.0 tons of VOC reduction planned in the strategy.

The overall VOC reduction strategy has worked so well that this year the Medford-Ashland AQMA will be proposed for reclassification from non-attainment to attainment. The airshed data for ozone has shown attainment from 1979 to 1982. The 7.0 ton/year increase could easily be accommodated in the 1,200 tons/year VOC growth cushion for the Medford area.

Economic Burden

The petition cites the difficulty of accomplishing submerged fill at "Ma and Pa stores," where a cost of $150 per tank or higher is estimated. This would be a contractor-installed cost.

The Department based its submerged fill rule upon a cost of $20 per tank and upon do-it-yourself installation.

The difference between submerged fill and splash fill is 4.2 lbs of gasoline per 1,000 gallons handled. For the 3,347,000 gallons/yr handled in the Medford AQMA in tanks of 1,000 gallon size or less, 14,000 lbs or 2,500 gallons are lost in splash-filling that would not be lost if submerged filled. At $1.00 per gallon, a loss of $2500 occurs each year from splash-filling small tanks. At $20 per tank, this could pay back the retrofit costs for all 600 tanks with drop tubes in 4.8 years. At $150 per tank, it would take 36 years. It is definitely not a cost-effective measure at $150 per tank.

Alternatives

1. The Commission could deny the petition. This would ignore the costs cited by the petitioners. It also now seems to be an unneeded strategy. By installing drop tubes on large tanks, vapor capture fittings at stations where the gasoline comes direct from terminals, and other strategies, the AQMA VOC sources have reduced overall volatile organic compound emissions enough to have attained the ozone ambient air standard for four straight years.

2. The Commission could grant the petition and authorize a hearing to change the rule as petitioned. This action would include amending the strategy in the State Implementation Plan for attaining the ozone standard in the Medford-Ashland AQMA. The authority for the Commission to act is cited in the Rulemaking Statement which follows the hearing notice as Attachment 2 to this Memorandum.

Summation

1. Eight bulk gasoline plant owners have petitioned the Commission for an exemption for customers with 1,000 gallon or smaller gasoline tanks for adding submerged fill as required by OAR 340-22-110(1)(a).

2. The Medford AQMA, where these petitioners are located, has achieved attainment for the ozone standard, partly by the efforts of these petitioners in installing vapor capture and other equipment to lessen emissions at the larger installations.

3. Submerged fill pipes for 1,000 gallon or smaller tanks would result in a reduction of only 7.0 tons/yr of VOC emissions.

4. The costs for commercial installation of drop tubes in these small tanks would be about $150 per tank and would not be cost-effective, as payback in gasoline savings could take as much as 30 years.

5. The VOC growth cushion of 1,200/tons/yr can accomodate the 7.0 tons/yr emissions from the requested exemption without adversely affecting the Medford ozone strategy.

6. The Commission could deny the petition or grant the petition and direct the Department to proceed with a hearing to consider amending the rule.

Director's Recommendation

It is recommended that the Commission accept the petition from the Medford bulk gasoline plant operators and direct the Department to proceed with rulemaking that would exempt small gasoline tanks (1,000 gallons capacity or less) in the Medford AQMA from 340-22-110(1)(a) which requires submerged fill. It is also recommended that the Commission authorize a hearing, both to amend the rule as petitioned and also to amend the State Implementation Plan.

Bill

William H. Young

Attachments: 1. Petition with proposed rule change
2. Hearing Notice with Rulemaking Statements

AA3268
P.B.Bosserman:a
229-6278
April 27, 1983

ATTACHMENT 1

March 28, 1983

Mr. William H. Young
Director
State of Oregon
Department of Environmental Quality
PO Box 1760
Portland, Oregon 97207

Dear Mr. Young,

This is a joint letter from all the gasoline distributors of the Rogue Valley. At the advice of Mr. Peter Bosserman of your office, we are hereby formally petitioning the Commission for a rule change (per #340-11-047) of the Oregon Administrative Rule #340-22-110(1)(a), "Small Gasoline Storage". We are requesting that the rule be ammended to exclude all existing tanks rated 1,000 gallon capacity, or less, from the "submerged fill" requirement, within the Medford-Ashland Air Quality Area (copy of proposed rule attached).

We were all quite surprised by Mr. Lloyd Kostow's letter of March ~~1, 1983~~ (attached), for we were all under the impression that all tanks of 1,000 gallon capacity, or less, would be excluded, following the numerous hearings and meetings that many of us participated in.

not att. Jan

Per our understanding, gasoline vapors contribute far less than 1% to the original total V.O.C. problem in the Medford-Ashland area. As you know, this group, plus the major oil companies, have already spent many thousands of dollars, adding submerged fill and Stage I vapor recovery systems to our transports, bulk plants, and most of the service stations in this market. We feel the Southern Oregon distributors have been most cooperative and helpful since the original sessions of vapor recovery. We too, are interested in improving the Rogue Valley environment. However, we feel the vast majority of the gasoline vapor problem has already been solved through our prior substantial investments. Infact, we believe the ozone levels in the Medford-Ashland AQMA have been below the revised standards, for the past three years. Our small truck deliveries into the small tanks in our valley, will still emit vapors, as gasoline volume naturally displaces some vapor out the vent tubes. Submerged fill of these smaller tanks would solve little of this remaining vapor problem. Again, adding submerged fill to all these small tanks, would solve far less than one-tenth of 1% of the total V.O.C. problem in our area. In fact, our group questions whether there would be any improvement at all.

The cost of adding submerged fill to these small tanks would be tremendous. Many of our customers could not afford these investments at this time. As you know, our Southern Oregon timber based economy has suffered even more than Oregon and national averages. Most of our accounts are barely surviving now, and simply can't afford to make these improvements. Cash needs are great, and funds can't be wasted on any item showing little or no value to the business, or community.

Particularly hard hit, would be the approximate 25 small "Ma & Pa" stores in our valley. They typically average two small tanks, and nearly all of these are well over 20 years old. All are underground, and most are covered by concrete. Some fill tubes are less than 2", some are bent, and many could not take a simple submerged tube installation. Even a simple tube installation would cost $150 per tank, or more. However, many of these tanks would cost far more, and many would have to be replaced. Gasoline is critical to the overall sales and profitability of these small stores. Gasoline margins often cover a substantial portion of their overhead, and does bring folks in, who often purchase other market items. With their limited total sales, many of these markets would not survive without their gasoline sales. Yet very few could afford to add "submerged fill". In reality, many of these small "Ma & Pa" stores would simply be forced out of business.

Our commercial and farm accounts would also suffer undue financial hardship, again when few can afford it. Over half these tanks are underground, and they also average over 20 years in age. We estimate 500 tanks of 1,000 gallons or less, and many of these would require substantial investment, and many would have to be replaced, costing several thousand dollars each.

Various government agencies also own some 50 tanks, and most of these suffer similar problems.

Bulk plant owners would also suffer from numerous delivery problems. Delivery time would increase substantially, and there would be constant spray-backs and spills. We too have suffered with this economy, and have recently spent tremendous sums on other required vapor recovery equipment. Gasoline margins simply don't allow for incremental expenses.

In summary, we estimate a total of 600 tanks in the Medford-Ashland area. If all tanks would accept a simple "submerged fill" tube installation, the total cost would exceed $100,000. However, many of these older underground tanks would require far more, including many tank replacements, which would increase the total costs several times. We estimate these some 600 tanks only represent a very small portion of the total gasoline deliveries, and that "submerge fill" would do little or nothing, since vapors would be displaced anyway. Again, gasoline vapors accounted for less than 1% of the Medford-Ashland original V.O.C. problem, and we have solved the bulk of the gasoline vapor problem with our prior substantial investments. The cost effectiveness of these additional "submerged fill" investments would be extremely poor, and a real hardship for all concerned.

We do support "submerged fill" for all tanks rated above 1,000 gallons, and all new tank installation. This would seem to be a reasonable compromise, and a realistic position for the State of Oregon.

We are also requesting that Mr. Lloyd Kostow, and the Department of Environmental Quality suspend all enforcement efforts related to "submerged fill" of these smaller tanks, until the state makes a final decision upon this request.

If we can provide any further information or assistance, please feel free to call or write. We do appreciate your efforts and consideration.

Mike Hawkins
Hawk Oil Company
PO Box 1388
Medford, Oregon 97501
772-5275

Mel Winkelman
Winkelman Oil Co.
20 Stage Rd. So.
Medford, Oregon 97501
772-6213

Bob George
Rogue Valley Oil Co.
5 Stage Rd. So.
Medford, Oregon 97501
772-6181

Frank Carter
Union Oil Distributor
103 W. McAndrews Rd.
Medford, Oregon 97501
773-3609

Bill Terpening
Medford Fuel Co.
936 S. Central
Medford, Oregon 97501
773-7311

Bob Hays
Hays Oil Company
1890 S. Pacific Hwy
Medford, Oregon 97501
772-2053

Darrell Badger
Grange Co-Op
11 Stewart
Medford, Oregon 97501
773-8464

Bill Cornitius
Shell Distributor
1000 S. Central
Medford, Oregon 97501
770-5115

Small Gasoline Storage Tanks

340-22-110 (1) No person may transfer or cause or allow the transfer of gasoline from any delivery vessel which was filled at a Bulk Gasoline Terminal or nonexempted Bulk Gasoline Plant into any stationary storage tank of less than 40,000 gallon capacity unless:

(a) The tank is filled by Submerged Fill; and

(b) A vapor recovery system is used which consists of a Certified Underground Storage Tank Device capable of collecting the vapor from volatile organic liquids and gases so as to prevent their emission to the outdoor atmosphere. All tank guaging and sampling devices shall be gas-tight except when gauging or sampling is taking place. Or

(c) The vapors are processed by a system demonstrated to the satisfaction of the Department to be of equal effectiveness.

(2) Exemptions. This section will not apply to:

(a) Transfers made to storage tanks of gasoline dispensing facilities equipped with floating roofs or their equivalent;

(b) Stationary gasoline storage containers of less than 2,085 liters (550 gallons) capacity used exclusively for the fueling of implements of farming, provided the containers use submerged fill[;]. HOWEVER, IN THE MEDFORD-ASHLAND AQMA, ALL EXISTING TANKS RATED 1,000 GALLON CAPACITY, OR LESS, WILL BE EXEMPT FROM SUBMERGED FILL;

(c) Stationary gasoline storage tanks located at a gasoline dispensing facility that are filled by a delivery vessel which was filled at an exempted bulk gasoline plant; provided that the storage tanks use submerged fill. However, in the Portland-Vancouver AQMA, no person shall deliver gasoline to a gasoline dispensing facility at a rate exceeding 10,000 gallons per month from a bulk gasoline plant, unless the gasoline vapor is handled as required by subsection (1)(b) or (c) of this rule.

(3) The owner, operator, or builder of any stationary storage container subject to this rule shall comply by April 1, 1981, except where added equipment is required by rule changes adopted in 1980, compliance is delayed to April 1, 1983.

(4) Compliance with subsection (1)(b) of this rule shall be determined by verification of use of equipment identical to equipment most recently approved and listed for such use by the Department or by testing in accordance with Method 30 on file with the Department.

Stat. Auth.:ORS Ch. 468

Hist: DEQ 21-1978, f. & ef. 12-28-78; DEQ 17-1979, f. & ef. 6-22-79; DEQ 23-1980, f. & ef. 9-26-80

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Gasoline Marketing Rule Petition

Date Prepared: April 26, 1983
Hearing Date: July 7, 1983
Comments Due: July 8, 1983

WHO IS AFFECTED:

Owners of small (1,000 gallon) gasoline tanks in the Medford-Ashland Air Quality Maintenance Area.

WHAT IS PROPOSED:

The Department of Environmental Quality is proposing to amend OAR 340-22-110(1)(a) by removing the requirement of an administrative rule which requires submerged filling of all gasoline tanks in Air Quality Maintenance Areas. The eight bulk gasoline dealers have petitioned for relief from this rule for customers in the Medford-Ashland Air Quality Maintenance Area with gasoline tanks of 1,000 gallon capacity or smaller.

WHAT ARE THE HIGHLIGHTS:

The petitioners cite the cost as the reason for exempting these small tanks from the submerged fill requirement.

The Department has computed the effect of the rule change. It gives up a planned reduction of 7 tons/year of reactive vapor, that would have helped to maintain the ozone standard.

However, the ozone standard has been attained from the summer of 1979 through the summer of 1982, without this additional reduction and there is more than enough available in the strategy growth cushion to accomodate this change.

HOW TO COMMENT:

Copies of the complete proposed rule package may be obtained from the Air Quality Division in Portland (522 S.W. Fifth Avenue) or the regional office nearest you. For further information contact Larry Jack at 776-6010.

A public hearing will be held before a hearings officer at:

TIME: 3:00 p.m.
DATE: July 7, 1983
PLACE: 2nd Floor Conference Room
201 West Main, Medford, OR

P.O. Box 1760
Portland, OR 97207

8/10/82

FOR FURTHER INFORMATION:

Contact the person or division identified in the public notice by calling 229-5696 in the Portland area. To avoid long distance charges from other parts of the state, call 1-800-452-7813, and ask for the Department of Environmental Quality.

Oral and written comments will be accepted at the public hearing. Written comments may be sent to the DEQ Air Quality Division, P.O. Box 1760, Portland, OR 97207, but must be received by no later than July 8, 1983.

WHAT IS THE NEXT STEP:

After public hearing the Environmental Quality 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 rules will be submitted to the U. S. Environmental Protection Agency as part of the State Clean Air Act Implementation Plan. The Commission's deliberation should come in November 1983 as part of the agenda of a regularly scheduled Commission meeting.

A Statement of Need, Fiscal and Economic Impact Statement, and Land Use Consistency Statement are attached to this notice.

AA3269

RULEMAKING STATEMENTS

for

Gasoline Marketing Rule Petition

Pursuant to ORS 183.335, these statements provide information on the intended action to amend a rule.

STATEMENT OF NEED:

Legal Authority

This proposal amends OAR 340-22-110(1)(a). It is proposed under authority of ORS 468.020(1) and ORS 468.295(3).

Need for the Rule

About 600 small gasoline storage tanks in the Medford AQMA have not complied with OAR 340-22-110(1)(a). To accomplish the required submerged fill would be costly and cause only minor air shed improvement. Therefore, since the AQMA is presently attaining the ozone standard, it is proposed to change this rule to exempt small tanks from submerged fill in the Medford AQMA.

Principal Documents Relied Upon

1. Petition, dated March 28, 1983, from Mike Hawkins et.al., to W.H. Young of DEQ, for a change to OAR 340-22-110(1)(a)

FISCAL AND ECONOMIC IMPACT STATEMENT:

This proposed rule change, if adopted, would relieve about 500 large and small businesses of the $20 to $150 cost of installing a submerged fill pipe in gasoline storage tanks of 1,000 gallon capacity or smaller.

LAND USE CONSISTENCY STATEMENT:

The proposed rule does not affect land use as defined in the Department's coordination program approved by the Land Conservation and Development Commission.

AA3271

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. F, May 20, 1983, EQC Meeting

Request for Authorization to Hold a Public Hearing on Modifications to Water Quality Rules Related to Waste Disposal Wells, OAR 340, Division 44.

Background and Problem Statement

Ever since indoor plumbing came to the people of Central Oregon, they have been using the fractured basalt and pumice deposits which underlie the area for sewage disposal. The shallow soil mantle did not allow for construction of leach fields in many areas so holes were drilled or hammered into the basalt until a fractured area was located. Thousands of these shallow waste disposal wells or "drain holes" were constructed in the Bend-Redmond-Madras area.

The State Sanitary Authority, predecessor to the Environmental Quality Commission, became very concerned about this practice and in 1966 requested the Federal Water Pollution Control Administration, predecessor to the Environmental Protection Agency (EPA), to conduct a study to investigate the "environmental hazards associated with the disposal of sewage wastes in deep lava sink holes in the Deschutes Valley Oregon." Their report was completed and published April 1968. The report concluded that the groundwater was threatened by the sewage disposal practice and that construction of drain holes should be discontinued. It also suggested that community sewers be built in Bend, Redmond, and Madras and that existing drainholes be abandoned and plugged.

In response to this report, the Sanitary Authority adopted rules in 1969. The rules required these shallow waste disposal wells be phased out by January 1980. Each municipality was to submit a plan and time schedule for sewering their area.

Since the rules were promulgated, they have been modified twice in order to address compliance schedule changes and to recognize that some drain holes would probably continue to exist for some time in the rural, unsewerable area.

Sewerage systems have now been completed for the three communities. Now that most of the drain holes have been eliminated, the rules need to be revised again to correspond to existing conditions. In addition, the EPA has promulgated rules regarding all classifications of underground injection practices and the types of wastes disposed. They have developed an underground injection control (UIC) program which is delegable to states.

There are several types of underground injection practices which could occur in Oregon which are currently not specifically addressed in the waste disposal well rules. The rules need to be modified to define and address these other practices.

Discussion and Evaluation

The following changes are proposed for the rules found in OAR 340 Division 44, Construction and Use of Waste Disposal Wells:

340-44-005 The definition of "Waste Disposal Well" is changed and the exclusions are removed.

Definitions for "Acknowledge Comprehensive Land Use Plan" and "Noncontact Cooling Water" are deleted because the terms are no longer used in the body of rules.

Definition for "standard subsurface sewage disposal system" is corrected to correspond with current on-site sewage disposal rules.

Definitions for "Aquifer", "Exempted Aquifer", "Seepage Pit", "Sewage Drain Hole", "Underground Injection Activity", and "Underground Source of Drinking Water" are added. (These definitions are necessary in order to tie into the federal Underground Injection Control Program.)

340-44-015 This rule relating to the construction and use of waste disposal wells has been extensively rewritten to define which injection activities need a permit and which activities are prohibited. Those sections relating to sewage drain holes have been updated to correspond to current conditions for construction and maintenance. All of the sections which are no longer applicable have been deleted.

340-44-017 There have been minor revisions to this rule, which pertains to repair of existing waste disposal wells, to clarify that it applies only to sewage drain holes.

340-44-019 This rule which required schedules for eliminating waste disposal wells in municipalities is being repealed because it is no longer needed now that sewers have been built in the municipal areas.

340-44-020 There is a minor modification to this rule to show that it applies to all waste disposal wells, not just sewage drain holes. The rule requires the Director's approval for all waste disposal wells.

340-44-035 There have been minor, clarifying changes to this rule. The rule addresses some of the things to be considered in permits.

340-44-050 This is a new rule which pertains to construction and use of disposal wells for surface runoff. Rather than regulating this activity by permit, these rules are proposed.

340-44-055 This rule has been added to require all types of underground injection activities which threaten groundwaters be approved by the Director. It also provides a mechanism for the Director to accept permits written by other agencies for specialized injection activities regulated by them.

The purpose of these changes being brought before the Commission at this time is to request authorization to hold a public hearing on the proposed rule changes.

Summation

1. In 1969, rules were adopted which required the orderly phaseout of waste disposal wells (drain holes) in Central Oregon.

2. Sewerage systems have been constructed in Bend, Redmond and Madras, and most sewage drain holes have been eliminated.

3. Many sections of the waste disposal well rules are no longer applicable and should be removed or modified.

4. There are other types of waste disposal wells or underground injection practices which aren't adequately addressed in the regulations which should be included.

5. The Department is prepared to hold a public hearing in order to receive input on the proposed rule modifications.

Director's Recommendation

Based on the summation, the Director recommends that the Commission authorize the Department to hold a public hearing on the proposed changes in the waste disposal well regulations.

Bill

William H. Young

Attachments: 3
1. Revised Rules
2. Draft Public Notice and Fiscal Impact Statement
3. Statement of Need

Charles K. Ashbaker:l
229-5325
May 3, 1983

WL2457

DIVISION 44

CONSTRUCTION AND USE OF WASTE DISPOSAL WELLS OR OTHER UNDERGROUND INJECTION ACTIVITIES

DEFINITIONS

340-44-005 As used in these regulations unless the context requires otherwise:

[(1)] (12) "Person" means the United States and agencies thereof, any state, any individual, public or private corporation, political subdivision, governmental agency, municipality, industry, copartnership, association, firm, trust, estate or any other legal entity whatsoever.

[(2)] (17) "Sewage" means the water-carried human or animal waste from residences, buildings, industrial establishments, or other places, together with such groundwater infiltration and surface water as may be present. The admixture with sewage as above defined of industrial wastes or wastes shall also be considered "sewage" within the meaning of these rules.

[(3)] (23) "Wastes" means sewage, industrial wastes, agricultural wastes, and all other liquid, gaseous, solid, radioactive or other substances which will or may cause pollution or tend to cause pollution of any waters of the state.

[(4)] (22) "Waste Disposal Well" means any [natural or manmade] bored, drilled, driven or dug hole, [crevasse, fissure or opening in the ground] whose depth is greater than its largest surface dimension which is used or intended to be used for disposal of sewage, industrial, agricultural or other wastes [:] and includes drainholes, drywells, cesspools and seepage pits, along with other underground injection wells, but does not apply to single family residential cesspools or seepage pits nor to nonresidential cesspools or seepage pits which receive solely sanitary wastes and serve less than 20 persons per day.

[(a) "Waste Disposal Well", as used in these regulations, does not include conventional seepage beds, tile fields, cesspools or landfills constructed and operated in accordance with Commission rules or waste treatment or disposal ponds or lagoons constructed or operated under a permit issued by the Director.]

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[(b) "Waste Disposal Well" does not include geothermal reinjection wells.]

[(c) "Waste Disposal Well" does not include disposal wells specifically approved by the Commission for disposal of adequately treated and disinfected effluents from large, efficiently operated, municipal or county sewage treatment plants, where continuous and effective surveillance and control of waste treatment and discharge can be assured so as to fully safeguard water quality and the public health and welfare. Such disposal wells shall only be considered for approval by the Commission if it determines that no other method of disposal other than disposal well is reasonably or practicably available.]

[(5)] (2) "Authorized Representatives" means the staff of the Department or of the local unit of government performing duties for and under agreement with the Department as authorized by the Director to act for the Department.

[(6)] (3) "Commission" means the Environmental Quality Commission.

[(7)] (4) "Construction" includes installation or extension.

[(8)] (5) "Department" means the Department of Environmental Quality.

[(9)] (6) "Director" means the Director of the Department of Environmental Quality.

[(10)] (14) "Public Health Hazard" means a condition whereby there are sufficient types and amounts of biological, chemical, or physical, including radiological, agents relating to water or sewage which are likely to cause human illness, disorders, or disability. These include, but are not limited to, pathogenic viruses and bacteria, parasites, toxic chemicals, and radioactive isotopes. A malfunctioning or surfacing subsurface sewage disposal system constitutes a public health hazard.

[(11)] (15) "Public Waters" means lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

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[(12)] (11) "Owner" means any person who alone, or jointly, or severally with others:

(A) Has legal title to any lot, dwelling, or dwelling unit; or

(B) Has care, charge, or control of any real property as agent, executor, executrix, administrator, administratrix, trustee, lessee or guardian of the estate of the holder of legal title; or

(C) Is the contract purchaser of real property.

Each such person as described in paragraphs (B) and (C) above, thus representing the holder of legal title, is bound to comply with the provisions of these minimum standards as if he were the owner.

[(13)] (8) "Municipal sewerage system" means any part of a sewage collection, transmission, or treatment facility that is owned and operated by an incorporated city.

[(14) "Acknowledged Comprehensive Land Use Plan" means any land use plan that has been acknowledged by the Land Conservation and Development Commission.]

[(15) "Noncontact cooling water" means water that has been used solely for cooling purposes in a manner such that the water contains no more contaminants (except heat), after its use, than when it was withdrawn from its natural source.]

[(16)] (13) "Property" means any structure, dwelling or parcel of land that contains or uses a waste disposal well for disposing of wastes.

[(17)] (19) "Standard [subsurface] on-site sewage disposal system" means a drainfield or approved alternative disposal system that complies with the requirements of [rules 340-71-020 and 340-71-030.] OAR Chapter 340 Division 71.

[(18)] (9) "Municipal sewer service area" means an area which has been designated by an incorporated city for sewer service and for which preliminary sewer planning has been completed.

[(19)] (10) "Municipality" means an incorporated city only.

[(20)] (24) "WPCF Permit" means a permit as defined in Division 45.

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(1) "Aquifer" means an underground stratum holding water which is capable of yielding a significant amount of water to a well or spring.

(7) "Exempted Aquifer" means an aquifer which contains water with fewer than 10,000 mg/l total dissolved solids yet has been excluded as a possible source of drinking water because of one or more of the following:

(a) Its mineral content, hydrocarbon content or physical characteristics, such as temperature, make it unpotable;
(b) It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical; or
(c) The water or aquifer exhibit other characteristics which makes the aquifer unusable for drinking water.

(16) "Seepage Pit" means a lined pit which receives partially treated sewage which seeps into the surrounding soil through perforations in the lining.

(18)"Sewage Drain Hole" means a specialized type of waste disposal well consisting of a drilled or hammered well or natural lava crack or fissure used for sewage disposal in the lava terrain of Central Oregon; but does not include a conventional seepage pit regulated by OAR 340-71-335.

(20) "Underground Injection Activity" means any activity involving underground injection of fluids including, but not limited to, waste disposal wells, petroleum enhanced recovery injection wells, liquid petroleum storage wells, in situ mining wells, groundwater recharge wells, saltwater intrusion barrier wells, sand backfill wells, and subsidence control wells.

(21) "Underground Source of Drinking water" means an aquifer or its portion which supplies drinking water for human consumption, or is an aquifer in which the groundwater contains fewer than 10,000 mg/l total dissolved solids, and is not an exempted aquifer.

Stat. Auth.: ORS Ch. 468
Hist: SA 41, f. 5-15-69; DEQ 35-1979, f. & ef. 12-19-79

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POLICY

340-44-010

Whereas the discharge of untreated or inadequately treated sewage or wastes to waste disposal wells and particularly to waste disposal wells in the lava terrain of Central Oregon constitutes a threat of serious, detrimental and irreversible pollution of valuable groundwater resources and a threat to public health, it is hereby declared to be the policy of the Commission to restrict, regulate or prohibit the further construction and use of waste disposal wells in Oregon and to phase out completely the use of waste disposal wells as a means of disposing of untreated or inadequately treated sewage or wastes as rapidly as possible in an orderly and planned manner.

Stat. Auth.: ORS Ch. 468
Hist: SA 41, f. 5-15-69; DEQ 35-1979, f. & ef. 12-19-79

CONSTRUCTION OR USE OF WASTE DISPOSAL WELLS RESTRICTED

340-44-015

(1) After the effective date of these rules, no person shall construct, [or] place in operation , or operate any waste disposal well [for the disposal of sewage] without first obtaining a WPCF permit [for said construction or operation of the waste disposal well from the Director or his authorized representative.] from the Department, unless the waste disposal well is exempted by (2), below.

(2) The following types of waste disposal wells do not require a WPCF permit, although they are regulated as indicated:

(a) Cesspool and seepage pits of less than 5,000 gallons per day capacity (See OAR 340-71-335);
(b) Storm water drains from residential or commercial areas, which are not affected by toxic or industrial wastes (See Rule 050 of these rules);
(c) Sewage drain holes serving less than 20 persons per day. (See prohibitions and other limitations in Sections (5), (7), (9) and (10) of this rule.)

(3) In addition to those waste disposal wells in (2) above which are exempt from a WPCF permit, the following types of waste disposal wells may be exempted from the permit requirement on a case-by-case basis:

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(a) All cesspools and seepage pits which were constructed before January 1, 1982, and which dispose of only domestic waste;
(b) All sewage drainholes which were constructed before January 1, 1980, and which dispose of only domestic waste;
(c) Geothermal reinjection wells which return uncontaminated water to the same aquifer or to one of equivalent quality; and
(d) Reinjection of air conditioning water or heat pump transfer water to the same aquifer or one of equivalent quality.

(4) The following types of waste disposal wells are prohibited:

(a) Wells used to dispose of hazardous waste, as defined in OAR 340 Division 63, or radioactive waste, as defined in ORS 469.300, into, above, or below a formation which contains an underground source of drinking water within one quarter (1/4) mile of the disposal well hole;

(b) Wells used to dispose of other industrial or municipal wastewater into or below a formation which contains an underground source of drinking water within one quarter (1/4) mile of the disposal well hole.

[(2)] (5) After January 1, 1983, use of [waste disposal wells for disposing of sewage] sewage drain holes is prohibited unless the disposal well is outside the boundaries of an incorporated city, sanitary district, or county service district and municipal sewer service is not available to the property; or unless [connection to the sewerage system violates any acknowledged comprehensive land use plan or any of Oregon's Statewide Land Use Goals as Determined by the Director.] the Director grants a waiver pursuant to section (6) below.

[(3) After January 1, 1981, use of a waste disposal well for disposing of wastes other than sewage is prohibited except for those disposal wells which dispose of only specifically approved non-sewage waste waters and which are operating under a valid WPCF Permit issued by the Director.]

[(4)] (6) Within 90 days following written notification by the Department that sewer service is available to a property, the owner of that property shall make connection to the sewer and shall abandon and plug the sewage drainhole [disposal well] in accordance with rule 340-44-040. Sewer service shall be deemed available to a property when a sewer is extended to within seventy-five (75) feet from the property boundary. On a case-by-case basis, the

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Director may waive the requirement to connect the sewer if he determines that connection to the sewer is impracticable or unreasonably burdensome. Any waiver granted by the Director shall be temporary and may be revoked when or if the use of the waste disposal well is modified or expanded.

[(5)] (7) Construction and use of new [waste disposal wells] sewage drain holes is prohibited except those new waste disposal wells that meet the following conditions:

(a) The waste disposal well is constructed [and operated in compliance with a valid WPCF Permit issued by the Director and is used solely for disposal of non-contact cooling water; or] as an interim sewage facility and written permission is granted by the Director.

(b) [The waste disposal well is constructed and operated inside the City of Bend and only serves a dwelling or other structure located inside the City of Bend. A permit to construct a waste disposal well inside the City of Bend shall not be issued unless it is an interim disposal system that will be abandoned within ninety (90) days after the new Bend sewage treatment plant is completed. No waste disposal wells shall be constructed inside the City of Bend after the new Bend sewage treatment plant is completed or after January 1, 1981, whichever comes first.] New [waste disposal wells inside the City of Bend] sewage drainholes shall be constructed within the following limitations:

(A) Waste disposal wells shall not be constructed closer than five hundred (500) feet from a natural stream or lake; [and]

(B) Waste disposal wells shall not be constructed greater than one hundred (100) feet deep[.];

(C) Waste disposal wells [designed to dispose of waste quantities greater than twelve hundred (1200) gallons per day shall not be closer than one quarter (1/4) mile from a domestic water well. If the design waste quantity is twelve hundred (1200) gallons per day or less, the waste disposal well] shall not be closer than one thousand (1000) feet from a domestic water well[.] ; and

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(D) There is no reasonable alternative available to dispose of sewage on the lot or on adjacent property.

[(c) The waste disposal well or wells are constructed under a letter permit issued by the Director. The Director may issue a permit only after he determines that the following requirements have been met:]

[(A) A written application shall be submitted to the Director, listing the number of waste disposal wells, the quantity of waste proposed for disposal, and the justification for allowing the disposal wells.]

[(B) The Director shall only issue a letter permit if he determines that the proposed waste disposal well or wells are needed to assure orderly extension of a regional sewerage system, or to preserve the capability of future sewer extensions to areas using existing waste disposal wells or other less desirable methods of long-term, urban sewage treatment and disposal.]

[(C) The Director shall not issue a letter permit unless the owner of a municipal sewerage facility provides adequate assurances that the waste disposal wells are interim and will ultimately be connected to the municipal sewerage facility.]

[(D) If the waste disposal wells will serve more than one parcel of land, it shall be operated and maintained by the owner of the municipal sewerage facility.]

[(E) The Director, in his evaluation of the application for waste disposal well letter permits shall take into account other potential means for sewage treatment and disposal.]

[(F) If the Director determines to issue a letter permit, he may require pretreatment of the wastes prior to disposal by waste disposal well. The Director may also require a commitment by the owner of the municipal sewerage system to provide a plan for replacing the waste disposal well or wells with sewers by a specific date. The Director may set other conditions on the construction and use of the waste disposal well or wells as necessary to assure that the disposal well or

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wells are interim and to assure protection of groundwater.]

[(d) Except for waste disposal wells that dispose of specifically approved non-sewage waste waters, no permit shall be issued for construction and use of a waste disposal well unless the owner of the property to be using the disposal well agrees in writing not to remonstrate against connection to sewer and abandonment of the waste disposal well when notified that sewer is available. The agreement shall be recorded in county deed records and shall run as a covenant with the land.]

[(6)] (8) A permit to construct a waste disposal well shall not be issued if the Director or his authorized representative, determines that the waste disposal well has the potential to cause significant degradation of public waters or creates a public health hazard.

[(7)] (9) Without first obtaining [a permit issued by] written authorization from the Director or his authorized representative, no person shall modify any structure or change or expand any use of a structure or property that utilizes a [waste disposal well] sewage drain hole. [A permit shall be a written document and,] Except as allowed in section [(8)] (10) of this rule , the authorization shall not be issued unless:

(a) The property cannot qualify for a standard [subsurface] on-site sewage disposal system including the reserve area requirement; and

(b) The property is inside a designated, municipal sewer service area; and

(c) The owner of the property and the municipality having jurisdiction over the municipal sewer service area shall enter into a written agreement. The agreement shall include the owner's irrevocable consent to connect to the municipal sewerage service when it becomes available and to not remonstrate against formation of and inclusion into a local improvement district if such a district is deemed necessary by the municipality to finance sewer construction to the property; and

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(d) The property is a single family dwelling that is not closer than one hundred (100) feet to a municipal sewerage system. (The proposed changes or expansion of the use of the waste disposal serving the single family dwelling shall not be for the purpose of serving a commercial establishment or multiple-unit dwelling); or

(e) The property is not a single family dwelling, is not closer than 300 feet from a municipal sewerage system, and the proposed change or expansion of the use of the waste disposal well would not create an increased waste flow; or

(f) The property is not a single family dwelling; existing sewer is not deemed available based upon the criteria established in Oregon Administrative Rules 340-71-160 and based upon the total average daily flow estimated from the property after the proposed modifications or expansion of the use of the waste disposal well and a municipality has committed in writing to provide sewers to the property within two (2) years.

[(8)] (10) The Director shall [issue a permit] grant authorization to connect a replacement structure to a [waste disposal well] sewage drain hole if:

(a) The waste disposal well previously served a structure that was unintentionally destroyed by fire or other calamity; and

(b) The property cannot qualify for a standard on-site sewage disposal system, including the reserve area requirement; and

(c) There is no evidence that the waste disposal well had been failing; and

(d) The replacement structure is approximately the same size as the destroyed structure and the use has not been significantly changed.

Stat. Auth.: ORS Ch. 468
Hist: SA 41, f. 5-15-69; DEQ 35-1979, f. & ef. 12-19-79; DEQ 22-1981, f. & ef. 9-2-81

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REPAIRS OF EXISTING [WASTE DISPOSAL WELLS] SEWAGE DRAIN HOLES

340-44-017

(1) Without first obtaining a Waste Disposal Well Repair Permit from the Director or his representative, no person shall repair or attempt to repair a plugged or otherwise failing [waste disposal well] sewage drain hole.

(2) The Director or his authorized representative shall not issue a Waste Disposal Well Repair Permit and shall require connection to a municipal sewerage system if, for a single-family dwelling, the property is within one hundred (100) feet from the municipal sewerage system or if, for other than a single-family dwelling, the property is within three hundred (300) feet from the municipal sewerage system.

(3) The Director or his authorized representative shall not issue a Waste Disposal Well Repair Permit if the property can successfully accommodate a [drainfield] standard on-site sewage disposal system. If the Director or his authorized representative determines that a drainfield can be installed and that it can be expected to function satisfactorily for an extended period of time, the property owner shall install a drainfield and abandon the waste disposal well. The Director or his authorized representative may waive the requirement to install a [drainfield] standard on-site sewage disposal system if a municipality provides written commitment to provide sewers to the property within two (2) years and if the failing waste disposal well can be repaired or operated without causing a public health hazard.

(4) A Disposal Well Repair Permit shall be a written document and shall specify those methods by which the waste disposal well may be repaired. Possible methods for repair shall include, but not be limited to, introduction of caustic or acid, use of explosives, or deepening the waste disposal well. Deepening the waste disposal well shall be limited to a maximum depth of one hundred (100) feet and shall only be permitted if:

(a) The property served by the failing waste disposal well shall be inside a recognized urban growth boundary; and

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(b) There is a written agreement between the owner of the property and the municipality having jurisdiction over the urban growth boundary. The written agreement shall include the property owner's irrevocable consent to connect to a sewer when it becomes available and to abandon the waste disposal well. The agreement shall also include the owner's irrevocable consent to participate in the formation and be included in a local improvement district if the municipality determines that such a district is necessary to finance extension of sewers to the property.

Stat. Auth: ORS Ch. 468
Hist: DEQ 35-1979, f & ef. 12-19-79

SCHEDULES FOR ELIMINATING WASTE DISPOSAL WELLS INSIDE INCORPORATED CITIES, SANITARY DISTRICTS, AND COUNTY SERVICE DISTRICTS

340-44-019 Entire Rule to be Repealed

[Prior to January 1, 1981, incorporated cities, sanitary districts, and county service districts that contain waste disposal wells inside their boundaries shall submit a plan to the Director that includes:]

[(1) An inventory and map of existing waste disposal wells inside its boundary; and]

[(2) A time schedule for eliminating all waste disposal wells inside its boundaries by January 1, 1983.]

Stat. Auth.: ORS Ch. 468
Hist: DEQ 35-1979, f. & ef. 12-19-79

ISSUANCE OF PERMITS WITHOUT DIRECTOR APPROVAL PROHIBITED

340-44-020

After the effective date of these rules, no person shall issue permits for the construction, modification, maintenance, or use of waste disposal wells unless that [person is at the time of issuance designated by the Director as the authorized representative for the area for which the permit is sought.] permit has been approved by the Director.

Stat. Auth.: ORS Ch. 468
Hist: SA 41, f. 5-15-69; DEQ 35-1979, f. & ef. 12-19-79

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WASTE DISPOSAL WELL PERMIT AREAS

340-44-025 [SA 41, f. 5-15-69;
Repealed by DEQ 35-1979,
f. & ef. 12-19-79]

WASTE DISPOSAL WELLS PROHIBITED WHERE BETTER TREATMENT OR PROTECTION IS AVAILABLE

340-44-030

Permits shall not be issued for construction, maintenance or use of waste disposal wells where any other treatment or disposal method which affords better protection of public health or water resources is reasonably available or possible.

Stat. Auth.: ORS Ch. 468
Hist: SA 41, f. 5-15-69

PERMIT CONDITIONS

340-44-035

Permits for construction or use of waste disposal wells [issued by an approved permit issuing agency] shall include, in addition to other reasonable provisions, minimum conditions relating to their location, construction or use and a time limit for authorized use of said waste disposal wells[, not to exceed a period of five years]. [Construction and orientation of building sewers shall be compatible with the approved area sewerage plan.]

Stat. Auth.: ORS Ch. 468
Hist: SA 41, f. 5-15-69

ABANDONMENT AND PLUGGING OF WASTE DISPOSAL WELLS

340-44-040

(1) A waste disposal well, upon discontinuance of use or abandonment shall immediately be rendered completely inoperable by plugging and sealing the hole to prevent the well from being a channel allowing the vertical movement of water and a possible source of contamination of the groundwater supply.

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(2) All portions of the well which are surrounded by "solid wall" formation shall be plugged and filled with cement grout or concrete.

(3) The top portion of the well must be effectively sealed with cement grout or concrete to a depth of at least 18 feet below the surface of the ground, or wherever this method of sealing is not practical, effective sealing must be accomplished in a manner approved in writing by the director or his authorized representative.

Stat. Auth: ORS Ch. 468
Hist: SA 41, f. 5-15-69; DEQ 35-1979, f. & ef. 12-19-79

CONSTRUCTION OR USE OF WASTE DISPOSAL WELLS PROHIBITED AFTER JANUARY 1, 1980

340-44-045 [SA 41, f. 5-15-69;
Repealed by DEQ 35-1979,
f. & ef. 12-19-79

WASTE DISPOSAL WELLS FOR SURFACE DRAINAGE

340-44-050

(1) Waste disposal wells for storm drainage shall only be used in those areas where there is an adequate confinement barrier or filtration medium between the well and an underground source of drinking water; and where construction of surface discharging storm sewers is not practical.

(2) New storm drainage disposal wells shall be as shallow as possible but shall not exceed a depth of 100 feet.

(3) They shall not be located closer than 500 feet of a domestic water well.

(4) Using a waste disposal well for agricultural drainage is prohibited.

(5) Using a waste disposal well for surface drainage in areas where toxic chemicals or petroleum products are stored or handled is prohibited, unless there is containment around the product area which will prevent spillage or leakage from entering the well.

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(6) Any owner or operator of a waste disposal well for storm drainage shall have available a means of temporarily plugging or blocking the well in the event of an accident or spill.

(7) Any parking lot which is drained by waste disposal wells shall be kept clean of petroleum products and other organic or chemical wastes as much as practicable to minimize the degree of contamination of the storm water drainage.

OTHER UNDERGROUND INJECTION ACTIVITIES

340-44-055

(1) Any underground injection activity which may cause, or tend to cause, pollution of groundwater must be approved by the Director, in addition to other permits or approvals required by other federal, state, or local agencies.

(2) Except for construction and use of waste disposal wells, the Director may enter into an agreement with another state agency which stipulates that that agency's approval of a type of underground injection activity will also constitute his approval, provided he determines that their approval and control program contains adequate safeguards to protect groundwaters from pollution.

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Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

CHANGE IN WASTE DISPOSAL WELL RULES
(OAR 340, Division 44)

Notice Issued On:
Hearing Date: June 24, 1983 10 a.m.
Record Closes: June 27, 1983 5 p.m.

WHO IS AFFECTED: Anyone who uses waste disposal wells or who conducts other underground injection activities.

WHAT IS PROPOSED: The current waste disposal well rules pertain primarily to sewage drain holes in Central Oregon. Since most of the sewage drain holes have been eliminated through construction of sewers, the rules need to be updated and modified. In addition, other types of disposal wells or underground injection practices need to be addressed so that the underground waters are protected.

Note: Copies of the revised rules are available upon request.

HOW TO COMMENT: Public Hearing -

Friday, June 24, 1983 - 10 a.m.
REDMOND CITY COUNCIL CHAMBERS
455 S. Seventh
Redmond, Oregon

Written comments should be sent to the Department of Environmental Quality, Water Quality Division, P. O. Box 1760, Portland, Oregon, 97207. They may also be handed in at the hearing. The comment period will close at 5 p.m., June 27, 1983.

WHAT IS THE NEXT STEP: After the hearing record has been evaluated, the rules as proposed or revised, will be presented for Commission approval at their next scheduled meeting.

FISCAL AND ECONOMIC IMPACTS: These rule changes are not expected to have any adverse fiscal impact above that of the current rules. They should provide some economic benefit including benefit for small businesses, in that certain environmentally sound underground injection practices would be permitted where they are probably prohibited by the current rules because they are not addressed.

LAND USE CONSISTENCY: These rule changes are not site specific and should have no more impact on goals 6 and 11 or other land use considerations than do the current rules.

CKA:ak
May 3, 1983

P.O. Box 1760
Portland, OR 97207

8/10/82

FOR FURTHER INFORMATION:

Contact the person or division identified in the public notice by calling 229-5696 in the Portland area. To avoid long distance charges from other parts of the state, call 1-800-452-7813, and ask for the Department of Environmental Quality.

STATEMENT OF NEED FOR RULE MAKING

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

(1) Legal Authority

ORS 468.020 authorizes the Commission to adopt such rules and standards as necessary for performance of the functions vested by law in the Commission.

ORS 468.725 authorizes the Commission to adopt, by rule, effluent limitations and other minimum requirements for disposal of wastes and all matters pertaining to standards of quality for waters of the state.

(2) Need for the Rule

The current rules pertaining to waste disposal wells (OAR 340 - Division 44) were adopted primarily for the purpose of phasing out sewage drain holes in Central Oregon. Now that sewers have been constructed in the larger communities and most of the drain holes have been eliminated, it is necessary to update the rules so that they relate to the current situation. In addition, other types of waste disposal wells or underground injection activities need to be addressed for adequate protection of groundwaters.

(3) Principal Documents Relied Upon in this Rulemaking

a. OAR 340 Division 44

b. ORS 468.020

c. ORS 468.725

d. 40 CFR Part 146

CKA:ak
April 12, 1983

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, May 20, 1983, EQC Meeting

Request for Authorization to Hold a Public Hearing on the Construction Grants Priority Management System and List for FY84

Background and Problem Statement

Annually the Department compiles a priority list for allocating construction grants for municipal sewage treatment works, based on the next planned allotment of funds. The list identifies projects for which funding may be available during the period October 1, 1983, through September 30, 1984, and also identifies the relative priorities of projects for future years if continued funding is available. This year, minor adjustments are also proposed for the administrative rules governing the development and management of the priority list. No changes affecting the priority rating criteria are proposed.

For federal fiscal year 1984, $2.4 billion is nationally authorized for the construction grants program and is requested in the President's budget. Exact appropriation levels await federal budgetary decisions. However, if $2.4 billion is appropriated, Oregon will receive approximately $27.6 million.

The Construction Grants Amendments of 1981 continues to greatly affect the character of the grants program. The full effects of the law did not occur during FY82 and 83, but were intended to be phased in and completely implemented in FY85. Major elements of the FY84 program, now in the transition stage, are summarized as follows:

1. Federal assistance levels are at 75 percent of the estimated eligible project costs. In FY85, this percentage decreases to 55 percent for new projects.

2. Eligible types of projects include treatment and disposal facilities, inflow/infiltration correction, rehabilitation and replacement of sewers, interceptors, and correction of combined sewer overflows. In FY85, only treatment and disposal facilities, interceptors and inflow/infiltration correction are eligible unless the state exercises an option to use up to 20 percent of its allotment for funding ineligible projects.

3. Federal assistance for growth or reserve capacity in facilities is now limited to the 20-year project needs for plants and sewers. In FY85, funding assistance for reserve capacity in new projects is limited to the capacity at the date of Step 3 grant approval.

4. The elimination of grant assistance for Step 1 facilities planning and Step 2 design will greatly impact the FY84 and FY85 programs. This effectively increases the responsibility of potential applicants to assess their probability for funding--before appropriation levels are known--and requires that potential applicants make appropriate decisions and local funding commitments in order to qualify for future possible construction grants. Since little change was made in the substantive planning and design requirements, nearly all completed facilities plans will require considerable updating or complete reevaluation prior to qualifying for future funding consideration.

An unusually high number of new projects are planned to be initiated during FY84 due to the progress made during FY82 and 83 to complete several very large projects and to eliminate previously listed public health hazard projects. However, considerably more reliance is placed on these potential grantees to qualify for funding consideration; very few of the top ranking projects on the FY84 priority list are currently ready to proceed with an approvable grant application.

Although the request for authorization to hold the public hearing is usually accompanied by the proposed FY84 priority system and list, only the proposed changes to the priority list management system are included at this time. The data is being assembled to produce the draft FY84 priority list; the draft list will be available by May 15, 1983. Public distribution of the draft list will occur on May 24, following Commission action on this report. Also, since the promulgation of EPA's final rules on the construction grants program and federal secondary treatment criteria have been delayed until after the Agency's Administrator is confirmed, any impacts of relevant federal decisions will be addressed, as appropriate, during the public involvement process.

Alternatives and Evaluation

Administrative rule changes are proposed to (1) reduce the grant increase reserve, (2) require that potential applicants submit planning and design schedules prior to the year in which funding consideration is sought and (3) make minor adjustments to add clarity to certain rule provisions.

The updated administrative rules (Attachment 1) address these changes. A summary evaluation is provided below:

1. Federal regulations no longer mandate that the state set aside any portion of its allotment as a reserve for grant increases to cover cost overruns or minor changes in the proposed project. In addition,

federal law now eliminates new Step 1 and 2 grants and instead provides for an allowance for planning and design costs which are requested as a part of a Step 3 construction grant. It is also probable that the final federal construction regulations will implement a 5 percent limit on grant increases for projects bid after the effective date of the federal rule.

Proposed changes to the administrative rules reduce from 10 percent to 5 percent of the state's allotment the amount of funds set aside for purposes of grant increases. This change does not limit the amount of increased funds available to individual projects.

A reduction in the reserve fund is recommended because (1) few increases will be needed to complete previously awarded Step 1 and 2 projects; (2) the practice of providing increases to existing Step 1 and 2 grants is severely limited by the 1981 Amendments; and (3) increase requests from existing construction projects are not frequent since each grant initially contains a contingency amount to handle minor project changes. For the years 1981-1983, grant increase expenditures have been far less than the funds available for that purpose.

The affected rule is OAR 340-53-025(1).

2. The elimination of Step 1 and 2 grants postpones official Environmental Protection Agency (EPA) involvement in project reviews and applications until after planning and design are complete. The responsibility for realistically appraising the possibility of receiving grant funds within the near future is shared by the state and the potential applicant. It is the state's responsibility to assign initial target dates for certification of applications and to initiate project bypass procedures when applicants are unlikely to receive funding within a particular year.

   The proposed rule establishes the responsibility that the potential applicant inform the state of the project's planning and design schedule prior to the year in which funding consideration is sought. If the potential applicant fails to provide information that reasonably assures the readiness of the project to proceed, the target certification date will not be set for the subsequent fiscal year. These schedules will be requested during the process for developing the annual priority list. This rule will assure that essential information will be systematically incorporated into development of each year's priority list. It will also assist potential applicants in determining if they are likely to produce a completed, approvable application within the timetable they expect. The priority ranking for the project is not affected.

   The affected rule is OAR 340-53-015(g) and (h).

3. Minor "housekeeping" rule modifications are proposed to clarify, restate, or delete rules, as appropriate. These changes do not affect program administration.

   Affected rules are OAR 3440-53-015(3)(f), 4(a), 5(a)(C); 340-53-025(f); 340-53-035(1)(a), (1)(b), (1)(c), (1)(d).

Summation

1. The EQC must compile and adopt the state priority list for allocating federal construction grant funds for FY84.

2. Limited adjustments to the priority list management system are needed regarding (a) the grant increase reserve fund; (b) submittal of applicants' planning and design schedules, and (c) minor "housekeeping" clarifications.

3. The proposed changes to the priority list management system are included at this time. The draft FY84 priority list is scheduled for public distribution on May 24, 1983.

4. Opportunity for public comment should be made available on the FY84 priority management system and list. A hearing is scheduled for June 24, 1983, at 10 a.m. at the DEQ offices, Room 1400, 522 S.W. Fifth Avenue, Portland.

Director's Recommendation

Based on the Summation, the Director recommends that the Commission authorize a public hearing on the FY84 priority management system and priority list, to be held on June 24, 1983. All testimony entered into the record by 5 p.m. on June 29, 1983, will be considered by the Commission.

Bill

William H. Young

Attachments: 3
1. Draft, Priority List Rules (Division 53)
2. Notice of Public Hearing
3. Statement of Need for Rulemaking

B. J. Smith:l
229-5415
May 4, 1983
WL2495

MUNICIPAL WASTE WATER TREATMENT WORKS
CONSTRUCTION GRANTS PROGRAM

DIVISION 53

Development and Management of The Statewide
Sewerage Works Construction Grants Priority List

PURPOSE

340-53-005 The purpose of these rules is to prescribe procedures and priority criteria to be used by the Department for development and management of a statewide priority list of sewerage works construction projects potentially eligible for financial assistance from U.S. Environmental Protection Agency's Municipal Waste Water Treatment Works Construction Grants Program, Sec. 201, P.L. 95-217.

DEFINITIONS

340-53-010 As used in these regulations unless otherwise required by context:

(1) "Department" means Department of Environmental Quality. Department actions shall be taken by the Director as defined herein.

(2) "Commission" means Environmental Quality Commission.

(3) "Director" means Director of the Department of Environmental Quality or his authorized representatives.

(4) "Municipality" means any county, city, special service district, or other governmental entity having authority to dispose of sewage, industrial waste, or other wastes, any Indian tribe or authorized Indian Tribal Organization or any combination of two or more of the foregoing.

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(5) "EPA" means U.S. Environmental Protection Agency.

(6) "Treatment Works" means any facility for the purpose of treating, neutralizing or stabilizing sewage or industrial wastes of a liquid nature, including treatment or disposal plants, the necessary intercepting, outfall and outlet sewers, pumping stations integral to such plants or sewers, equipment and furnishings thereof and their appurtenances.

(7) "Grant" means financial assistance from the U.S. Environmental Protection Agency Municipal Waste Water Treatment Works Construction Grants Programs as authorized by Sec. 201, P.L. 95-217 and subsequent amendments.

(8) "Advance" means an advance of funds for a Step 1 or Step 2 project. The advance is equal to the estimated allowance which is expected to be included in a future Step 3 grant award. An advance is made from funds granted to Oregon by EPA; it is not a direct grant by EPA to a municipality.

(9) "Project" means a potentially fundable entry on the priority list consisting of Step 3 or Step 2 plus 3 treatment works or components or segments of treatment works as further described in Section 340-53-015, Subsection (4).

(10) "Treatment Works Component" means a portion of an operable treatment works described in an approved facility plan including but not limited to:

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(a) Sewage treatment plant

(b) Interceptors

(c) Sludge disposal or management

(d) Rehabilitation

(e) Other identified facilities.

A treatment works component may but need not result in an operable treatment works.

(11) "Treatment Works Segment" means a portion of a treatment works component which can be identified in a contract or discrete sub-item of a contract and may but need not result in operable treatment works.

(12) "Priority List" means all projects in the state potentially eligible for grants listed in rank order.

(13) "Fundable portion of the list" means those projects on the priority list which are planned for a grant during the current funding year. The fundable portion of the list shall not exceed the total funds expected to be available during the current funding year less applicable reserves.

(14) "Facilities Planning" means necessary plans and studies which directly relate to the construction of treatment works. Facilities planning will demonstrate the need for the proposed facilities and that they are cost-effective and environmentally acceptable.

(15) "Step 1 Project" means any project for development of a facilities plan for treatment works.

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(16) "Step 2 Project" means any project for engineering design of all or a portion of treatment works.

(17) "Step 3 Project" means any project for construction or rehabilitation of all or a portion of treatment works.

(18) "Eligible Project Costs" means those costs which could be eligible for a grant according to EPA regulations and certified by the Department and awarded by EPA. These costs may include an estimated allowance for a Step 1 and/ or Step 2 project.

(19) "Innovative Technology" means treatment works utilizing conventional or alternative technology not fully proven under conditions contemplated but offering cost or energy savings or other advantages as recognized by federal regulations.

(20) "Alternative Technology" means treatment work or components or segments thereof which reclaim or reuse water, recycle waste water constituents, eliminate discharge of pollutants, or recover energy.

(21) "Alternative system for small communities" means treatment works for municipalities or portions of municipalities having a population of less than 3,500 and utilizing alternative technology as described above.

(22) "Funding Year" means a federal fiscal year commencing October 1st and ending September 30th.

(23) "Current Funding Year" means the funding year for which the priority list is adopted.

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(24) "State Certification" means assurance by the Department that the project is acceptable to the state and that funds are available from the state's allocation to make a grant award.

(25) "Small community" means, for the purposes of an advance of allowance for Step 1 or Step 2, a municipality having less than 25,000 population.

PRIORITY LIST DEVELOPMENT

340-53-015 The Department will develop a statewide priority list of projects potentially eligible for a grant.

(1) The statewide priority list will be developed prior to the beginning of each funding year utilizing the following procedures:

(a) The Department will determine and maintain sufficient information concerning potential projects to develop the statewide priority list.

(b) The Department will develop a proposed priority list utilizing criteria and procedures set forth in this section.

(c) A public hearing will be held concerning the proposed priority list prior to Commission adoption. Public notice and a draft priority list will be provided to all interested parties at least thirty (30) days prior to the hearing. Interested parties include, but are not limited to, the following:

(A) Municipalities having projects on the priority list.

(B) Engineering consultants involved in projects on the priority list.

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(C) Interested state and federal agencies.

(D) Any other persons who have requested to be on the mailing list.

Interested parties will have an opportunity to present oral or written testimony at or prior to the hearing.

(d) The Department will summarize and evaluate the testimony and provide recommendations to the Commission.

(e) The Commission will adopt the priority list at a regularly scheduled meeting.

(2)(a)The priority list will consist of a listing of all projects in the state potentially eligible for grants listed in ranking order based on criteria set forth in Table "A". Table A describes five (5) categories used for scoring purposes as follows:

(A) Project Class

(B) Regulatory Emphasis

(C) Stream Segment Rank

(D) Population Emphasis

(E) Type of treatment component or components.

(b)The score used in ranking a project consists of the project class identified by letter code plus the sum of the points from the remaining four categories. Projects are ranked by the letter code of the project class with "A" being highest and within the project class by total points from highest to lowest.

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(3) The priority list entry for each project will include the following:

(a) Priority rank consisting of the project's sequential rank on the priority list. The project having the highest priority is ranked number one (1).

(b) EPA project identification number

(c) Name and type of municipality

(d) Description of project component

(e) Project step

(f) [Project segment code] Grant application number

(g) Ready to proceed date consisting of the expected date when the project application will be complete and ready for certification by the Department. For the current funding year the ready to proceed date will be based upon planning and design schedules submitted by potential applicants. For later funding years, the ready to proceed date may be based upon information available to the Department.

(h) Target certification date consisting of the earliest estimated date on which the project could be certified based on readiness to proceed and on the Department's estimate of federal funds expected to be available. The target certification date for the current funding year will be assigned based on a ready to proceed date. In the event actual funds made available differ from the Department's estimate when the list was adopted the Department may modify this date without public hearing to reflect actual funds available and revised future funding estimates.

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(i) Estimated grant amount based on that portion of project cost which is potentially eligible for a grant as set forth in Section 340-53-020.

(j) The priority point score used in ranking the projects.

(4) The Department will determine the scope of work to be included in each project prior to its placement on the priority list. Such scope of work may include the following:

(a) Design (Step 2) and construction of complete treatment works, (Step 2 plus 3), or

(b) Construction of one or more complete waste treatment systems, or

(c) Construction of one or more treatment works components,

(d) Construction of one or more treatment works segments of a treatment works component.

(5)(a)When determining the treatment works components or segments to be included in a single project, the Department will consider:

(A) The specific treatment works components or segments that will be ready to proceed during a funding year, and

(B) The operational dependency of other components or segments on the components or segment being considered, and

(C) The cost of the components or segments relative to allowable project grant. In no case will the [grant for a single project,] project included on the priority list, as defined by 340-53-010(9) exceed ten (10) million dollars in any given funding year.

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Where a [grant] proposed project would exceed this amount the scope of work will be reduced by limiting the number of components or dividing the components into segments. The total grant for treatment works to a single applicant is not however limited by this subsection.

(b) The Department shall have final discretion relative to scope of work or treatment works components or segments which constitute a project.

(6) Components or segment not included in a project for a particular funding year will be assigned a target certification date in a subsequent funding year. Within constraints of available and anticipated funds, projects will be scheduled so as to establish a rate of progress for construction while assuming a timely and equitable obligation of funds statewide.

(7) A project may consist of an amendment to a previously funded project which would change the scope of work significantly and thus constitute a new project.

(8) The Director may delete any project from the priority list if:

(a) It has received full funding

(b) It is no longer entitled to funding under the approved system.

(c) EPA has determined that the project is not needed to comply with the enforceable requirements of the Clean Water Act or the project is otherwise ineligible.

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(9) If the priority assessment of a project within a regional 208 areawide waste treatment management planning area conflicts with the priority list, the priority list has precedence. The Director will, upon request from a 208 planning agency, meet to discuss the project providing the request for such a meeting is submitted to the Director prior to Commission approval of the priority list.

ELIGIBLE COSTS AND LIMITATIONS

340-53-020 For each project included on the priority list the Department will estimate the costs potentially eligible for a grant and the estimated federal share.

(1) Where state certification requirements differ from EPA eligibility requirement the more restrictive shall apply.

(2) Except as provided for in subsection (3), eligible costs shall generally include Step 1, Step 2, and Step 3 costs related to an eligible treatment works, treatment works components or treatment works segments as defined in federal regulations.

(3) The following will not be eligible for state certification:

(a) The cost of collection systems except for those which serve an area where a mandatory health hazard annexation is required pursuant to ORS 222.850 to 222.915 or where elimination of waste disposal wells is required by OAR 340-44-019 to 44. In either case, a Step 1 grant for the project must have been certified prior to September 30, 1979.

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(b) Step 2 or Step 3 costs associated with advanced treatment components.

(c) The cost of treatment components not considered by the Department to be cost effective and environmentally sound.

(4) The estimated grant amount shall be based on a percentage of the estimated eligible cost. The percentage is seventy-five (75) percent of the estimated eligible cost until FY 1985, when it is reduced to fifty-five (55) percent of the estimated eligible cost for new projects. The Commission may reduce the percentage to fifty (50) percent as allowed by federal law or regulation. The Department shall also examine other alternatives for reducing the extent of grant participation in individual projects for possible implementation beginning in FY 1982. The intent is to spread available funds to address more of the high priority needs in the state.

ESTABLISHMENT OF SPECIAL RESERVES

340-53-025 From the total funds allocated to the state the following reserves will be established for each funding year:

(1) Reserve for grant increases of [ten (10)] five (5) percent.

(2) Reserve for Step 1 and Step 2 grant advances of up to ten (10) percent This reserve shall not exceed the amount estimated to provide advances for eligible small communities projected to apply for a Step 3 or Step 2 + 3 grant in the current funding year and one funding year thereafter.

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(3) Reserve for alternative components of projects for small communities utilizing alternative [system] systems of four (4) percent.

(4) Reserve for additional funding of projects involving innovative or alternative technology of four (4) percent.

(5) Reserve for water quality management planning of not more than 1% of the state's allotment nor less than $100,000.

(6) Reserve for state management assistance of up to 4 percent of the total funds authorized for the state's allotment.

(7) The balance of the state's allocation will be the general allotment.

(8) The Director may at his discretion utilize funds recovered from prior year allotments for the purpose of:

(a) Grant increases or

(b) Conventional components of small community projects utilizing alternative systems or

(c) The general allotment.

[(9) If FY82 appropriations are received, the special reserves noted in 340-53-025(1)-(6), as required by federal law and regulation, will be established prior to October 1, 1982.]

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PRIORITY LIST MANAGEMENT

340-53-030 The Department will select projects to be funded from the priority list as follows:

(1) After Commission adoption and EPA acceptance of the priority list, allocation of funds to the state and determination of the funds available in each of the reserves, final determination of the fundable portion of the priority list will be made. The fundable portion of the list will include the following:

(a) Sufficient projects selected according to priority rank to utilize funds identified as the state's general allotment, and

(b) Additional projects involving alternative systems for small communities as necessary to utilize funds available in that reserve.

(2) Projects to be funded from the Step 1 and 2 grant advance reserve will be selected based on their priority point scores and whether they are projected to apply for Step 3 or Step 2 + 3 grant in the current funding year or one funding year thereafter.

(3) Projects included on the priority list but not included within the fundable portion of the list will constitute the planning portion of the list.

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PRIORITY LIST MODIFICATION AND BYPASS PROCEDURE

340-53-035 The Department may modify the priority list or bypass projects as follows:

(1) The Department may add to or rerank projects on the priority list after the adoption of the priority list but prior to the approval of the priority list for the next year providing:

(a) Notice of the proposed action is provided to all affected lower priority projects.

(b) Any affected project may within 20 days of receiving adequate notice request a hearing before the Commission provided that such hearing can be arranged before the end of the current funding year.

(2) The Department will initiate bypass procedures when any project on the fundable portion of the list is not ready to proceed during the funding year.

(a) The determination will be based on quarterly progress reports.

(b) Written notice will be provided to the applicant of intent to bypass the project.

(c) An applicant may request a hearing on the proposed bypass within 20 days of adequate notice. If requested the Director will schedule a hearing before the Commission within 60 days of the request, provided that such hearing can be arranged before the end of the current funding year.

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(d) If a project is bypassed it will maintain its priority point rating for consideration in future years. [If, however, a project is designated as a transition project as described in section 340-53-015(7), it will retain its transition status after being bypassed and will be ranked the following year according to the criteria.] If a project is bypassed for two consecutive years the Commission may remove it from the priority list.

(e) Department failure to certify a project not on the fundable portion of the list or for which funds are otherwise unavailable will not constitute a "bypass".

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Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

FY84 CONSTRUCTION GRANTS PRIORITY SYSTEM AND PRIORITY LIST

Notice Issued On:
Hearing Date: June 24, 1983, 10 a.m.
Comment Period Closes: June 29, 1983, 5 p.m.

WHO IS AFFECTED: Cities, counties, and special districts seeking U. S. Environmental Protection Agency grants for sewerage projects are directly affected.

WHAT IS PROPOSED: The adoption of the FY84 Priority List for Sewerage Works Construction Grants and changes to the priority system used to manage available funds is proposed by the Environmental Quality Commission. Minor changes are also proposed to the administrative rules governing the criteria and management of the Priority List, OAR 340, Division 53. No changes in the priority criteria used to establish priority ratings are proposed.

WHAT ARE THE HIGHLIGHTS: For FY84, the President's budget proposal contains a $2.4 billion request for construction grants. Oregon's FY84 share of the national appropriation is expected to be about $27 million.

The list identifies the priority point scores and relative rankings of projects or project segments potentially eligible for federal construction grants. It contains an identification of the "fundable list," that is, those projects expected to receive funds during fiscal year 1984 and the "planning list," those projects which may expect assistance during future years. Both the "fundable list" and the "planning list" are based on assumed levels of federal appropriations, which may or may not actually become available.

HOW TO COMMENT: Public Hearing - Friday, June 24, 1983 - 10 a.m.
DEQ Offices, Room 1400
522 S. W. Fifth Ave.
Portland, Oregon

The proposed Priority List and the draft rules will be mailed to all cities, counties, and sanitary or sewer districts, and interested parties about May 23, 1983. Written comments should be sent to Ms. B. J. Smith, DEQ Construction Grants Unit, P.O. Box 1760, Portland, OR 97207. The comment period will close at 5 p.m., June 29, 1983.

FISCAL AND ECONOMIC IMPACTS: The Priority List management rules set forth a framework for distribution of a limited amount of federal funds to assist in financing sewerage system improvements for selected, high priority communities.

LAND USE CONSISTENCY: These rules do not directly affect development of local land use programs. However, the Air, Water, and Land Resources Quality Goal elements of these plans should take into account federal (EPA) funding as an implementation tool only where a realistic potential and high priority for funding is consistent with this rule. Alternative financing plans for timely implementation of sewerage system capital improvements should be defined in the local land use programs of communities who cannot be assured of receiving grant funds.

P.O. Box 1760
Portland, OR 97207

8/10/82

FOR FURTHER INFORMATION:

Contact the person or division identified in the public notice by calling 229-5696 in the Portland area. To avoid long distance charges from other parts of the state, call 1-800-452-7813, and ask for the Department of Environmental Quality.

Contains Recycled Materials

BJS:ak

STATEMENT OF NEED FOR RULEMAKING

Pursuant to ORS 183.335(7), this statement provides information on the Environmental Quality Commission's intended actions to consider revisions to OAR Chapter 340, Division 53 rules.

(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

These modifications are necessary to bring existing administrative rules into conformance with the recently enacted federal Municipal Construction Grant Amendments of 1981, PL 97-117, and proposed rules of the U. S. Environmental Protection Agency which implement the law.

(3) Principal Documents Relied Upon in This Rulemaking

(a) Public Law 97-117
(b) 40 CFR Parts 25 and 35
(c) OAR 340 Division 53
(d) OAR 340 Division 41

(4) Fiscal and Economic Impact of Rulemaking

One fiscal impact of this rulemaking is upon municipalities and special districts seeking financial assistance for sewerage projects. The rules affect the distribution of these funds. In communities that receive federal grants, small businesses will benefit because they will pay less to improve or develop sewerage systems. However, since few federal grant dollars are expected to be available to assist communities seeking them, the majority of projects will not receive assistance and will presumably provide the cost of capital improvements through local financing plans for these improvements by passing these costs on to potential or actual users of the sewerage system such as residential, industrial and commercial users. No direct adverse economic impact on small businesses is expected.

BJS:g
WG2303
4-27-83

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. I, May 20, 1983, EQC Meeting

Proposed Modification of Rules for Hazardous Waste Storage or Treatment by Generators, OAR 340-63-215(8) and 340-63-405(1)(a).

Background

Due to a high potential for human health and environmental damage, hazardous waste requires special management controls. This need has been recognized since 1971 when Oregon initially adopted hazardous waste legislation so that today we have a comprehensive hazardous waste management program that controls hazardous waste from the time of generation through transportation, storage, treatment, and disposal.

Concurrently, the U.S. Environmental Protection Agency, under Subtitle C of the Resource Conservation and Recovery Act (1976), has developed a national program for the management of hazardous waste. The Act places hazardous waste management in the federal province but includes provisions for EPA to authorize a state program to operate in lieu of the federal program.

The two-step authorization process consists of a period of Interim Authorization during which a state program is to be "substantially" equivalent to the federal program; and Final Authorization for which full equivalence is required. The purpose of Interim Authorization is to give a state time to bring its program into compliance with federal standards. The DEQ is currently preparing major revisions to its rules with that objective in mind.

However, due to a delay in the adoption of some portions of the federal rules, EPA separated the Interim Authorization process into two phases. The DEQ obtained Phase 1 on July 16, 1981 and, as a consequence, is solely responsible for managing those portions of the hazardous waste program dealing with generators, transporters, and existing management facilities.

The DEQ submitted draft applications for Phase 2 Interim Authorization (standards for licensing storage, treatment and disposal facilities) to EPA in March and August, 1982. A number of deficiencies were identified which

precluded authorization at that time. Through extensive negotiations, however, all the deficiencies but two are solvable without rule changes.

The remaining deficiencies involve OAR 340-63-215(8) and 340-63-405(1)(a), which allow generators to store hazardous waste on-site for up to 180 days without specific approval from the DEQ and to treat wastes subject only to general performance standards. The EPA requires generators to obtain a license if they store for longer than 90 days (under certain conditions, this may be extended for an additional 30 days) or treat more than 2,200 pounds a month of hazardous waste on-site. Unless these rules are modified EPA has stated that they cannot grant DEQ Phase 2 Interim Authorization. It is therefore proposed that the subject rules be modified to comply with EPA requirements.

A public hearing was held in Portland on May 2, 1983. Prior to that hearing, about 125 public notices were mailed to persons that requested participation in our generator rules revisions (those 125 responding to a mailing of over 1,000 notices of rulemaking that were mailed earlier to hazardous waste generators, management facility operators, the media, interested public, etc.) Five persons attended, of whom one testified. Written comments were received from one person not in attendance and are included in the Hearing Officer's Report.

As a result of the hearing, the Department has modified its original proposal, OAR 340-63-215(8), to permit PCBs to be stored in accordance with federal law. Federal law permits the unlicensed on-site storage of PCBs (in a facility meeting EPA specifications) for up to one year whereas the DEQ proposal was to license storage after 90 days. At this time, it does not appear that DEQ, without specific EPA authorization, can apply its more stringent storage standards to PCBs.

The legal basis for this action is ORS 459.445(2) and 459.505.

Alternatives and Evaluation

The alternatives are either to modify or not modify the rules.

Modifying the rules will enable DEQ to obtain Phase 2 Interim Authorization. This would make generators that store and treat hazardous waste subject only to DEQ rules and possibly a DEQ license.

Conversely, if DEQ does not obtain Phase 2 Interim Authorization, the federal program will also be operable and generators that store for in excess of 90 days or treat would have to obtain a federal permit in addition to any requirements that DEQ may impose.

Summation

(1) The DEQ currently operates a comprehensive management program that controls hazardous waste from the time of generation through transportation, storage, treatment and disposal.

(2) The DEQ is in the process of seeking authorization from EPA to manage hazardous waste in Oregon in lieu of the federal program. However, the state program is deficient in that it allows a generator to store hazardous waste without a license for 180 rather than 90 days and to treat wastes on-site without a license.

(3) The proposed modifications of OAR 340-63-215(8) and 340-63-405(1)(a) will remedy these deficiencies and allow DEQ to seek Phase 2 Interim Authorization.

Director's Recommendation

Based upon the summation, it is recommended that the Commission adopt the proposed modifications of OAR 340-63-215(8) and 340-63-405(1)(a).

Bill

William H. Young

Attachments 1. Statement of Need for Rules
2. Hearing Officer's Report
3. Proposed Modifications of OAR 340-63-215(8) and 340-63-405(1)(a)

Richard Reiter:bc
229-6434
May 2, 1983
ZB1777

ATTACHMENT I
Agenda Item No. I
May 20, 1983 EQC Meeting

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF MODIFYING OAR 340-63-215(8) & 340-63-405(1)(a)	)))	STATEMENT OF NEED FOR RULES

STATUTORY AUTHORITY:

ORS 459.445(2) allows generators to store hazardous waste without a license for a period to be set by rule. ORS 459.505 requires generators that treat or store hazardous waste to obtain a license unless exempted by the Commission.

NEED FOR THE RULES:

The current rules allow generators to store hazardous waste without approval for up to 180 days. The Department seeks to lower this period to 90 days and to license storage beyond 90 days in order to demonstrate that its hazardous waste management program is in compliance with federal standards. The Department's program also allows generators to treat hazardous waste on-site subject only to general performance standards. The proposal to license generator treatment facilities that treat more than 2,000 pounds per month (2 pounds if a waste is classified toxic) will also demonstrate further compliance with federal standards.

PRINCIPAL DOCUMENTS RELIED UPON:

Existing federal hazardous waste management rules, 40 CFR Part 262.

FISCAL IMPACT:

Modification of these rules will have no fiscal impact on any person since the rules upon which they are based have been in effect at the federal level since November 19, 1980.

ZC835

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

ATTACHMENT II
Agenda Item No. I
May 20, 1983 EQC Meeting

MEMORANDUM

TO: Environmental Quality Commission DATE: May 2, 1983

FROM: Fred Bromfeld, Hearing Officer

SUBJECT: Public Hearing on the Proposed Modification of Rules for Hazardous Waste Storage or Treatment by Generators, OAR 340-63-215(8) and 340-63-405(1)(a)

On May 2, 1983, a public hearing was held at 9:00 a.m. in Room 1400 of the DEQ offices in Portland to receive testimony on the proposed modification of the subject rules.

About 125 hearing notices were mailed. Five persons were present at the hearing, of whom one testified. Written comments were received from one person not in attendance.

Summary of Testimony

Testimony was given by Mr. Rick Hess, Portland General Electric. Mr. Hess requested that PCBs be exempt from the 90-day limit on unlicensed hazardous waste storage. He reasoned that it conflicted with the federal Toxic Substances Control Act (P.L. 94-469, Oct. 1976) rule allowing generators on-site storage for one year (in a facility meeting EPA specifications). The reduced storage time will result in increased costs to PGE as a result of additional paperwork, coordination of four shipments versus one shipment per year and the additional costs for the disposal of small quantities of PCBs.

Recommendation

P.L. 94-469, Section 18, suggests that a state may not establish any requirement applicable to PCBs unless it is identical to a federal requirement or unless the state has received specific EPA authorization to do so. As neither of these conditions have been met, it is recommended that Mr. Hess' exemption be granted until DEQ's authority to control PCBs can be resolved at a later date.

FB:b
5/2/83
Attachments

9:00 am, MAY 2, 1983 ROOM 1400

PUBLIC HEARING

MODIFICATION OF RULES FOR HAZARDOUS WASTE STORAGE OR TREATMENT BY GENERATORS, OAR 340-63-215(8) AND 340-63-405(1)(a)

	ATTENDEE	REPRESENTING
1.	RICHARD A OLMSTEAD	The Chas H Lilly Co
	Rick Hess	PGE
	Jack McCready	McCready Columbia Corp
	Ed Nolte	" " "
	JOHN HATFIELD	RELIANCE UNIVERSAL INC.

RESPONSE TO COMMENT PERTAINING TO THE PROPOSED MODIFICATION OF RULES FOR HAZARDOUS WASTE STORAGE OR TREATMENT BY GENERATORS, OAR 340-63-215(8) and 340-63-405(1)(a).

The following written comment was received in response to the Notice of Public Hearing distributed April 15, 1983. Both the comment and the Department's response thereto are included as part of the public hearing record.

Comment Summary

A request was received to exempt a lime sludge from the proposed storage requirements. It was stated that some of the sludge has been stored for 20 years with no apparent health or environmental problems.

Response to Comment

The Department believes this request can best be addressed by establishing that the waste (presuming it to be hazardous) is either being beneficially used or disposed. Variance procedures already exist which could allow current practices to continue, and the Department will work with the generator to resolve the problem. No reason is seen for a specific exemption in this rule. Request denied.

FB:b
ZB2136

ATTACHMENT III
Agenda Item No. I
May 20, 1983 EQC Meeting

(1) It is proposed to modify OAR 340-63-215(8) as follows:

340-63-215(8) (a) Except as provided by paragraph (b), a [A] generator shall not store hazardous waste for longer than [6 months] 90 days without [specific approval] obtaining a collection site license from the Department. [Such approval will be based upon a determination that a practicable means of transportation, treatment or disposal is not available, or that there is a good potential for reuse or recycle within a reasonable time frame.] The Department may grant a 30-day extension due to unforeseen, temporary and uncontrollable circumstances.

(b) PCBs shall be stored in accordance with 40 CFR 761.

(2) It is proposed to modify OAR 340-63-405(1)(a) as follows:

340-63-405(1)(a) Generators who store hazardous waste as permitted by rule 340-63-215(8) or who store or treat less than 2 lb/mon. of any one or combination of wastes classified toxic or less than 2,000 lb/mon. of any one or combination of other [their own] hazardous wastes on their own plant site need comply only with rule 340-63-420.

ZC835

VICTOR ATIYEH
GOVERNOR

Department of Environmental Quality

522 S.W. 5th AVENUE, BOX 1760, PORTLAND, OREGON 97207

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. J, May 20, 1983, EQC Meeting

Request for Approval of Preliminary Plan, Specifications and Schedule for Sanitary Sewers to Serve Health Hazard Annexation Area Known as Pelican City, Contiguous to City of Klamath Falls, Klamath County

Background

Pursuant to ORS 222.850-915, the Administrator of the State Health Division, on February 1, 1983, certified an area northwest of the City of Klamath Falls, to be a health hazard because of failing septic systems. The certification orders the area to be annexed to Klamath Falls. The area requiring annexation to correct the health hazard is known as Pelican City. A copy of the annexation order was sent to the City of Klamath Falls. (Attachment 1)

The area was surveyed during April 8 and 9, 1980 and February 23 and 24, 1982. Twenty-nine properties had inadequate sewage disposal.

The City has 90 days after receipt of a certified copy of the order to prepare preliminary plans and specifications, together with a time schedule for removing or alleviating the health hazard.

By letter received March 21, 1983, the City of Klamath Falls has submitted preliminary plans, specifications, and a time schedule for construction of sewers in the proposed annexation area. (Attachment 2)

The Environmental Quality Commission has 60 days from time of receipt of preliminary plans and other documents to determine them either adequate or inadequate to remove or alleviate the dangerous conditions and to certify same to the City.

Upon receipt of EQC certification, the City must adopt an ordinance in accordance with ORS 222.900 which includes annexation of the territory. The City is then required to cause the necessary facilities to be constructed.

Evaluation

The schedule proposed by the City calls for annexation of the territory immediately following certification of plans, specifications, and time schedule by the EQC. All construction work would be completed within two years or less.

The preliminary plans and specifications require construction of gravity sewers within the health hazard annexation area. These would connect at several points to the existing College Industrial Park trunk sewer which exists westerly and northerly of the area. A new raw sewage pump station and force main on California Avenue will be necessary to provide capacity to convey the added flow into an interceptor sewer.

Treatment of collected sewage will be at the City's treatment plant which has adequate capacity to do so.

The staff concludes from the Health Division findings and conclusions that the health hazard in the area is a result of sewage at or on the surface of the ground and disposal systems constructed within high groundwater areas. Installation of a sewage collection system will prevent the discharge of inadequately treated sewage to the ground surface and groundwater.

Thus, the staff concludes that installation of sewers in the area will remove the health hazard.

Summation

1. Pursuant to the provisions of ORS 222.850 to 222.915, the State Health Division issued an order adopting findings and conclusions and certified a copy to the City of Klamath Falls.

2. The City has submitted a preliminary plan and specifications, together with a time schedule to the DEQ for review.

3. ORS 222.898(1) requires the Commission to make a determination of the adequacy or inadequacy of the preliminary plans and other documents submitted by the City within 60 days of receipt.

4. ORS 222.898(2) requires the Commission to certify to the City its aproval if it considers the proposed facilities and time schedule adequate to remove or alleviate the dangerous conditions.

5. The gravity sewer, pump station, and force main proposed by plans and specifications will remove the conditions dangerous to public health within the area to be annexed. The proposed time schedule is satisfactory.

Director's Recommendation

Based upon the findings in the summation, it is recommended that the Commission approve the proposal of the City of Klamath Falls and certify approval to the City.

Bill

William H. Young

Attachments:

1. Health Division Rulings, Findings, Conclusions of Law and Order
2. City Letter of March 15, 1983

James L. Van Domelen:g
WG2300
229-5310
April 26, 1983

BEFORE THE HEALTH DIVISION OF THE DEPARTMENT OF

HUMAN RESOURCES OF THE STATE OF OREGON

In the Matter of the Proposed Annexation of a Certain Territory Commonly known as the PELICAN CITY) Area to the City of Klamath Falls,) Klamath County, Oregon, pursuant to the Provisions of ORS 222.850 to 222.915 Due to Conditions Causing a Danger to Public Health.)	ASSISTANT DIRECTOR'S FINDINGS OF FACT, ULTIMATE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

A hearing on the question of the existence of a danger to public health in the above-entitled matter was held on March 24, 1982 at the Pelican City School Library, 501 McLean, Klamath Falls, Oregon, a place near the proposed area to be annexed, before Samuel J. Nicholls, the hearings officer appointed by the Health Division. The hearings officer considered all the evidence presented by the Division and affected persons and made his FINDINGS OF FACT, CONCLUSIONS OF LAW, and RECOMMENDATIONS. Opportunity for arguments and for petitioning for exclusion of property was thereafter given by publication of notice as prescribed by rules of the Division. Two petitions for exclusion were received and a hearing on these petitions was provided on September 29, 1982 as required by rule and statute. Following this hearing the hearings officer, upon consideration of all evidence presented, issued his FINDINGS OF FACT, CONCLUSIONS OF LAW and RECOMMENDATIONS, and opportunity was provided the petitioners and affected persons to make arguments or objections thereto.

The Assistant Director, having considered the findings,

conclusions and recommendations of the hearings officer, now makes the following disposition of this matter.

FINDINGS OF FACT

I

By order of the Oregon State Health Division dated February 16, 1982, a hearing was ordered in this matter for the following purposes: To determine whether a danger to public health exists due to conditions existing in the territory proposed to be annexed and described in a resolution dated March 13, 1979 of the Klamath County Board of Health.

II

Notice of said order and resolution was given by the Health Division by publishing them once each week for two successive weeks in the Herald & News, a newspaper of general circulation within the City of Klamath Falls, Oregon, and the territory proposed to be annexed, and by posting copies of the order and resolution in each of four public places within the territory proposed to be annexed.

III

There is no community collection system for sewage disposal and treatment within the area proposed to be annexed; all units depend upon individual subsurface sewage disposal facilities, primarily septic tanks and drain fields.

IV

There are two primary components to a septic tank and drain field system. The first is the septic tank itself, which is a

water-tight box which serves as a settling basin to settle out solids. The second component is a drain field, which is a series of underground pipes through which the sewage effluent is pumped into the ground.

V

Treatment of raw sewage occurs in the soil of the drain field where microorganisms in the presence of oxygen break down pathogenic or disease-causing organisms which are always present in human sewage.

VI

Properly constructed and functioning subsurface disposal systems do not pump sewage effluent onto the ground surface. Sewage must be retained in the soil to be adequately treated bacteriologically and to be rendered non-septic. Sewage effluents rising or discharging onto the ground surface from a subsurface sewage disposal facility are inadequately treated and essentially raw.

VII

Limiting factors to the effective use of a subsurface drainage system are soil type of the drain field and the level of the water table. Both factors affect the amount of oxygen in the soil, which is necessary for adequate bacteriological treatment of the effluent. Presence of excess water in the drain field limits the amount of oxygen available to the microorganisms which break down the pathogenic organisms in the sewage and render them non-septic.

Non-treated sewage being discharged onto the ground may be detected by a very strong characteristic odor and appearance. In addition, non-treated sewage rising to the surface may be detected by finding standing water on the surface of a drain field which does not appear on adjacent areas, especially when combined with a lush green growth of grass over the drain field area.

IX

One method used to detect an improperly functioning subsurface drainage system is to introduce a dye into the toilet of a particular system, flush water through the system, and watch to see if the hydraulic action of the system carries that dye to the surface of the ground. If the dye appears on the ground at all, the system is not functioning properly. If the dye appears on the surface within a short period of time, virtually no treatment is being provided to the sewage discharged into that particular system.

X

Pathogens, or disease-causing agents, are found in the fecal material of mammals. Microbiological testing for the presence of the following organisms is performed to investigate the presence of inadequately treated sewage: Total coliform, fecal coliform, and fecal streptococcus organisms. These organisms are not themselves pathogens but are indicators of the presence of fecal matter which may contain pathogens.

1. Coliform organisms are bacteria widely distributed in nature, always found in the feces of mammals; therefore they are

a reliable indicator of the presence of some contaminant which may or may not be a fecal source.

2. Fecal coliform organisms, if present, show that the contamination is definitely from a fecal source, and the danger of transmission of disease is therefore immediate and serious.

3. The presence of fecal streptococcus organisms indicates the presence of a contaminant which may or may not be from a fecal source. The relatively short life span of these organisms indicates that the contamination is quite recent.

XI

A statistical method used to report test results for these microorganisms is the MPN method, which stands for the MOST PROBABLE NUMBER, which is a statistical count of what would be the most probable number of colonies of these individual organisms per 100 milliliters of water.

XII

The following conditions existed on properties within the area proposed for annexation, and without evidence to the contrary are presumed to continue to exist:

1. On April 8, 1980 at tax lot 2400 on tax map 3809-1914, 3520 Lindberg, a large open hole in the backyard served as a catch basin for sewage effluent from the house. A dye flushed down the toilet appeared in the hole within 5 minutes.

2. On April 8, 1980 at tax lot 900 on tax map 3809-1914, 3502 Chelsea, there was standing water in ditches in the drain field area. A water sample taken from the area indicated the

presence of total coliform (MPN 23), fecal coliform (MPN 9.1), and fecal streptococcus (MPN 3.6) organisms.

3. On April 9, 1980 at tax lot 700 on tax map 3809-1914, 3527 Chelsea, sewage from the house surfaced along the driveway, as confirmed by dye flushed down the toilet and observed the next day. Water sample taken from this water showed the presence of total coliform (MPN 4,600), fecal coliform (MPN 430), and fecal streptococcus (MPN 4,600) organisms.

4. On April 9, 1980 at tax lot 800 on tax map 3809-1914, 3512 Quarry, a pool of water near the base of the duplex on that lot had the characteristic odor of sewage. A water sample showed the presence of total coliform, fecal coliform, and fecal streptococcus organisms, all with an MPN in excess of 11,000. In addition, a water meter near the front of the property was flooded with water which had the characteristic odor of sewage. A water sample taken of this water showed the presence of total coliform (MPN 930), fecal coliform (MPN 36), and fecal streptococcus (MPN 4,600) organisms.

5. On April 9, 1980 at tax lot 400 on tax map 3809-1914, 3532 Quarry Street, there was surface water in the area of the drain field with the characteristic odor of sewage. A water sample showed the presence of total coliform (MPN greater than 11,000), fecal coliform (MPN 11,000), and fecal streptococcus (MPN greater than 11,000) orgnanisms. Also, a water meter at the front of this property was flooded with water having the characteristic odor and appearance of sewage. A water sample of this

water showed the presence of total coliform (MPN greater than 11,000), fecal coliform (MPN 4,600), and fecal streptococcus (MPN greater than 11,000) organisms.

6. On April 8, 1980 at tax lot 1700 on tax map 38-9-1911, 323 Coli, standing water in the area of the drain field surrounded with lush green grass had the characteristic odor of sewage. A water sample showed the presence of total coliform (MPN 240,000), fecal coliform (MPN 15, 000), and fecal streptococcus (MPN 11,000) organisms.

7. On April 8, 1980 at tax lot 1100 on tax map 3809-1911, Route 5, Box 665, surface water in the drain field area had the characteristic odor and appearance of sewage. A water sample showed the presence of total coliform, fecal coliform and fecal streptococcus organisms, all with an MPN of 11,000.

8. On April 8, 1980 at tax lot 700 on tax map 3809-1911, Route 5, Box 660, water on the surface of the drain field area had the characteristic odor and appearance of sewage and was surrounded with lush green grass. A water sample showed the presence of total coliform (MPN greater than 1,100,000), fecal coliform (MPN greater than 1,100,000), and fecal streptococcus (MPN 43,000) organisms.

9. On April 9, 1980 at tax lot 400 on tax map 3809-1913, 3528 Lakeport, effluent flowed from the septic system onto the ground surface of the lot next door, as confirmed by dye flushed into the system. A water sample showed the presence of total coliform (MPN 11,000), fecal coliform (MPN 11,000) and fecal

streptococcus (MPN 930) organisms.

10. On April 9, 1980 at tax lot 1200 on tax map 3809-1912, 3642 Lakeport, surface water in the area of the drain field displayed the characteristic odor and appearance of sewage. A water sample taken showed the presence of total coliform (MPN greater than 11,000), fecal coliform (MPN 2,100), and fecal streptococcus (MPN 930) organisms.

11. On February 24, 1982 at tax lot 7800 on tax map 3809-1942, 302 McCourt, a resident indicated that sewage surfaced at different times during the year. Laundry waste flows into the ditch near the house. Surface water near the septic system displayed the characteristic odor and appearance of sewage. The water sample showed the presence of total coliform (MPN 93,000), fecal coliform (MPN 7,300), and fecal streptococcus (MPN greater than 3,000) organisms.

12. On February 24, 1982 at tax lot 4300 on tax map 3809-2023, 112 D Street, a pipe coming from the house discharged gray water directly onto the ground surface. A large quantity of surface water near the drain field displayed a very strong characteristic odor of sewage. The water sample showed the presence of total coliform (MPN 93,000), fecal coliform (MPN 93,000), and fecal streptococcus (MPN greater than 3,000) organisms. In addition on April 9, 1980, effluent running down-slope from the house displayed the characteristic odor of sewage and was gray and slimey. A dye confirmed this water to be sewage effluent. A water sample taken on April 10, 1980 showed the

presence of total coliform (MPN greater than 1,100,000), fecal coliform (MPN greater than 1,100,000), and fecal streptococcus (MPN 3,600) organisms.

13. On April 8, 1980 at tax lot 2400 on tax map 3809-1942, 435 Torrey, dye introduced into the toilet surfaced immediately outside. A water sample showed the presence of total coliform (MPN 36,000), fecal coliform (MPN 36,000), and fecal streptococcus (MPN greater than 30,000) organisms.

14. On February 24, 1982 at tax lot 7600 on tax map 3809-1942, 318 McCourt, the renter stated that septic water appeared on the ground surface outside and that the toilet did not function properly. An attempt was made to dye the toilet, but the dye would not flush down. Standing water over the drain field displayed the characteristic odor and appearance of sewage. A water sample showed the presence of total coliform (MPN 93,000), fecal coliform (MPN greater than 3,000), and fecal streptococcus (MPN greater than 3,000) organisms. Also on April 8, 1980, a dye was introduced into the toilet and immediately surfaced outside. A water sample taken then showed the presence of total coliform (MPN 240,000), fecal coliform (MPN greater than 30,000), and fecal streptococcus (MPN greater than 30,000) organisms.

15. On April 9, 1980 at tax lot 400 on tax map 3809-2023, 109 D Street, dye introduced into the toilet immediately surfaced outside. The surface water displayed the characteristic odor and appearance of sewage. A water sample showed the presence of total

coliform, fecal coliform and fecal streptococcus organisms, all with an MPN greater than 1,100,000.

16. On February 23, 1982 at tax lot 7500 on tax map 3809-1942, 2831 Harvard, sewage effluent surfaced in the backyard, as confirmed with a dye flushed into the system which immediately surfaced outside. A water sample showed the presence of total coliform (MPN greater than 1,100,000), fecal coliform (MPN 9,100), and fecal streptococcus (MPN greater than 3,000) organisms.

17. On February 24, 1982 at tax lot 4300 on tax map 3809-2023, 106 D Street, surface water in the drain field area displayed the characteristic odor and appearance of sewage. A water sample showed the presence of total coliform (MPN 1,100,000), fecal coliform (MPN 249,000), and fecal streptococcus (MPN 9,100) organisms.

18. On April 8, 1980 at tax lot 4600 on tax map 3809-1914, 3428 Chelsea, sewage effluent flowed from under the southwest corner of the house, as confirmed by a dye which was flushed into the system and appeared on the surface within 10 minutes. The flowing effluent displayed a harsh characteristic odor of sewage. A water sample found the presence of total coliform, fecal coliform and fecal streptococcus organisms, all with an MPN greater than 1,100,000.

19. On April 8, 1980 at tax lot 5000 on tax map 3809-1914, 3420 Chelsea, sewage effluent flowed from beneath a shed adjacent to the mobile home of the property onto the lawn, as

confirmed by a dye which was flushed into the system and appeared on the surface within 12 mintues. A water sample showed the presence of total coliform (MPN greater than 1,100,000), fecal coliform (MPN 290,000), and fecal streptococcus (MPN greater than 3,000) organisms.

20. On April 8, 1980 at tax lot 4900 on tax map 3809-1914, 303 Acosta, effluent displaying the characteristic odor and appearance of sewage flowed on the surface from beneath the garage adjacent to the residence. A blue dye flushed into the system appeared on the surface the next day. A water sample showed the presence of total coliform (MPN greater than 1,100,000), fecal coliform (MPN greater than 100,000), and fecal streptococcus (MPN 240,000) organisms.

21. On April 8, 1980 at tax lot 4800 on tax map 3809-1914, 3405 Pelican Street, surface water in the backyard displayed the characteristic odor and appearance of sewage. A green dye flushed into the system appeared on the surface within 10 minutes and flowed from the end of a pipe into a ditch running along the south side of the residence; then formed a puddle in and along across the street; then crossed the street and flowed down the other side. A water sample showed the presence of total coliform (MPN 240,000), fecal coliform (MPN 240,000), and fecal streptococcus (MPN 20,000) organisms. The owner of the residence indicated that even though their septic tank is pumped every 6 months, the system still fails. The owner also stated that sewage from the residence next door flowed into their yard.

22. On April 9, 1980 at tax lot 3700 on tax map 3809-1914, 3429 Lindberg, surface water bubbling up from the ground displayed the characteristic odor and appearance of sewage. This water flowed across a garden site on the adjacent lot south of the residence. A dye flushed into the system appeared on the surface within 10 minutes. A water sample showed the presence of total coliform (MPN 240,000), fecal coliform (MPN 23,000), and fecal streptococcus (MPN 29,000) organisms.

23. On April 8, 1980 at tax lot 700 on tax map 3809-1914, 223 Pelican Avenue, a straight pipe from the house emptied effluent into a crumbling cesspool structure with a cover that is rotted and disintegrating. The condition of the cover permits the entry of insects and rodents. A green dye was flushed into the system and appeared on the surface outside.

24. On April 8, 1980 at tax lot 1700 on tax map 3809-1914, 670 Lakeport, surface water above the drain field displayed the characteristic odor and appearance of sewage. Dye flushed into the system surfaced immediately. Laundry waste water flows from a pipe out of the side of the house onto the soil surface. A water sample showed the presence of total coliform, fecal coliform and fecal streptococcus organisms, all with an MPN greater than 1,100,000.

25. On April 8, 1980 at tax lot 1300 on tax map 3809-1941, 2926 Montelius, surface water displayed the characteristic odor and appearance of sewage. Dye flushed into the system immediately surfaced. A water sample showed the presence of total coliform

(MPN 1,100,000), fecal coliform (MPN 200), and fecal streptococcus (MPN 43,000) organisms. The business on this site deals with second-hand auto parts.

26. On April 8, 1980 at tax lot 200 on tax map 3809-1944, 2622 Montelius, a hole dug in the garden area contained water displaying the characteristic odor and appearance of sewage. Dye flushed into the system surfaced in the drain field area the following day. A water sample showed the presence of total coliform (MPN 1,100,000), fecal coliform (MPN 1,100,000), and fecal streptococcus (MPN 15,000) organisms.

27. On April 8, 1980 at tax lot 800 on tax map 3809-1941, 2921 Alma Alley, a dye test confirmed that sewage effluent was flowing from the drain field surfaces into a low boggy swamp. A water sample showed the presence of total coliform (MPN 1,100,000), fecal coliform (MPN 23,000), and fecal streptococcus (MPN 15,000) organisms.

28. Fish and Chips Restaurant located on Highway 97, tax lot 3500 on tax map 3809-2023, is located on a rise separated from a lower level by a steep enbankment. Dye flushed into the system appeared on the surface of the drain field on the lower level the following day. A water sample showed the presence of total coliform (MPN 460,000), fecal coliform (MPN 3,000), and fecal streptococcus (MPN 23,000) organisms.

29. The structure at tax lot 1500 on tax map 3809-2032, 2820 Biehn, is a gasoline service station. Surface water over the drain field which is at the bottom of a hill displayed the charac-

teristic odor and appearance of sewage. A water sample showed the presence of total coliform (MPN 11,000), fecal coliform (MPN 430), and fecal streptococcus (MPN 430) organisms.

XIII

In the area proposed for annexation, the possibility of contracting disease through direct or indirect contact with raw, inadequately treated sewage occurs due to:

1. Normal daily activities carried on in and around the residential living units in the area.

2. Children playing in the area are exposed to contaminated surface water.

3. Domestic animals found in the subject area are possible vectors of pathogens to residents within and without the area.

4. Other vectors, such as insects, rodents or other pests, could transmit pathogens to persons within and outside the area.

XIV

Persons living within the territory proposed for annexation who contract diseases as discussed above could in turn carry diseases contracted to persons living outside the subject territory either by direct personal contact or by contaminating food to be consumed by persons outside the territory. In addition, persons from outside the territory are exposed to the conditions discussed above by virtue of the passage of Highway 97 through the area, by the existence of a school adjacent to the area and by the existence of public accommodations within the area, such as two motels, two restaurants and a service station.

XV

By order of the Oregon State Health Division dated August 24, 1982, a hearing was ordered in this matter for the following purpose: To receive evidence relative to the petitions for exclusion of territory for the territory proposed to be annexed in the within proceeding. Petitioners were: Burton E. and Thelma G. Gray, owners of tax lots 1000 and 1100 on tax map 3809-1941, located on Lakeport Boulevard in Klamath Falls, Oregon 97601; Freida M. and Clecy R. Sweet, owners of tax lots 500 and 600 on tax map 3809-1944, also known as 2731 Alma Alley, Klamath Falls, Oregon 97601; and Nella Castro, owner of tax lot 700 on tax map 3809-1944, also known as 2695 Alma Alley, Klamath Falls, Oregon 97601.

XVI

Notice of the hearing was given by the Health Division by publishing the notice in the Herald & News, a newspaper of general circulation in the City of Klamath Falls, Oregon, and the territory proposed to be annexed.

XVII

No danger to public health presently exists on any of the property proposed for exclusion from the annexation.

XVIII

None of the areas proposed for exclusion would be surrounded by the territory remaining to be annexed.

XIX

Statewide planning goals established under ORS ch 197 would

not be violatd by the reduction of the boundaries of the area proposed for annexation by excluding any of the property proposed for exclusion.

XX

Tax lots 500, 600, and 700 of tax map 3809-1944 would not be directly served by the facilities necessary to alleviate the danger to public health existing in the area remaining to be annexed.

XXI

Tax lots 1000 and 1100 of tax map 3809-1941 would be directly served by the facilities necessary to alleviate the danger to public health existing in the area remaining to be annexed (after excluding the area described in XX above) in that the sewer lines which would be constructed by the City of Klamath Falls to service the remaining area in question would be located in the roadway directly adjacent to, and pass directly in front of, said lots 1000 and 1100.

XXII

The area proposed for annexation, as described in the county resolution and after excluding tax lots 500, 600, and 700 of tax map 3809-1944, is contiguous to the City of Klamath Falls, Oregon, and is within the urban growth boundary of the city.

ULTIMATE FINDINGS OF FACT

1. The improper and inadequate installations for the disposal treatment of sewage or other contaminated or putrifying wastes, as described in paragraph XII, constitute conditions

which are conducive to the propogation of communicable or contageous disease-producing organisms and which present a reasonably clear possibility that the public generally is being exposed to disease-caused physical suffering or illness.

2. Such conditions do not exist within the area of tax lots 500, 600 and 700 on tax map 3809-1944 previously described, and such territory further qualifies for exclusion from the boundary proposed for annexation in the county resolution.

3. The area of tax lots 1000 and 1100 on tax map 3809-1941 would be directly served by the sanitary facilities necessary to alleviate the danger to public health existing within the remaining territory to be annexed after exclusion of tax lots 500, 600, and 700 on tax map 3809-1944.

4. The area remaining for annexation after excluding tax lots 500, 600 and 700 on tax map 3809-1944, which remaining area is legally described in the attached Exhibit "A" made a part hereof, is contiguous to the City of Klamath Falls, Oregon, and is within the urban growth boundary of the city.

CONCLUSIONS OF LAW

Under ORS 222.880(3) and (4), and OAR 333-12-045, the property represented by tax lots 500, 600, and 700 on tax map 3809-1944 would be appropriately excluded from the area proposed for annexation.

Under ORS 222.880(3) and (4), and OAR 333-12-045, the property represented by tax lot 1000 and 1100 of tax map 3809-1941 would not qualify for exclusion from the area proposed for annexation.

A danger to public health as defined in ORS 222.850(4) has been found, as provided in ORS 222.850 to 222.915, to exist within the territory described in paragraph 4 of the ULTIMATE FINDINGS OF FACT above. Such area is otherwise eligible for annexation to the City of Klamath Falls in accordance with ORS 222.111 and is within the urban growth boundary of the City of Klamath Falls.

ORDER

IT IS ORDERED that a certified copy of these findings and conclusions be filed with the City of Klamath Falls and with the Environmental Quality Commission; and that upon their receipt of such findings and conclusions, the City of Klamath Falls and the Commission proceed in accordance with ORS 222.897 and 222.900.

DATED this 1 day of February, 1983.

KRISTINE M. GEBBIE, Assistant
Director, Human Resources
Administrator, Health Division

Notice: You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this order. Judicial review is pursuant to the provisions of ORS 183.482.

A parcel of land in Sections 19 and 20, T. 38 S., R. 9 E., W.M., being more particularly described as follows:

PARCEL #1: Beginning at the Section Corner common to Sections 17, 18, 19 and 20, T. 38 S., R. 9 E., W.M.; thence S 89°07'E., along the South line of Section 17, 1690.22 feet; thence S 00°51'W., 1308.12 feet; thence N 89°10'W., 371.28 feet; to a point being the Northeasterly corner of Opportunity Addition, Klamath County, Oregon; thence S 00° 26'W., along the Easterly line of said Opportunity Addition, 1320.6 feet to the Southeast corner of said Addition; thence West along the South line of said Addition, to the intersection of said line with the Westerly right-of-way line of the Dalles-California Highway (revised line-constructed 1931) as shown on Oregon State Highway Department Drawing No. 3B 14-15; thence Southeasterly and Southerly along the said Westerly right-of-way (also known as Biehn Street) to a point, said point being the intersection of said West right-of-way and the South line of Highway Addition, according to the official plat thereof on file in the records of Klamath County, Oregon; thence West along said South line to its intersections with the East right-of-way line of Lakeport Boulevard; thence South and Southeasterly along said right-of-way line of Lakeport Boulevard to its intersection with the said West right-of-way line of Biehn Street; thence Southerly along said West right-of-way line to its intersection with the South line of Section 20, T. 38 S., R. 9 E., W.M.; thence West, 1280 feet, more or less, along said line to the section corner common to Sections 19, 20, 29 and 30, T. 38 S., R. 9 E., W.M.; thence North, along the East line of Section 19, 350 feet; thence West, parallel to the South boundary of Section 19, 315 feet; thence North, parallel to the East boundary of Section 19,

19

100 feet; thence West, parallel to the South boundary of Section 19, 350 feet; thence North, parallel to the East boundary of Section 19, 410 feet; thence East, parallel to the South boundary of Section 19, 148 feet; thence North, parallel with the East boundary of Section 19, 468.5 feet; thence East, parallel with the South boundary of Section 19, 94 feet; thence North, parallel with the East boundary of Section 19, 575.5 feet; thence West, parallel with the South boundary of Section 19, 266.55 feet to the Southwest corner of a tract of land described in Volume M76, Page 9296 of the DEED RECORDS of Klamath County; thence Northerly, along the Westerly boundary of said parcel to the Southerly boundary of Lakeport Boulevard; thence Northeasterly, 60.00 feet to a point on the Northeasterly boundary of Lakeport Boulevard; thence Southeasterly, along the Northeasterly boundary of Lakeport Boulevard to the Southwesterly boundary of the Southern Pacific Railroad; thence Northwesterly, along the Southwesterly boundary of said railroad to the Southeast corner of Lot 12, Block 4 of Pelican City, a duly recorded subdivision in Klamath County, Oregon; thence South 79°40'W, along the South boundary of Pelican City, 298.98 feet to the Easterly boundary of Lakeport Boulevard; thence North 10°20'W, along the East boundary of Lakeport Boulevard, 2000.0 feet to the Northwest corner of Lot 1, Block 1 of Pelican City; thence North 79°40'E, 32.4 feet to the Northeast corner of said Lot 1, Block 1, said point also being the Westerly boundary of the Southern Pacific Railroad; thence Southerly, along said railroad boundary to the North line of Section 19; thence East, along said section line to the point of beginning.

PARCEL #2: Commencing at the Southeast corner of Section 19; thence South 89° 27'30"W, along the South line of Section 19, 1180 feet to the true point of beginning; thence North, parallel with the East boundary of Section 19, 350 feet; thence Westerly, 150 feet to the Easterly boundary of Buena Vista Addition to Klamath Falls, Oregon; thence North 00°04'30"E, along said boundary 480.0 feet more or less to the Northwest corner of a tract of land described in Volume M66, Page 12509 of the DEED RECORDS of Klamath County; thence Easterly, along the boundary of said deed volume, 363 feet to a point that is 830 feet Northerly and 967 feet Westerly from the Southeast corner of said Section 19; thence North, parallel with the East boundary of Section 19, 506 feet to the North boundary of the SE¼ SE¼ of said Section 19; thence Westerly, 365 feet to the Northwest corner of the SE¼ SE¼ of said Section 19; thence North, along the West boundary of the NE¼ SE¼ of said Section 19, 581 feet; thence East, parallel with the South boundary of Section 19, 410.45 feet; thence North 1°34'E, 213.19 feet; thence Northwesterly, along the arc of a 492.96 foot radius curve to the left, to the Southwesterly boundary of Lakeport Boulevard; thence Northwesterly along said boundary to the most Easterly Northeast corner of Lot 1, Block 1, Klamath Lake Addition to Klamath Falls, Oregon; thence Southerly 14.25 feet to the Southeast corner of said Lot 1; thence Westerly along the South boundary of said Block 1, 360 feet ; thence Southerly, to and along the West boundary of Harvard Street, 280.0 feet to the Southeast corner of Block 3 of said addition; thence West, along the South boundary of said Block 3, 360.0 feet to the Southeast corner of Block 4 of said addition; thence South, along the West boundary of Corvallis Street, 160.0 feet to the Southeast corner of Lot 1,

Block 6 of said addition; thence West, along the North boundary of the alley in said Block 6 and the extension thereof, 360.0 feet to the East boundary of Block 5 of said addition; thence North, along the East boundary of said Block 5, 54.7 feet to the Northerly corner of said Block 5; thence S 34°39'W, along the Southeasterly boundary of Hanks Street, 368.5 feet to the Northeast corner of the SE¼ of the NE¼ of the SW¼ of said section 19, said point also being on the boundary of Buena Vista Addition to Klamath Falls, Oregon; thence along the boundarys of Buena Vista Addition as follows: S 0°16'W., 626.35 feet; N 89°27'30"E., 1327.7 feet; thence S 00° 04'30"W., 1337.0 feet; thence N 89°27'30"E., 150.0 feet, more or less to the true point of beginning.

SAVE AND EXCEPT tax lot 500 on tax map 3809-1944 Klamath County, Oregon, more particularly described as follows:

Beginning at a point which is 1330 feet Westerly on the section line between Sections 19 and 30, Township 38 South Range 9 East, W.M., and Northerly 1199 feet parallel with section line between Section 19 and 20 of said Township and Range from corner common to Sections 19, 20, 29 and 30, Township 38 South Range 9 East, W.M.; thence Easterly and parallel with the section line between Section 19 and 30, a distance of 363 feet to a point; thence Northerly and parallel with the section line between Sections 19 and 20 a distance of 121 feet; thence Westerly on the 16th line parallel with Section line between Sections 19 and 30 a distance of 363 feet to a point; thence Southerly and parallel with section line between Sections 19 and 20 a distance of 121 feet to place of beginning, containing 1 acre more or less, situate in SE1/2 of SE1/4 of Section 19, Township 38 S.R. 9 East, W.M.

SAVE AND EXCEPT tax lot 600 on tax map 3809-1944, more particularly described as follows:

The Northerly 45' of the following described real property in Klamath County, Oregon:

Beginning at a point which is 1330 feet Westerly on Section line between Sections 19 and 30, Twp. 38 South, Range 9 E.W.M., and Northerly 830 feet parallel with Section line between Sections 19 and 20 of said Twp. and Range from corner common to Sections 19, 20, 29 and 30, Twp. 38 S., R. 9 E.W.M.; thence Easterly and parallel with Section line between Sections 19 and 30 a distance of 363 feet to a point; thence Northerly and parallel with Section line between Sections 19 and 20, a distance of 369 feet to a point; thence Westerly parallel to the 16th line and parallel with Section line between Sections 19 and 30 a distance of 363 feet to a point; thence Southerly and parallel with Section line between Sections 19 and 20 a distance of 369 feet to place of beginning, containing 3.00 acres, more or less, located in the SE-1/4 of SE-1/4 of Section 19, Twp. 38 South, Range 9 E.W.M.

SAVE AND EXCEPT tax lot 700 on tax map 3809-1944, more particularly described as follows:

Beginning at a point which is Thirteen Hundred Thirty (1330) feet Westerly on Section line between Sections 19 and 30, Twp. 38 S. Range 9 E.W.M. and Northerly Eight Hundred Thirty (830) feet parallel with Section line between Sections 19 and 20 of said Twp. and Range from Corner common to Sections 19, 20, 29 and 30 Twp. 38 S.R. 9 E.W.M., thence Easterly and parallel with Section line between Sections 19 and 30 a distance of Three Hundred Sixty Three (363) feet to a point; thence Northerly and parallel

with Section line between Sections 19 and 20 a distance of Three Hundred Sixty Nine (369) feet to a point; thence Westerly parallel to the 16th line and parallel with Section line between Sections 19 and 30 a distance of Three Hundred Sixty Three (363) feet to a point; thence Southerly and parallel with Section line between Sections 19 and 20 a distance of Three Hundred Sixty Nine (369) feet to place of beginning, containing Three acres (3.00) more or less, located in the SE 1/4 SE 1/4 of Section 19, Twp. 36 S. Range 9 E.W.M. Less the Northerly 45 feet of the above described real property in Klamath County, Oregon.

CITY OF KLAMATH FALLS, OREGON

AN EQUAL OPPORTUNITY EMPLOYER
P.O. Box 237
97601

ATTACHMENT 2

SISTER CITY
ROTORUA, NEW ZEALAND

#12

RECEIVED
MAR 21 1983
Water Quality Division
Dept. of Environmental Quality

March 15, 1983

Environmental Quality Commission
Department of Human Resources
1400 SW 5th Ave.
Portland, OR 97201

Dear Sirs:

As per your request dated February 4, 1983, the City of Klamath Falls has prepared a preliminary plan, specifications and schedule as outlined in ORS 222.897.

The proposed plan for the collection system is attached and marked "Exhibit A". The collection system will consist of the following:

Quantity	Item	Estimated Cost
30,780 L.F.	8" gravity Class 1500 A.C.	$ 769,500.00
1,420 L.F.	10" pressure A.C.	49,700.00
2,480 L.F.	12" gravity Class 1500 A.C.	89,280.00
1,425 L.F.	21" gravity A.C.	106,875.00
86 Ea.	Manholes	94,600.00
6 Ea.	Lampholes	900.00
2 Ea.	Pumps & Miscellaneous	12,500.00
	TOTAL	$1,123,355.00
	Engineering, Legal & Contingencies	280,845.00
	TOTAL PROJECT	$1,404,200.00

Specifications for construction will be the Standard Specifications for Public Works construction prepared by the Oregon Chapter of the American Public Works Association and adopted by the Council of the City of Klamath Falls. Standard specifications of the City of Klamath Falls will also be used. Selected City standards have been included for your information.

The following is a proposed time block for completion of the facilities necessary to remove the danger to public health which exists in the Pelican City area:

Description	Time
Review by Commission	60 days
City Council to adopt ordinance	15 days
Time for Appeal	60 days

Survey, Engineering, plans & specifications	360 days
City Council authorize call for bids	20 days
Award of bid by City Council	15 days
Construction total project	250 days

Several of the above time blocks will overlap and some will run consecutively. The total project time could be done in two years or less.

If the City of Klamath Falls can be of any assistance in this matter, please feel free to contact us.

Sincerely,

Harold Derrah
City Manager

Enc.

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. K, May 20, 1983, EQC Meeting

Public Hearing on a Request for a Variance from Noise Control Rules for Motor Sports Vehicles and Facilities (OAR 340-35-040) at Jackson County Sports Park in White City.

Background and Problem Statement

A request for a variance has been received from the Jackson County Parks and Recreation Department for their racing facility located near White City in Jackson County. Strict compliance with the noise control regulations for motor sports requires drag race vehicles to only be operated with approved muffler systems installed and operate within specified curfews. The County has requested a variance from the muffler requirement for drag racing cars and motorcycles operating at the Jackson County Sports Park's drag strip.

The Sports Park was proposed as an area for several recreational activities that generate noise. This includes firearm ranges and several motor racing tracks. One of the reasons the County chose the White City site was because of the low residential population density and a reasonable buffer zone. The nearest homes are approximately 2500 feet from the drag strip. A very few number of residences are located west of the track while a larger number of homes are located north of Highway 140 and the track.

The County also attempted to reduce noise levels from the drag strip toward residential areas west and north of the track by constructing an earthen noise suppression berm. Generally, such berms will provide an added noise reduction of approximately 10 dBA (decibels) at locations effectively shielded by the device. The majority of the residents receive at least some noise control benefits from this berm. Thus, the County believes that

the infrequent noise from activities at the Sports Park is compatible with the community.

Some members of the community believe the Sports Park is compatible with the area. However, others believe that drag strip noise impacts are excessive and that further controls are needed. The Park was opened to racing in 1979 with two drag race events and has grown to a scheduled 16 events for the 1983 race season. The addition of lights at the drag strip in the latter part of the 1982 race season has allowed nighttime racing. As 10 nighttime events are scheduled for 1983, it may be expected that the community will become more sensitive to race noise impacts.

The motor sports noise control rules were adopted in November, 1980 subsequent to public hearings held in Medford as well as other locations. During the hearings, the County testified that they were opposed to mandatory muffler requirements at their facility. Staff believes that the typical racing muffler reduces vehicle noise emissions by approximately 10 dBA. The rules became effective in 1982 thus providing over one year as a phase-in period for racers and track operators. During the 1982 racing season, Jackson County claimed they were not aware of the mandatory muffler requirement and were not prepared to immediately implement this control measure at the drag strip. However, no movement toward compliance was attempted. The track then requested each scheduled event be granted an exception (Department granted variance) from the muffler requirement because of the expected large number of out-of-state competitors. In addition, the County requested the drag strip be exempted from the muffler requirements due to the claimed effectiveness of a sound suppression berm that shields portions of the strip from receptors located west and northwest of the facility.

The County claims their records indicate that approximately 18.5% of their participants reside outside Oregon. As it is claimed that none of the non-Oregon drap strips require mufflers, the County believes these competitors would not race under mandatory muffler requirements and thus a substantial loss of revenue would result.

Since 1982, the drag strip at Jackson County Sports Park has been operating under Department granted exceptions to the muffler requirement. Initial exceptions were granted as a means toward developing compliance capability, and later to provide time to consider whether the noise suppression berm met the intent of the regulations. The Motor Sports Advisory Committee, a committee of ten citizens plus one DEQ member, evaluated the request to accept the noise berm as an adequate muffler under the rules. The rule defines an adequate muffler to include "any other device demonstrated effective and approved . . .". This Committee recommended against approval of the noise berm as meeting the intent of the rules. Under the existing motor sports rules, the Department does not believe it may accept the noise berm as an "adequate muffler" and thus grant an exception from

the muffler requirements because of the noise berm. Thus, it was recommended that this issue be addressed to the Commission in the form of a variance request.

The Commission has legal authority to grant a variance from the noise control rule pursuant to ORS 467.060 and OAR 340-35-100.

Alternatives and Evaluation

Jackson County requests a variance from the muffler requirements of the motor sports noise control rules because they claim the sound suppression berm is an acceptable method of reducing drag racing noise to acceptable levels at noise sensitive property in the vicinity of the facility. In addition, they claim the muffler requirement would have an adverse effect on park revenues due to the number of out-of-state competitors who would otherwise not compete in Oregon.

Jackson County proposes the noise control rules should accept sound suppression berms and perhaps other external noise control structures as a possible alternative method of noise control. They recommend that additional data be collected on the effectiveness of their noise berm during the 1983 racing season. If noise berms or other devices are determined to be acceptable, the County recommends the rules be amended to include such devices. Staff supports the need for additional data on the impact of drag strip operations at Jackson County Sports Park on the community. Some data has been gathered in the past. However, additional data is desirable especially since the drag strip has begun to hold nighttime events. The Sports Park operators have agreed to cooperate in this effort.

The issue of the impact of the noise control rule on revenue has not been fully evaluated. The County claims that approximately 18.5% of their participants reside outside Oregon and the loss of this revenue would result in a substantial loss of Park revenue. One northern California drag racing organization claimed they would not compete in Oregon if mufflers were required. It is not clear whether California residents would boycott Oregon tracks because of muffler requirements. Staff has found that racing mufflers are readily available that will comply with this rule. Cost estimates of mufflers and installation to the average race competitor are approximately $60. Additional data and investigation of this issue is also needed.

If the variance is not granted, it is likely that some drag racers would install mufflers to comply at the Jackson County Sports Park. However, it is also likely that some racers would choose not to race at the Sports Park. Thus, they would either not compete or decide to race only at out-of-state facilities.

The Sports Park is a relatively new facility, operating in an area of low population. Although the Park provides a variety of sports facilities, including a go-kart track and rifle ranges, the County hopes to generate sufficient revenue, primarily by drag race events, to support maintenance and operation of the entire facility. Thus, the County is anxious to attract non-County residents to use the facility to help support its operation.

The noise control statute, ORS 467.060, allows the Commission to grant a variance "(1) . . . only if it finds that strict compliance with the rule or standard is appropriate because: . . . (b) special circumstances render strict compliance unreasonable, unduly burdensome or impractical due to special physical conditions or cause; [or] (c) strict compliance would result in substantial curtailment or closing down of a business, plant or operation . . . (3) In determining whether or not a variance shall be granted, the Commission or the Department shall consider the equities involved and the advantages and disadvantages to residents and to the person conducting the activity for which the variance is sought."

It would appear that the contention that the sound berm is an effective noise control device and that further controls would be unreasonable are, at this point in time, sufficient to meet the criteria outlined above. However, no comprehensive studies have been conducted on the effectiveness of the noise berm nor the impact of racing noise on the community. In addition, the economic issues that have been raised have not been adequately quantified and thus should not be used as a basis for a variance at this time. Staff believe that sufficient information has been presented to justify a variance for a short period, however additional information is needed to justify a variance beyond the 1983 racing season. Therefore, the Department supports the need for a time limited variance for this source.

The Department proposes a variance from the muffler requirements of the noise control rules for the Jackson County Sports Park's drag race events during the 1983 racing season. During that time period, Department staff, with cooperation from Jackson County, would investigate and document the economic, noise control, and community noise impacts of drag race operations at this facility. Such a study would include an evaluation of the numbers of non-Oregon participants using the facility, the likely impact of strict compliance on Oregon and non-Oregon participants, the effectiveness of the existing noise berm, and the impact of drag racing on surrounding noise sensitive properties. Such a study should provide sufficient information to determine the need for any rule amendments or continued variances.

If this variance request is granted, the Park would be able to complete the 1983 racing season without the burden of the rule. The advantage to the County would be the elimination of any possible economic impact during 1983

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If this variance request is granted, the Park would be able to complete the 1983 racing season without the burden of the rule. The advantage to the County would be the elimination of any possible economic impact during 1983

due to this rule. The County and the Department would also gather the necessary information to allow the Commission to determine whether the noise berm is an acceptable long-term alternative to mufflers at that facility, the extent of any economic impacts, and whether the rule should be amended. The disadvantages to the residents is the continuation of unmuffled motor racing noise during this period. In addition, the 10 scheduled nighttime events will likely be viewed as a substantial increase over previous schedules.

Summation

The following facts and conclusions are offered:

1. Jackson County owns and operates a motor racing drag strip near White City, Oregon, where the nearest residential area is of low density and is approximately 2500 feet from the track.

2. The drag strip incorporates a noise suppression berm that substantially (approximately 10 dBA) reduces noise impacts at the majority of the receptors.

3. The average racing muffler reduces vehicle noise emission by approximately 10 dBA and costs approximately $60 per vehicle installed.

4. Due to the location of the facility adjacent to the Oregon-California border, a number of out-of-state participants may be expected to use the drag strip.

5. The drag strip operator has requested a variance from the muffler requirements on drag race vehicles, contained in OAR 340-35-040, Noise Control Regulations for Motor Sports Vehicles and Facilities.

6. The facility operator proposes that the effectiveness of the noise suppression berm be monitored during the 1983 racing season. In addition, the economic impact of the regulations at this facility should also be quantified as the operator claims strict compliance would cause an unreasonable economic burden.

7. The facility operator believes additional information on noise berms and other external noise control structures may be the basis for an amendment to the present regulations.

8. If a variance is issued, the Department should investigate and document economic, noise control, and community noise impacts at the facility.

9. The Commission is authorized to grant variances from the noise control rules pursuant to ORS 467.060 and OAR 340-35-100 if strict compliance

is unreasonable due to special physical conditions.

10. The Commission should find that, based on information available at this time, strict compliance with the muffler requirement is inappropriate at the Sport Park's drag strip because the presence of a substantially effective noise berm renders unreasonable the requirement that each competitor also add mufflers.

Director's Recommendation

Based upon the findings in the Summation, it is recommended that the Jackson County Sports Park be granted a variance from the mufffler requirements of OAR 340-35-040(2)(a) for drag race vehicles operated on the Park's drag strip. This variance shall be subject to the following conditions:

1. A study to be conducted by Department staff, with cooperation from Jackson County staff, will assess the following during the 1983 racing season:

   a) The effectiveness of the Jackson County Sports Park noise suppression berm.

   b) The effectiveness of other external noise control devices that may be incorporated into motor racing facilities.

   c) The noise impact of drag race activities at the Sports Park on noise sensitive property in the vicinity of the track.

   d) The economic impact of mufflers on race competitors.

   e) The economic impact to Oregon facilities due to the reluctance of Oregon and non-Oregon competitors to comply with the muffler requirements.

2. This variance shall expire at the end of the 1983 racing season (October 31, 1983.)

3. A report, documenting the study described in item 1 above, shall be available to the Commission prior to December 31, 1983. This report shall also contain recommendations on:

   a) The need for rule amendments to recognize the benefits of external noise control devices at motor race facilities.

   b) The need for rule relaxation to address any severe adverse economic impacts.

c) The need for continued variances at the Jackson County Sports Park.

Bill

William H. Young

Attachments: 1. Variance Request dated March 15, 1983.

John Hector:ahe
229-5989
April 21, 1983
NZ212

Attachment 1
Agenda Item
May 20, 1983
EQC Meeting

JACKSON COUNTY

Parks and Recreation Department

80 East Stewart Avenue, Medford, Oregon 97501 (503) 776-7001

March 15, 1983

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
MAR 17 1983
OFFICE OF THE DIRECTOR

TO: OREGON ENVIRONMENTAL QUALITY COMMISSION

THROUGH: Mr. Bill Young, Director
Oregon Dept. of Environmental Quality
P.O. Box 1760
Portland OR 97207

REGARDING: Variance to Chapter 340, Oregon Administrative Rules Division 35, pursuant to OAR 340-35-100

Gentlemen:

Please consider our request for a variance to certain requirements of Chapter 340, Oregon Administrative Rules, Division 35 for the remainder of the calendar year 1983. Specifically, we are seeking a variance to any and all sections that require use of muffling devices that would be attached to drag racing cars and motorcycles.

Unlike the other two drag strips located within Oregon, the Jackson County Sports Park is situated in a relatively small population area of Oregon residences and there is reliance on participants and patrons residing in areas of California to be a significant portion of our opportunity to generate revenues for the maintenance and operation of the Sports Park. Our records indicate that approximately 18.5% of our participants reside outside of Oregon.

Additionally, it is our contention that a sound suppression berm installed at the drag strip portion of the Jackson County Sports Park is an effective method of reducing impacts of drag racing, to acceptable levels, on noise sensitive property in the vicinity of the track.

An engineering analysis prior to the actual beginning of drag racing and three separate noise surveys indicate that sound suppression berms and perhaps other external noise control structures are possibly an alternative method of noise control that should be available and recognized in the noise control regulations. It is desirable for us to have the support of the Department of Environmental Quality prior to requesting a change in the regulations and it is felt that the Department could use the 1983 season as a period to monitor the effectiveness of our sound suppression berm over a full 16-event season, presenting a combination of daytime and evening events.

In realizing the need for noise control, we generally support the content of the existing noise control regulations and in certain cases have established policies that are more restrictive than called for in these regulations.

Sincerely,

PARKS AND RECREATION

Carl Weisinger

Carl Weisinger
Sports Park Manager

CW/bc

cc: Neil Ledward
Senator Lenn Hannon
Oregon Drag Racers Association

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. L, May 20, 1983, EQC Meeting

Proposed Adoption of Increases in Air Contaminant Discharge Permit Fees (OAR 340-20-155, Table 1 and OAR 340-20-165).

Background

On February 25, 1983, the Commission authorized a public hearing to take testimony on proposed increases in the fees for Air Contaminant Discharge Permits and exemption of small oil-fired boilers and small non-pathological incinerators from the permit program. Increases in the fee structure were proposed to partially offset inflationary costs. The fee schedule proposed would increase compliance determination fees an average of 7.8% and increase filing fees from $50.00 to $75.00.

The public hearing was held on April 15, 1983. The hearing officer's report is attached. The Statement of Need for Rulemaking is also attached.

The Commission is authorized by ORS 468.045(2) to establish a fee schedule for permits.

Evaluation

The Department has proposed increases in the filing fee and compliance determination fees. In addition, the Department has proposed exemption of small, oil-fired boilers (less than 10 x 10^6 Btu/hr) and small, non-pathological incinerators (less than 500 lbs/hr) from the permit program. The proposed fee schedule, with exemption of small boilers and small non-pathological incinerators, would generate approximately $737,625 during the 1983-85 biennium. This represents an increase of approximately 6.54% over the $692,365 projected revenue for the 1981-82 biennium.

There was no testimony submitted during the hearing. Written testimony requesting evaluation of administrative procedures and staffing levels to determine how the budgeted revenue of $737,625 from fees could be reduced

and a request for a more equitable fee structure were received. The request for evaluation of administrative procedures and staffing levels was based on the current economic climate and cited reduced production levels, plant closures and exemption of small boilers and small non-pathological incinerators as the reason less Departmental effort is required. The small boilers and small incinerators are primarily minimal sources requiring inspection only once every five years. It has been determined that these sources have achieved a high degree of compliance and to maintain them on permit is not cost-effective. The reduced manpower requirement from exemption of small boilers and small incinerators will be used to partially offset previous manpower reductions during the past biennium which has delayed implementation of the VOC program as it related to point sources and has caused unscheduled delays in compliance determination of all sources. Sources with reduced production still require the same level of inspection and other effort related to compliance determination.

The request for a more equitable fee structure by the managment of the Weyerhaeuser Paperboard Division at North Bend will require additional study at some future time to determine if substantial differences in time expended for compliance determination warrant further changes in Table 1. It should be noted that the compliance determination fees for individual categories were adjusted on April 24, 1981, effective July 1, 1981, after considering the time spent on those sources. The currently proposed increases would apply uniformily (rounded) for all source categories. The staff proposes to look specifically at the pulp and paper mill category to see if there is justification for a two-tiered fee structure.

The requirements of OMB A-95, Part III have been met.

The Department had met with the Air Permit Fees Task Force and received their input prior to proposing the Fee increases. The committee did not make a formal recommendation, but the general consensus was that it would be inappropriate to increase fees during the current economic recession. The Department supports the adoption of the fee schedule as proposed to cover inflationary increases and because the workload remains essentially the same.

A modification of the State Implementation Plan will be required if the proposal is adopted.

This fee schedule is intended to be effective for the fees due July 1, 1983. The current schedule was effective beginning with the July 1, 1981 fees. Each regular permit will have paid two annual fees under the current schedule.

Summation

1) On February 25, 1983, the EQC authorized a public hearing to consider increases in the fees for Air Contaminant Discharge Permits.

2) The public hearing was held on April 15, 1983. No oral or written testimony was presented at the hearing. Written testimony submitted prior to the hearing has been considered and generally opposed fee

increases due to the economic recession. The Department supports the adoption of the fee schedule as proposed to cover inflationary increases and to develop revenues as projected in the 1983-85 budget. The fee schedule should be in effect for the fees due July 1, 1983.

3) The EQC is authorized by ORS 468.045(2) to establish a schedule of fees for permits and to modify the State Implementation Plan.

Director's Recommendations

Based upon the Summation, it is recommended that the Commission adopt the proposed modifications to OAR 340-20-155, Table 1, Air Contaminant Sources and Associated Fee Schedule (Attachment 1), which includes an exemption for small boilers and small non-pathological incinerators, and OAR 340-20-165, Fees. It is also recommended that the Commission direct the Department to submit the rule revision to the EPA as a modification to the State Implementation Plan.

Bill

William H. Young

Attachments: 1) Proposed Fee Schedule
2) Staff Report for Hearing Authorization
3) Hearing Officer's Report with Written Testimony Attached (four letters)
4) Statement of Need for Rulemaking

W.J. FULLER:a
AA3267
229-5749
April 26, 1983

TABLE 1
AIR CONTAMINANT SOURCES AND
ASSOCIATED FEE SCHEDULE

(340-20-155)

NOTE: Persons who operate boilers shall include fees as indicated in Items 58 or 59, or 60 in addition to fee for other applicable category.

Air Contaminant Source	Standard Industrial Classification Number	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee	Fees to be Submitted with New Application	Fees to be Submitted with Renewal Application	Fee to be Submitted with Application to Modify Permit
1. Seed cleaning located in special control areas, commercial operations only (not elsewhere included)	0723	[50] 75	100	[175] 190	[325] 365	[225] 265	[150] 175
2. Smoke houses with 5 or more employees	2013	[50] 75	100	[125] 135	[275] 310	[175] 210	[150] 175
3. Flour and other grain mill products in special control areas	2041						
a) 10,000 or more t/y		[50] 75	325	[350] 375	[725] 775	[400] 450	[375] 400
b) Less than 10,000 t/y		[50] 75	250	[150] 160	[450] 485	[200] 235	[300] 325
4. Cereal preparations in special control areas	2043	[50] 75	325	[250] 270	[625] 670	[300] 345	[375] 400
5. Blended and prepared flour in special control areas	2045						
a) 10,000 or more t/y		[50] 75	325	[250] 270	[625] 670	[300] 345	[375] 400
b) Less than 10,000 t/y		[50] 75	250	[125] 135	[425] 460	[175] 210	[300] 325
6. Prepared feeds for animals and fowl in special control areas	2048						
a) 10,000 or more t/y		[50] 75	325	[350] 375	[725] 775	[400] 450	[375] 400
b) Less than 10,000 t/y		[50] 75	200	[275] 295	[525] 570	[325] 370	[250] 275

TABLE 1 Continued (340-20-155)

NOTE: Persons who operate boilers shall include fees as indicated in Items 58 or 59, or 60 in addition to fees for other applicable category.

Air Contaminant Source	Standard Industrial Classification Number	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee	Fees to be Submitted with New Application	Fees to be Submitted with Renewal Application	Fee to be Submitted with Application to Modify Permit
7. Beet sugar manufacturing	2063	[50] 75	425	[1725] 1860	[2200] 2360	[1775] 1935	[475] 500
8. Rendering plants	2077						
a) 10,000 or more t/y		[50] 75	250	[425] 460	[725] 785	[475] 535	[300] 325
b) Less than 10,000 t/y		[50] 75	250	[250] 270	[550] 595	[300] 345	[300] 325
9. Coffee roasting	2095	[50] 75	200	[225] 245	[475] 520	[275] 320	[250] 275
10. Sawmill and/or planing	2421						
a) 25,000 or more bd.ft./shift		[50] 75	200	[350] 375	[600] 650	[400] 450	[250] 275
b) Less than 25,000 bd.ft./shift		[50] 75	75	[250] 270	[375] 420	[300] 345	[125] 150
11. Hardwood mills	2426	[50] 75	75	[225] 245	[350] 395	[275] 320	[125] 150
12. Shake and shingle mills	2429	[50] 75	75	[275] 295	[400] 445	[325] 370	[125] 150
13. Mill work with 10 employees or more	2431	[50] 75	150	[275] 295	[475] 520	[325] 370	[200] 225
14. Plywood manufacturing	2435 & 2436						
a) Greater than 25,000 sq.ft./hr, 3/8" basis		[50] 75	625	[700] 755	[1375] 1455	[750] 830	[675] 700
b) Less than 25,000 sq.ft,/hr, 3/8" basis		[50] 75	450	[475] 510	[975] 1035	[525] 585	[500] 525
15. Veneer manufacturing only (not elsewhere included)	2435 & 2436	[50] 75	100	[250] 270	[400] 445	[300] 345	[150] 175
16. Wood preserving	2491	[50] 75	150	[250] 270	[450] 495	[300] 345	[200] 225
17. Particleboard manufacturing	2492	[50] 75	625	[825] 890	[1500] 1590	[875] 965	[675] 700

TABLE 1 Continued (340-20-155)

NOTE: Persons who operate boilers shall include fees as indicated in Items 58, 59 or 60 in addition to fees for other applicable category.

Air Contaminant Source	Standard Industrial Classification Number	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee	Fees to be Submitted with New Application	Fees to be Submitted with Renewal Application	Fee to be Submitted with Application to Modify Permit
18. Hardboard manufacturing	2499	[50] 75	625	[675] 730	[1350] 1430	[725] 805	[675] 700
19. Battery separator mfg.	2499	[50] 75	100	[500] 540	[650] 715	[550] 615	[150] 175
20. Furniture and fixtures	2511						
a) 100 or more employees		[50] 75	200	[350] 375	[600] 650	[400] 450	[250] 275
b) 10 employees or more but less than 100 employees		[50] 75	125	[225] 245	[400] 445	[275] 320	[175] 200
21. Pulp mills, paper mills, and paperboard mills	2611 2621 2631	[50] 75	1250	[3000] 3235	[4300] 4560	[3050] 3310	[1300] 1325
22. Building paper and building-board mills	2661	[50] 75	200	[225] 245	[475] 520	[275] 320	[250] 275
23. Alkalies and chlorine mfg.	2812	[50] 75	350	[600] 645	[1000] 1070	[650] 720	[400] 425
24. Calcium carbide manufacturing	2819	[50] 75	375	[600] 645	[1025] 1095	[650] 720	[425] 450
25. Nitric acid manufacturing	2819	[50] 75	250	[300] 325	[600] 650	[350] 400	[300] 325
26. Ammonia manufacturing	2819	[50] 75	250	[350] 375	[650] 700	[400] 450	[300] 325
27. Industrial inorganic and organic chemicals manufacturing (not elsewhere included)	2819	[50] 75	325	[425] 460	[800] 860	[475] 535	[375] 400
28. Synthetic resin manufacturing	2819	[50] 75	250	[350] 375	[650] 700	[400] 450	[300] 325
29. Charcoal manufacturing	2861	[50] 75	350	[725] 780	[1125] 1205	[775] 855	[400] 425
30. Herbicide manufacturing	2879	[50] 75	625	[3000] 3235	[3675] 3935	[3050] 3310	[675] 700

NOTE: Persons who operate boilers shall include fees as indicated in Items 58, 59 or 60 in addition to fees for other applicable category.

Air Contaminant Source	Standard Industrial Classification Number	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee	Fees to be Submitted with New Application	Fees to be Submitted with Renewal Application	Fee to be Submitted with Application to Modify Permit
31. Petroleum refining	2911	[50] 75	1250	[3000] 3235	[4300] 4560	[3050] 3310	[1300] 1325
32. Asphalt production by distillation	2951	[50] 75	250	[350] 375	[650] 700	[400] 450	[300] 325
33. Asphalt blowing plants	2951	[50] 75	250	[450] 485	[750] 810	[500] 560	[300] 325
34. Asphaltic concrete paving plants	2951						
a) Stationary		[50] 75	250	[275] 295	[575] 620	[325] 370	[300] 325
b) Portable		[50] 75	250	[350] 375	[650] 700	[400] 450	[300] 325
35. Asphalt felts and coating	2952	[50] 75	250	[525] 565	[825] 890	[575] 640	[300] 325
36. Blending, compounding, or refining of lubricating oils and greases	2992	[50] 75	225	[325] 350	[600] 650	[375] 425	[275] 300
37. Glass container manufacturing	3221	[50] 75	250	[425] 460	[725] 785	[475] 535	[300] 325
38. Cement manufacturing	3241	[50] 75	800	[2200] 2370	[3050] 3245	[2250] 2445	[850] 875
39. Redimix concrete	3273	[50] 75	100	[150] 160	[300] 335	[200] 235	[150] 175
40. Lime manufacturing	3274	[50] 75	375	[225] 245	[650] 695	[275] 320	[425] 450
41. Gypsum products	3275	[50] 75	200	[250] 270	[500] 545	[300] 345	[250] 275
42. Rock crusher	3295						
a) Stationary		[50] 75	225	[275] 295	[550] 595	[325] 370	[275] 300
b) Portable		[50] 75	225	[350] 375	[625] 675	[400] 450	[275] 300

TABLE 1 Continued (340-20-155)

NOTE: Persons who operate boilers shall include fees as indicated in Items 58, 59 or 60 in addition to fees for other applicable category.

Air Contaminant Source	Standard Industrial Classification Number	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee	Fees to be Submitted with New Application	Fees to be Submitted with Renewal Application	Fee to be Submitted with Application to Modify Permit
43. Steel works, rolling and finishing mills, electrometallurgical products	3312 & 3313	[50] 75	625	[600] 645	[1275] 1345	[650] 720	[675] 700
44. Incinerators							
a) 1000 lbs/hr and greater capacity		[50] 75	375	[225] 245	[650] 695	[275] 320	[425] 450
b) [40] 500 lbs/hr to 1000 lbs/hr capacity		[50] 75	125	[175] 190	[350] 390	[225] 265	[175] 200
c) 40 lbs/hr to 500 lbs/hr capacity pathological waste only		75	125	190	390	265	200
45. Gray iron and steel foundries	3321						
Malleable iron foundries	3322						
Steel investment foundries	3324						
Steel foundries (not elsewhere classified)	3325						
a) 3,500 or more t/y production		[50] 75	625	[525] 565	[1200] 1265	[575] 640	[675] 700
b) Less than 3,500 t/y production		[50] 75	150	[275] 295	[475] 520	[325] 370	[200] 225
46. Primary aluminum production	3334	[50] 75	1250	[3000] 3235	[4300] 4560	[3050] 3310	[1300] 1325
47. Primary smelting of zirconium or hafnium	3339	[50] 75	6250	[3000] 3235	[9300] 9560	[3050] 3310	[6300] 6325

TABLE 1 Continued (340-20-155)

NOTE: Persons who operate boilers shall include fees as indicated in Items 58, 59 or 60 in addition to fees for other applicable category.

Air Contaminant Source	Standard Industrial Classification Number	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee	Fees to be Submitted with New Applications	Fees to be Submitted with Renewal Application	Fee to be Submitted with Application to Modify Permit
48. Primary smelting and refining of ferrous and nonferrous metals (not elsewhere classified)	3339						
a) 2,000 or more t/y production		[50] 75	625	[1300] 1400	[1975] 2100	[1350] 1475	[675] 700
b) Less than 2,000 t/y production		[50] 75	125	[500] 540	[675] 740	[550] 615	[175] 200
49. Secondary smelting and refining of nonferrous metals	3341	[50] 75	300	[350] 375	[700] 750	[400] 450	[350] 375
50. Nonferrous metals foundries	3361 3362	[50] 75	150	[300] 325	[500] 550	[350] 400	[200] 225
51. Electroplating, polishing, and anodizing with 5 or more employees	3471	[50] 75	125	[225] 245	[400] 445	[275] 320	[175] 200
52. Galvanizing and pipe coating--exclude all other activities	3479	[50] 75	125	[225] 245	[400] 445	[275] 320	[175] 200
53. Battery manufacturing	3691	[50] 75	150	[300] 325	[500] 550	[350] 400	[200] 225
54. Grain elevators--intermediate storage only, located in special control areas	4221						
a) 20,000 or more t/y		[50] 75	225	[475] 510	[750] 810	[525] 585	[275] 300
b) Less than 20,000 t/y		[50] 75	125	[225] 245	[400] 445	[275] 320	[175] 200

TABLE 1 Continued (340-20-155)

NOTE: Persons who operate boilers shall include fees as indicated in Items 58, 59 or 60 in addition to fees for other applicable category

Air Contaminant Source	Standard Industrial Classification Number	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee	Fees to be Submitted with New Application	Fees to be Submitted with Renewal Application	Fee to be Submitted with Application to Modify Permit
55. Electric power generation	4911 *						
A) Wood or Coal Fired - Greater than 25MW		[50] 75	5000	[3000] 3235	[8050] 8310	[3050] 3310	[5050] 5075
B) Wood or Coal Fired - Less than 25 MW		[50] 75	3000	[1500] 1615	[4550] 4690	[1550] 1690	[3050] 3075
C) Oil Fired		[50] 75	450	[725] 780	[1225] 1305	[775] 855	[500] 525
56. Gas production and/or mfg.	4925	[50] 75	475	[350] 375	[875] 925	[400] 450	[525] 550
57. Grain elevators--terminal elevators primarily engaged in buying and/or marketing grain--in special control areas	5153						
a) 20,000 or more t/y		[50] 75	625	[600] 645	[1275] 1345	[650] 720	[675] 700
b) Less than 20,000 t/y		[50] 75	175	[225] 245	[450] 495	[275] 320	[225] 250
58. Fuel Burning equipment within the boundaries of the Portland, Eugene-Springfield and Medford-Ashland Air Quality Maintenance Areas and the Salem Urban Growth Area***	4961**	(Fees will be based on the total aggregate heat input of all boilers at the site)					
a) Residual or distillate oil fired 250 million or more btu/hr (heat input)		[50] 75	200	[225] 245	[475] 520	[275] 320	[250] 275
b) Residual or distillate oil fired, [5] 10 or more but less than 250 million btu/hr (heat input)		[50] 75	125	[125] 135	[300] 335	[175] 210	[175] 200
[c) Residual oil fired, less than] [5 million btu/hr (heat input)]		[50]	[50]	[100]	[200]	[150]	[100]

NOTE: Persons who operate boilers shall include fees as indicated in Items 58, 59 or 60 in addition to fees for other applicable category.

Air Contaminant Source	Standard Industrial Classification Number	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee	Fees to be Submitted with New Application	Fees to be Submitted with Renewal Application	Fees to be Submitted with Application to Modify Permit
59. Fuel burning equipment within the 4961 ** boundaries of the Portland, Eugene-Springfield and Medford-Ashland Air Quality Maintenance Areas and the Salem Urban Growth Area***							
a) Wood or coal fired, 35 million or more Btu/hr (heat input)		[50] 75	200	[225] 245	[475] 520	[275] 320	[250] 275
b) Wood or coal fired, less than 35 million Btu/hr (heat input)		[50] 75	50	[125] 135	[225] 260	[175] 210	[100] 125
60. Fuel burning equipment outside 4961** the boundaries of the Portland, Eugene-Springfield and Medford-Ashland Air Quality Maintenance Areas and the Salem Urban Growth Area.			(Fees will be based on the total aggregate heat input of all boilers at the site.)				
All wood, coal and oil fired greater than 30 x 10^6 Btu/hr (heat input)		[50] 75	125	[125] 135	[300] 335	[175] 210	[175] 200

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

TABLE 1 Continued (340-20-155)

NOTE: Persons who operate boilers shall include fees as indicated in Items 58, 59 or 60 in addition to fees for other applicable category.

Air Contaminant Source	Standard Industrial Classification Number	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee	Fees to be Submitted with New Application	Fees to be Submitted with Renewal Application	Fee to be Submitted with Application to Modify Permit
61. New sources not listed herein which would emit 10 or more tons per year of any air contaminants including but not limited to particulates, SO_x, or NO_x or hydrocarbons, if the source were to operate uncontrolled.		[****]	[****]	[****]	[****]	[****]	[****]
a) Low cost		75	****	150	****	225	****
b) Medium cost		75	****	350	****	425	****
c) High cost		75	****	2000	****	2075	****
62. New sources not listed herein which would emit significant malodorous emissions, as determined by Departmental or Regional Authority review of sources which are known to similar air contaminant emissions.		[****]	[****]	[****]	[****]	[****]	[****]
a) Low cost		75	****	150	****	225	****
b) Medium cost		75	****	350	****	425	****
c) High cost		75	****	2000	****	2075	****
63. Existing sources not listed herein for which an air quality problem is identified by the Department or Regional Authority.		[****]	[****]	[****]	[****]	[****]	[****]
a) Low cost		75	****	150	****	225	****
b) Medium cost		75	****	350	****	425	****
c) High cost		75	****	2000	****	2075	****

TABLE 1 Continued (340-20-155)

NOTE: Persons who operate boilers shall include fees as indicated in Items 58, 59 or 60 in addition to fees for other applicble category.

Air Contaminant Source	Standard Industrial Classification Number	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee	Fees to be Submitted with New Application	Fees to be Submitted with Renewal Application	Fees to be Submitted with Application to Modify Permit
64. Bulk Gasoline Plants	5100 *****	[50] 75	55	[150] 160	[255] 290	[200] 235	[105] 130
65. Bulk Gasoline Terminals	5171 *****	[50] 75	1000	[500] 540	[1550] 1615	[550] 615	[1050] 1075
66. Liquid Storage Tanks, 39,000 gallons or more capacity, not elsewhere included	4200 *****	[50] 75	50/tank	[100] 110 /tank			
67. Can Coating	3411 *****	[50] 75	1500	[900] 970	[2450] 2545	[950] 1045	[1550] 1575
68. Paper Coating	2641 or 3861*****	[50] 75	1500	[900] 970	[2450] 2545	[950] 1045	[1550] 1575
69. Coating Flat Wood	2400 *****	[50] 75	500	[300] 325	[850] 900	[350] 400	[550] 575
70. Surface Coating, Manufacturing	2500, 3300, 3400, 3500, 3600, 3700, 3800, 3900 *****						
a) 1-20 tons VOC/yr		[50] 75	25	[85] 90	[160] 190	[135] 165	[75] 100
b) 20-100 tons VOC/yr		[50] 75	100	[200] 215	[350] 390	[250] 290	[150] 175
c) over 100 tons VOC/yr		[50] 75	500	[400] 430	[950] 1005	[450] 505	[550] 575
71. Flexographic or Rotograveure Printing over 60 tons VOC/yr per plant	2751, 2754 *****	[50] 75	50/press	[150] 160 /press			

TABLE 1 Continued (340-20-155)

NOTE: Persons who operate boilers shall include fees as indicated in Items 58, 59 or 60 in addition to fees for other applicable category.

Air Contaminant Source	Standard Industrial Classification Number	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee	Fees to be Submitted with New Application	Fees to be Submitted with Renewal Application	Fee to be Submitted with Application to Modify Permit
72. New sources of VOC not listed herein which have the capacity or are allowed to emit 10 or more tons per year VOC	*****	[50]	[****]	[****]	[****]	[****]	[****]
a) Low cost		75	****	150	****	225	****
b) Medium cost		75	****	350	****	425	****
c) High cost		75	****	2000	****	2075	****

**** Sources required to obtain a permit under items 61, 62, 63 and 72 will be subject to the following fee schedule to be applied by the Department based upon the anticipated cost of processing [and compliance determination].

Estimated Permit Cost	Application Processing Fee	[Annual] [Compliance] [Determination Fee]
Low cost	$100.00 - $250.00	[$100.00 - $250.00]
Medium cost	$250.00 - $1500.00	[$250.00 - $1000.00]
High cost	$1500.00 - $3000.00	[$1000.00 - $3000.00]

As nearly as possible, applicable fees shall be consistent with sources of similar complexity as listed in Table A.

***** Permit for sources in categories 64 through 72 are required only if the source is located in the Portland AQMA, Medford-Ashland AQMA or Salem SATS.

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. , February 25, 1983, EQC Meeting

Authorization to Hold a Public Hearing to Consider Proposed Increases in Air Contaminant Discharge Permit Fees (OAR 340-20-155, Table 1, and OAR 340-20-165.

Background

The permit fee revenues are used to support a portion of the permit program. As required by ORS 468.065(2), the fees are set in accordance with the cost to the Department of filing and investigating the application, issuing or denying the permit, and determining compliance or non-compliance with the permit. As part of the proposed budget for the 1983-85 biennium, the Department has proposed to increase permit revenues to partially offset inflationary costs by increasing the compliance determination fees by an average of 7.8% and increasing the filing fee $25.00.

In addition to these modifications of permit fees, it is proposed to exempt small oil-fired boilers (less than $10x10^6$ BTU/hr) and small non-pathological incinerators (less than 500 lbs/hr) from the permit program. The Department considers these sources to have negligible air quality impact, thus permit activities for these sources are not cost effective.

The proposed revisions to the fee structure were presented to the Air Contaminant Discharge Permit Fee Task Force, a group representing, industry,agriculture, general public, and the Department. It was their feeling that any increase during the present economic climate is inappropriate.

At this time, the Legislature is considering the Department's proposed budget as submitted by the Governor. A copy of the proposed fee schedule, Table 1, with proposed rule revisions consistent with the proposed budget are attached. The "Statement of Need for Rulemaking" is also attached.

Alternatives and Evaluation

The Air Contaminant Discharge Permit Fees are comprised of three parts: a non-refundable filing fee, presently $50, submitted with all applications; an application processing fee submitted only with applications for new or modified sources; and a compliance determination fee submitted either annually by holders of regular permits or once every five years by holders of minimal source permits. The latter two types of fees differ between source categories depending upon the relative time required to draft and issue permits and to determine compliance with the permit.

The revenue for the 1983-85 biennium is projected to be $737,625. This projection was developed in the following manner:

Projected Fee Income (present fee schedule)	$724,200
Proposed exemption of Small Boilers and Non-Pathological Incinerators	(28,325)
Projected Fee Increases	
Filing Fee $25	22,425
ACDP fee 7.8%	54,120
Estimated revenue Loss due to permanent shutdowns	(34,795)
Projected revenue for 1983-85 Biennium	$737,625

Revenue from filing and processing fees resulting from new or modified sources cannot be anticipated or forecasted. Therefore, the Department historically has not included these fees in any revenue projections.

In accordance with the proposed budget, revenues for the 1983-85 biennium should be increased to $737,625 to cover inflated operating costs. This amount will be generated by compliance determination fees and the increase in the filing fee. Compliance determination fee revenue would be increased by approximately 7.8%. These fees would then range from $110 to $3,235.

The Department intends to review costs of processing permit applications for new and modified sources. Upon completion of the review, the results with appropriate proposed modifications of processing fees, if warranted, will be presented to the Commission for its consideration. Although processing fees were raised approximately 15% on July 1, 1981, they may not adequately represent present Department costs to draft and issue permits.

Filing fees have not been adjusted since July 1, 1979. Compliance determination fees were last adjusted on July 1, 1981.

Summation

1. The Department's proposed budget contains projected revenues of $737,625 from the Air Contaminant Discharge Permit program.

2. In preparing the budget, revenue losses from exempting some small sources and permanent shutdowns were considered.

3. The Department has proposed a fee schedule (Table 1) with associated rule revisions which would generate approximately $737,625 by increasing filing fees $25 and increasing compliance determination fees an average of 7.8%.

4. The Department proposes to review permit application processing costs with the intent of appropriately modifying the processing fees based upon Departmental costs, if warranted.

5. In order to consider modification of OAR 340-20-155, Table 1, and OAR 340-20-165 as proposed, EQC authorization for a public hearing is required.

Director's Recommendation

Based upon the summation, it is recommended that the Commission authorize a public hearing to obtain testimony on proposed changes to Air Contaminant Discharge Fees, OAR 340-20-155, Table 1, and OAR 340-20-165.

William H. Young

Attachments (2)

1) Proposed amendments to OAR 340-20-155, Table 1, and OAR 340-20-165(1).

2) Statement of Need for Rulemaking and Public Hearing Notice.

WJFuller:z
229-5749
February 1, 1983
AZ50

ATTACHMENT 3

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: Hearing Officer

Subject: Report on April 15, 1983 Public Hearing on Proposed Increases in Air Contaminant Discharge Permit Fees (OAR 340-20-155, Table 1, and OAR 340-20-165).

Summary of Procedure

Pursuant to Public Notice, a public hearing was convened in Room 1400, 522 S.W. Fifth, Portland, at 1:00 p.m., on April 15, 1983. The purpose was to receive testimony on proposed changes to Table 1, OAR 340-20-155, Air Contaminant Sources and Associated Fee Schedule, and OAR 340-20-165, Fees.

Summary of Testimony

No oral or written testimony was presented at the hearing. However, four (4) letters commenting on the proposed rule changes were received prior to the hearing. A summary of the comments is as follows:

The Oregon-Columbia Chapter, Associated General Contractors, urges the members of the Commission to not adopt any increase in fees at this time. They indicate that the cumulative effect of even a nominal increase in permit fees when combined with other permit fees would be significant. They do ask that the administrative procedures and staffing levels be evaluated to determine how the budgeted revenue of $737,625 from fees can be reduced.

The Office of the Governor indicated that the proposal had been circulated for review to appropriate State Agencies and that no significant conflict with State plans or programs had been identified. Gubernatorial endorsement of the proposal was given.

The management of the Containerboard Division of Weyerhaeuser Company at North Bend related that the proposed increases in annual compliance determination fees is not appropriate for the North Bend mill and requested a more equitable fee structure. To support their request, they offered as evidence lower emissions from semi-chemical pulping than from full chemical pulping, the semi-chemical pulping process being less complex than full-

chemical pulping, smaller amounts of chemicals used in the process leading to lower emissions of SO_2 and reduced sulfur, low emissions from their small liquor plant, and less staff time required to maintain surveillance of their non-continuous monitoring equipment. They also indicate that under the current fee structure both a new groundwood pulp plant or a new de-inking plant would be subject to these same pulp and paper mill fees.

The Asphalt Pavement Association urges no fee increase at this time, suggesting that a reduction might be more in order. In support of this position, they cite the poor economic climate in the asphalt paving industry, fewer compliance determinations necessary because of reduced production and the exemption of small boilers and small incinerators from the permit program, and permanent shutdowns in other industries. They request an evaluation of administrative procedures and staffing levels with the recommendation to consider budget reductions rather than budget increases, as private industry is doing during the recession.

William J. Fuller

William J. Fuller

Attachments: (4) Letters
AA3263
W.J. FULLER:a
229-5749
April 26, 1983

:HAPTER OFFICE
450 S. W. Commerce Circle
Vilsonville, Oregon 97070
'hone: 503/682-3363
Kenneth W. Twedt, *Manager*

)ISTRICT OFFICE
185 Fairfield
:ugene, Oregon 97402
'hone: 503/689-2261

)FFICERS
:obert C. Wilson, *President*
'rank E. Ward, *Vice President*
Kenneth G. Bakke, *2nd Vice President*
im Juhr, *Secretary-Treasurer*

)IRECTORS
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'laude G. (Bill) Baughman
. Scott Benge
ohn H. Biglin
Villiam A. Bugge
arry A. Burroughs
)ale A. Campbell
ames A. Elting
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ichard Geary
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arry H. Hannan
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. Nicholas Johnson
im Juhr
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)n E. Morris
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ick O'Brien
radley K. Pence
oger M. Peters
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ichard T. Robertson
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. Lee Schroeder
onald E. Schwarz
onald E. Sheets
)b Taylor
arry G. Thompson
avid W. Thompson
)hn R. Todd
aul D. Triem
ank E. Ward
)bert C. Wilson
mes M. Wright
chard E. Wright

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rl M. Halvorson
orge H. Lord
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illiam T. Peckham
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THE ASSOCIATED GENERAL CONTRACTORS
of America, Inc.

1983

OREGON COLUMBIA CHAPTER

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
MAR 30 1983
AIR QUALITY CONTROL

March 28, 1983

Environmental Quality Commission
c/o Mr. William Fuller
Air Quality Department
Department of Environmental Quality
P.O. Box 1760
Portland, OR 97207

SUBJECT: Proposed increases in air contaminant discharge permit fees

Members of the Commission:

We have had a chance to study the proposed increases in compliance determination and filing fees, and we urge you not to adopt any increase at this time.

As you know, your Air Contaminant Discharge Permit Fee Task Force recommends that any increase during the present economic climate is inappropriate. Some may suggest that the increases are nominal. However, when combined with various other proposed increases in permit fees, the cumulative effect is significant.

Since there appears to be a growing number of plant shut-downs and curtailments in the state, we ask that you carefully evaluate administrative procedures and staffing levels to determine how the budgeted revenue of $737,625 can be reduced.

Sincerely,

Robert C. Wilson

Robert C. Wilson
President
Oregon-Columbia Chapter
Associated General Contractors

/cmp

VICTOR ATIYEH
GOVERNOR

OFFICE OF THE GOVERNOR
STATE CAPITOL
SALEM, OREGON 97310

March 30, 1983

Mr. William Fuller
Dept. of Environmental Quality
Air Quality Division
PO Box 1760
Portland, Oregon 97207

Subject: Air Contaminated Discharge Permit Fees
PNRS #OR830307-015-6

Thank you for the opportunity to review the subject state plan amendment.

The amendment was circulated for review among appropriate state agencies. No significant conflicts with state plans or programs were identified.

I am pleased to add my endorsement as required by OMB A-95, Part III.

Sincerely,

Victor Atiyeh
Governor

VA:nl

Weyerhaeuser Company
Containerboard Division

P.O. Box 329
North Bend, Oregon 97459
(503) 756-5171

April 6, 1983

Mr. William Fuller
Department of Environmental Quality
Air Quality Division
Post Office Box 1760
Portland, Oregon 97207

Dear Mr. Fuller:

The Department of Environmental Quality's proposal to increase annual compliance fees does not appear appropriate for the North Bend Weyerhaeuser Paper Mill. Currently all pulp and paper mills pay the same annual fee. This places small, simple mills with low air emission rates and minimal monitoring in the position of subsidizing compliance determination for larger, more complex mills with higher emission rates and more sophisticated and frequent monitoring.

The following is offered as evidence in support of our request for a more equitable fee structure:

1. The semi-chemical pulping method we use produces substantially less air pollutants than full chemical pulping which use some type of recovery cycle. For example, our spent liquor incinerator (SLI) is an automatically controlled, steady-state fluidized bed with a venturi scrubber, which produces less than 185 tons/year particulate, compared to the 250-300 tons/year produced by our hogfuel boilers. The SLI produces almost no SO_2 or TRS.

2. Semi-pulping is much less complex than full chemical pulping. In addition, we do not bleach pulp. The lack of complexity should serve to reduce the costs of compliance determination.

3. The relatively simple semi-chemical pulping does not produce significant amounts of SO_2 or reduced sulfur. The small amounts of chemicals used, combined with the high yield of semi-chemical pulping are responsible for lower sulfur emissions.

4. Emissions from our small liquor plant are very low.

5. The North Bend paper mill has no continuous monitoring requiring DEQ monitoring report review or field observation.

6. Under the current fee structure a new mill making a groundwood pulp or deinking newsprint would be subject to the same fee as a full chemical pulp mill. Neither the groundwood process nor the deinking process produce significant amounts of air contaminants.

I would appreciate your careful consideration of this matter.

Very truly yours,

WEYERHAEUSER COMPANY

T. F. Williscroft
General Manager
North Bend Containerboard Division

TFW:bj

cc: Jerry Bollen, Springfield
Jack Wethersbee, DEQ, Portland

MIKE HUDDLESTON
Executive Director
GEORGE MORTON
President
RICHARD WRIGHT
Vice President
GARY BAKER
Secretary/Treasurer

ASPHALT PAVEMENT
ASSOCIATION OF OREGON

3747 Market Street, N.E. - Salem, Oregon 97301
(503) 363-3858

April 8, 1983

Environmental Quality Commission
% Mr. William Fuller
Air Quality Dept.
Department of Environmental Quality
P. O. Box 1760
Portland, Oregon 97207

Subject: Proposed Increases in Air Contaminant Discharge Permit Fees

Members of the Commission:

I will be unable to attend the April 15, 1983 public hearing on the proposed increases in Air Contaminant Discharge Permit Fees, therefore, I would like the following statement read into the record.

My name is Mike Huddleston, Executive Director of the Asphalt Pavement Association of Oregon. In this position, I represent over forty firms who hold over 100 air contaminant discharge permits.

We have studied the proposed increases in compliance determination and filing fees, and we urge you not to adopt any increases at this time. Perhaps a reduction in fees would be more in order. Our reasons for this are as follows:

1. The economic climate in our industry is poor.

   (a) In 1979 our members produced 4,327,021 tons of asphalt. In 1982 they produced 2,212,733. On an average, employment was down 35%.

2. Fewer Compliance Determinations Necessary

   A. This reduction in production (a) above simply tells me you don't need as many people in the Compliance Division.

   B. The fact that you are exempting the small boilers and non-pathological incinerators also tells me you don't need as many people in the Compliance Division.

C. The third item - other industries having permanent shutdowns (so you lost $34,795 of revenue) tells me you need less people in the Compliance Division.

Under the conditions listed above, how can you talk about anything except reducing staff and freezing salaries?

"The Contractor earneth and the Government taketh it away."

Please evaluate administrative procedures and staffing levels and consider reducing not increasing your budget, as private industry is doing during this recession period.

Sincerely yours,

Mike Huddleston

Mike Huddleston, P.E.
Executive Director

MH/jh

ATTACHMENT 4

RULEMAKING STATEMENTS

for

PROPOSED INCREASES IN AIR CONTAMINANT DISCHARGE PERMIT FEES

Pursuant to ORS 183.335, these statements provide information on the intended action to amend a rule.

STATEMENT OF NEED:

Legal Authority

This proposal amends OAR 340-20-155, Table 1, and 3240-20-165. It is proposed under authority of ORS Chapter 468, including Sections 065 and 310.

Need for the Rule

Additional funds are needed to offset inflationary costs of administering the Air Contaminant Discharge Permit Program included in the Department's 1983-85 budget.

Principal Documents Relied Upon

1) OAR 340-20-155, Table 1, and 340-20-165.

2) Proposed DEQ budget for the 1983-85 biennium.

FISCAL AND ECONOMIC IMPACT STATEMENT:

The proposal would be very beneficial to small businesses and industries having small boilers and small non-pathological incinerators by exempting those boilers and incinerators from the permit requirements. The effect upon all other holders of Air Contaminant Discharge Permits, including some small businesses, would be slightly adverse as a result of the increased fees.

LAND USE CONSISTENCY STATEMENT:

The proposed rule does not affect land use as defined in the Department's coordination program approved by the Land Conservation and Development Commission.

AZ63

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 , May 20, 1983, EQC Meeting

Proposed Adoption of Rules Amending Water Quality Permit Fees to Increase Revenues for 1983-85 Biennium, OAR 340-45-070, Table 2.

Background and Problem Statement

The Water Quality Permit Fees were originally adopted by the Commission April 30, 1976, following enactment of a fee requirement by the Legislature in 1975. A three-part fee was adopted, consisting of a fixed filing fee, an application processing fee which varied with the type of application processed and an annual compliance determination fee. The annual compliance determination fee varied from $50 per year for simple sources to $950 per year for complex industrial sources. When the fees were established, the Department was instructed to increase the fees as necessary so that fee revenues continue to support approximately the same proportion of permit related costs.

For the 1979-81 biennium, the Commission adopted an increase in the permit processing fees. The annual compliance determination fees were increased for the 1981-83 biennium.

For the 1983-85 biennium budget, the Department has projected fee revenues of $369,400. This is an increase from 81-83 revenue projections of about $28,000 or 8 percent.

With the increase in fee revenue needed, coupled with the loss in fee revenue from general permits, the total increase in fees required for the biennium is $78,000.

On February 25, 1983, the Commission authorized the Department to hold a public hearing on the proposed fee increase. The hearing was held April 15, 1983. The hearing officer's report is attached as Attachment 2.

Alternatives and Evaluation

Those four permittees who submitted written testimony on the proposed fee increases were against any increase at this time. This was rejected as an alternative because it would require the revenue lost through issuance of general permits and the increased costs due to inflation to be accounted for in general fund appropriation. The Legislature intended the fees to continue to carry their proportion of the revenue needs.

Another alternative would have been to increase all fees by a certain percentage across the board. This was rejected because it was thought more equitable to adjust certain categories of fees which were not paying their proportional share when related to staff time involved.

The alternative selected consists of a combination of factors, as follows:

(a) The filing fee was increased from the $25 fee originally adopted in 1976 to $50.

(b) Special reduced fee considerations for waste irrigation projects were removed because the staff are finding that they are spending as much or more time on land disposal systems as on systems which discharge to surface water.

(c) The annual compliance determination fees were increased by $25 for the smaller facilities and by about 10 percent for the larger ones. The greatest increase was $125 per year for the major industrial facilities.

Some minor changes have been made in the proposed fee schedule since it was presented to the Commission last February. Annual compliance fees for log ponds were reduced from $225 to $125. In addition, a special category was added (Q) for watertight industrial waste ponds. The fee for this category is $100, which is the same that is charged for municipal sewage lagoons.

A public notice of the public hearing was sent March 1, 1983. The hearing was held April 15, 1983. A copy of the notice was sent to each permittee as well as the standard rulemaking list. In response to the notice the Department received four letters. Each objected to the fee increase. Only two people came to the hearing. Neither wanted to testify officially. Both seemed supportive.

Summation

1. A three part water permit fee schedule was first adopted April 30, 1976. It consisted of a $25 filing fee; permit processing fees ranging from $25 to $500, depending upon size and complexity; and an annual compliance determination fee which ranged from $50 to $950.

2. The Department has been instructed to increase fees as necessary so that fee revenues continue to support approximately the same proportion of permit related costs.

3. There has been an increase in fees each biennium since the fee schedule was originally adopted.

4. The current fee schedule shows a filing fee of $25, processing fee range of $50 to $1,000 and annual compliance determination fees ranging from $50 to $1,200. The budgeted fee revenues under this schedule were $341,422 for the 81-83 biennium.

5. For the 1983-85 biennium the Department has projected fee revenues of $369,400, which is an increase of about 8 percent over the 1981-83 biennium.

5. The Department proposes to get this additional revenue by increasing the filing fee to $50, changing fees charged permittees using land disposal to be equivalent to permittees discharging to public waters, and increasing the annual compliance fees to range from $60 to $1,325.

6. Prior to the public hearing, the Department received four letters in opposition to the fee increases. No one testified at the hearing.

Director's Recommendation

Based on the summation, the Director recommends that the Commission adopt the new fee schedule which modifies Table 2 of OAR 340-45-070.

Bill

William H. Young

Attachments:

1. Revised Fee Schedule
2. Hearing Officer's Report
3. Public Notice and Fiscal Impact Statement
4. Statement of Need

C. K. Ashbaker:g
WG2267
229-5325
April 18, 1983

TABLE 2

(340-45-070)

PERMIT FEE SCHEDULE

(1) Filing Fee. A filing fee of [$25] $50 shall accompany any application for issuance, renewal, modification, or transfer of an NPDES Waste Discharge Permit or Water Pollution Control Facilities Permit. This fee is non-refundable and is in addition to any application processing fee or annual compliance determination fee which might be imposed.

(2) Application Processing Fee. An application processing fee varying between $50 and $1,000 shall be submitted with each application. The amount of the fee shall depend on the type of facility and the required action as follows:

(a) New Applications

(A) Major industries[1] -- $1000
(B) Minor industries -- $500
(C) Major domestic[2] -- $500
(D) Minor domestic -- $250
(E) Agricultural -- $250
[(F) Minor nondischarging -- $175]

(b) Permit Renewals (including request for effluent limit modification):

(A) Major industries[1] -- $500
(B) Minor industries -- $250
(C) Major domestic[2] -- $250
(D) Minor Domestic -- $125
(E) Agricultural -- $125
[(F) Minor nondischarging -- $100]

(c) Permit Renewals (without request for effluent limit modification):

(A) Major industries[1] -- $250
(B) Minor industries -- $150
(C) Major domestic[2] -- $150
(D) Minor domestic -- $100
(E) Agricultural -- $100
[(F) Minor nondischarging -- $100]

[ ] = Deleted Material
_____ = New Material

(d) Permit Modifications (involving increase in effluent limitations):

(A) Major industries[1] -- $500
(B) Minor industries -- $250
(C) Major domestic[2] -- $250
(D) Minor domestic -- $125
(E) Agricultural -- $125
[(F) Minor nondischarging -- $100]

(e) Permit Modifications (not involving an increase in effluent limits): All categories -- [$50] $75
[(f) Department Initiated: Modifications[3] -- $25]

(3) Annual Compliance Determination Fee Schedule:

(a) Domestic Waste Sources (Select only one category per permit) (Category, Dry Weather Design Flow, and Initial and Annual Fee):

(A) Sewage [Discharge] Disposal -- 10 MGD or more -- [$950] $1050
(B) Sewage [Discharge] Disposal -- At least 5 but less than 10 MGD -- [$750] $825
(C) Sewage [Discharge] Disposal -- At least 1 but less than 5 MGD -- [$375] $425
(D) Sewage [Discharge] Disposal -- Less than 1 MGD -- [$200] $225
(E) [No scheduled discharge during at least 5 consecutive months of the low stream flow period -- 1/2 of above rate] Non-overflow sewage lagoons --$100
(F) [Land disposal -- no scheduled discharge to public waters -- 1/4 of above rate or $75, whichever is greater.] On-Site sewage disposal systems larger than 5000 gallons per day -- $60
[(G) Chlorinated septic tank effluent from facilities serving more than 5 families and temporarily discharging to public waters -- $75]
[(H) Chlorinated septic tank effluent from facilities serving 5 families or less and temporarily discharging to public waters -- $50]
[(I) Chlorinated septic tank effluent from facilities serving more than 25 families or 100 people and temporarily discharging to waste disposal wells as defined in OAR 340-44-005(4) -- $50]

(b) Industrial, Commercial and Agricultural Sources (Source and Initial and Annual Fee:[4]

(For multiple sources on one application select only the one with highest fee)

[ ] = Deleted Material
_____ = New Material

(A) Major pulp, paper, paperboard, hardboard, and other fiber pulping industry [discharging process waste water other than log pond overflow] -- [$1200] $1325

(B) Major sugar beet processing, potato and other vegetable processing, and fruit processing industry [discharging process waste water] -- [$1200] $1325

(C) Fish Processing Industry:

(i) Bottom fish, crab, and/or oyster processing -- [$100] $125
(ii) Shrimp processing -- [$125] $150
(iii) Salmon and/or tuna canning -- [$200] $225

(D) Electroplating industry [with discharge of process water] (excludes facilities which do anodizing only):

(i) Rectifier output capacity of 15,000 Amps or more -- [$1200] $1325
(ii) Rectifier output capacity of less than 15,000 Amps ,but more than 5000 Amps -- [$575] $650

(E) Primary Aluminum Smelting -- [$1200] $1325

(F) Primary smelting and/or refining of non-ferrous metals utilizing sand chlorination separation facilities -- [$1200] $1325

(G) Primary smelting and/or refining of ferrous and non-ferrous metals not elsewhere classified above -- [$575] $650

(H) Alkalies, chlorine, pesticide, or fertilizer manufacturing with discharge of process waste waters -- [$1200] $1325

(I) Petroleum refineries with a capacity in excess of 15,000 barrels per day discharging process waste water -- [$1200] $1325

(J) Cooling water discharges in excess of 20,000 BTU/sec. -- [$575] $650

(K) Milk products processing industry which processes in excess of 250,000 pounds of milk per day [and discharges process waste water to public waters] -- [$1200] $1325

[ ] = Deleted Material
_____ = New Material

(L) [Fish hatching and rearing facilities -- $100] Major mining operators -- $1325

(M) Small [placer] mining operations [which process less than 50 cubic yards of material per year and] which:

(i) Discharge directly to public waters -- [$75] $150
(ii) Do not discharge to public waters -- [$None] $100

(N) All facilities not elsewhere classified with [discharge] disposal of process waste water [to public waters] -- [$200] $225

(O) All facilities not elsewhere classified which [discharge from point sources to public waters] dispose of non-process waste waters (i.e. small cooling water discharges, boiler blowdown, filter backwash, log ponds, etc.) -- [$100] $125

(P) [All facilities not specifically classified above (A-M) which dispose of all waste by an approved land irrigation or seepage system -- $75] Dairies and other confined feeding operations -- $100

(Q) All facilities which dispose of waste waters only by evaporation from watertight ponds or basins -- $100

1 Major Industries Qualifying Factors:

-1- Discharges large BOD loads; or
-2- Is a large metals facility; or
-3- Has significant toxic discharges; or
-4- Has a treatment system which, if not operated properly, will have a significant adverse impact on the receiving stream; or
-5- Any other industry which the Department determines needs special regulatory control.

2 Major Domestic Qualifying Factors:

-1- Serving more than 10,000 people; or
-2- Serving industries which can have a significant impact on the treatment system.

[3 Those Department initiated modifications requiring payment of fees are those requiring public notice such as:

-1- Addition of new limitations promulgated by EPA or the Department.
-2- Addition of conditions necessary to protect the environment.
Changes in format, correction of typographical errors, and other modifications not requiring public notice, require no fee.]

[ ] = Deleted Material
_____ = New Material

[4 For any of the categories itemized above (A-O) which have no discharge for at least five consecutive months of the low stream flow period, the fee shall be reduced to 1/2 of the scheduled fee or $75 whichever is greater.]

[For any specifically classified categories above (A-L) which dispose of all waste water by land irrigation, evaporation, and/or seepage, the fee shall be reduced to 1/4 of the scheduled fee or $75, whichever is greater.]

[ ] = Deleted Material
_____ = New Material

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMO

TO: Environmental Quality Commission DATE: April 19, 1983

FROM: Charles K. Ashbaker, Hearing Officer

SUBJECT: Report of Testimony Received Regarding Proposed Increase in Water Quality Permit Fees

Procedures Followed

A public notice was mailed March 1, 1983, announcing a public hearing to be held April 15, 1983. The notice was sent to the rulemaking mailing list as well as every permittee.

A hearing was held at 10 a.m. March 1, 1983, in the 14th floor conference room in the Yeon Building. Two persons attended the hearing. One representing Northwest Pulp and Paper. The other representing Stayton Canning Co. Neither desired to present any formal testimony.

After 30 minutes of informal discussion the hearing was closed. One staff member remained in the room for another thirty minutes in the event anyone came late. A note was then left on the door informing anyone arriving late that testimony could be submitted to the Water Quality Division on the second floor.

Summary of Testimony

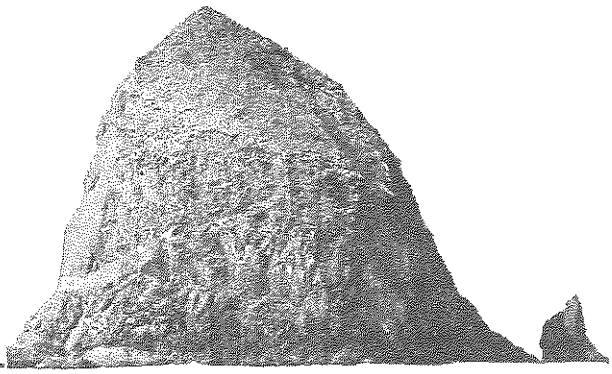
Although there was no testimony given at the hearing there were four letters submitted as follows:

1. The City of Cannon Beach objected to the increase.
2. Steinfields Products Company objected to any increase.
3. Willamette Industries, Inc. objected to increase in fees.
4. The City of Lebanon is opposed to any increase in fees.

This concludes the testimony received and is respectfully submitted to the Environmental Quality Commission for consideration.

Charles K. Ashbaker
Hearings Officer

CKA:g
WG2274



CITY OF CANNON BEACH

"The Beach of a Thousand Wonders"

P. O. BOX 368
CANNON BEACH
OREGON 97110

March 9, 1983

Oregon Department of Environmental Quality
Water Quality Division
P.O. Box 1760
Portland, Oregon 97207

Comments on "Increase in Water Quality Permit Fees" for the Public Hearing scheduled for April 15, 1983.

It is our observation that increasing the filing fee from $25.00 to $50.00 represents a 100% increase, a ludicrous proposition. Is it expected that we are to believe that the work load has doubled? Or that services are to be increased twofold?

How can you propose to increase fees for wastewater irrigation systems to the level of those discharging to public waters at the same time you are supposedly working on a program of utilizing wastewater rather than "dumping" it in public waters? This does not sound to us like the way to encourage a more creative attitude toward solving wastewater problems in this State.

Why aren't fee increases an economic hardship? All increases of this kind must obviously be passed along to system users. In these times of economic crunch, we view your concept of meeting your budget requirements by raising fees rather than relying on the tax base as onerous. We believe you should be looking for methods of holding the line as an example and encouragement to the rest of us instead of just adding another straw to the camel's back. If you intend to be leaders, start acting like leaders.

CLEAN UP YOUR ACT SO WE CAN ALL CLEAN UP THE WATER TOGETHER.

Cannon Beach Sewer Board

Signature Sheet Attached

LLB

LEBANON CITY HALL

925 MAIN STREET, P.O. BOX 247
LEBANON, OREGON 97355 (503) 258-3185

ADMINISTRATION • FINANCE • COMMUNITY DEVELOPMENT

March 7, 1983

Department of Environmental Quality
Water Quality Division
P. O. Box 1760
Portland, OR 97207

Re: Notice of proposed increase in Water Quality Permit fees.

Gentlemen:

We have reviewed the proposal for increasing permit fees and find that the City of Lebanon will be affected as will most cities in the state. We understand the necessity for reviewing these matters in an effort to keep abreast of rising costs. We also know that increasing costs on every side makes survival with our tight budgets increasingly difficult.

These increases leave cities no choice but to go to the taxpayer for more money. This is difficult in good times; with conditions as they are presently, it is next to impossible.

The City of Lebanon wishes to go on record as opposing any increases in general and an increase of the annual permit fee in particular.

Sincerely,

Stanley Stevenson

Stanley Stevenson
Public Works Superintendent

SS/jw

cc: James D. Thompson, City Administrator

STEINFELD'S PRODUCTS COMPANY

10001 N. RIVERGATE BLVD.
PORTLAND, OREGON 97203
TELEPHONE (503) 286-8241 • TWX 910-464-4718

Steinfeld's WESTERN ACRES
Since 1922

Manufacturers of Finest Quality

pickles - relishes
sauerkraut

March 8, 1983

Department of Environmental Quality
Water Quality Division
P. O. Box 1760
Portland, Oregon 97207

Dear Sirs:

Insofar as our company is concerned, Governmental Agencies and Public Utilities remain the greatest abusers contributing to inflation today, and I think you will find industry has done a reasonable job in trying to hold down increased costs, because their survival has depended upon it.

Therefore, I wish to remonstrate against any and all increases for permits, user fees and all other increases proposed, not only by the DEQ but any Governmental increases.

It may seem like a small amount to you people who are administering and monitoring the DEQ, but sooner or later you must realize that many of these increases by each and every agency add up to large amounts in the final analysis.

I am personally in favor of clean air, water, and the ecology of our Country, but I feel that the sooner the DEQ and many other Government Agencies can reduce much of their services and let the businesses get on with trying to survive in the economical difficulty of today, the better off that we as industries and business people will be.

Therefore, please put our company on record as a sincere "No" to any and all increases that you are proposing.

Very truly yours,

Raymond H. Steinfeld

R. H. Steinfeld
President
STEINFELD'S PRODUCTS COMPANY

RHS:r

RECEIVED
MAR 9 1983
Water Quality Division
Dept. of Environmental Quality

March 9, 1983

Oregon Department of Environmental Quality

Comments on "Increase in Water Quality Permit Fees"

page 2 Signature Sheet

Lenore Houston

Ron Thompson

Robert W. Russell

Steve S. Mater

Lawrence B. Hood

John Williams

Kenneth Sawyer

Raymond Siebuhr

Timothy M. Lindsey

Willamette Industries, Inc.

Building Materials Group
Sales and Operations Office

P.O. Box 907
Albany, Oregon 97321
503/926-7771

March 8, 1983

Department of Environmental Quality
Water Quality Division
P. O. Box 1760
Portland, OR 97207

Dear Sirs:

This is in answer to the increase in water quality permit fees. We feel that the amount now charged should be sufficient to control the water qualities at each of our divisions. The amount seems small to you, however there seems to be no end to price increases on all types of charges passed on to industries, power, natural gas, etc. All of them seem small at the time, until you add up and see the final costs.

Sincerely,

WILLAMETTE INDUSTRIES, INC.

Chuck Russell

Chuck Russell
Engineering Department

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Increase in Water Quality Permit Fees

March 1, 1983

PUBLIC HEARING

WHO IS AFFECTED: All municipalities, industries, and other persons with wastewater disposal or discharge permits.

WHAT IS PROPOSED: The Water Quality Division is proposing an increase in permit fees, as follows:

(1) Increase $25 filing fee to $50
(2) Increase fees for wastewater irrigation systems to the same level as those which discharge to public waters.
(3) Increase annual compliance determination fees by an amount ranging from $25 per year for small minor disposal systems to $125 per year for large major disposal systems.

NOTE: Copies of the revised fee schedule are available upon request.

HOW TO COMMENT: PUBLIC HEARING

Friday, April 15, 1983 - 10 a.m.
Portland DEQ Office, 14th Floor Conference Room
522 S.W. Fifth Ave.
Portland, Oregon

Written comments should be sent to the Department of Environmental Quality, Water Quality Division, P. O. Box 1760, Portland, Oregon 97207. Comment period will close at 5 p.m. April 18, 1983.

WHAT IS THE NEXT STEP: After the hearing record has been evaluated, the fee schedule as proposed, or revised, will be presented for Commission approval at their May 20, 1983, Commission meeting.

FISCAL AND ECONOMIC IMPACTS:

The fee increases range from $25 per year for the small disposal systems up to $125 per year for the large disposal systems. Although this impacts small businesses, the $25 per year increase should not be an economic hardship. The application filing fee is to be increased by $25 but there is no across-the-board increase in permit processing fees so the impact on new businesses trying to get a permit should be minimal.

LAND USE CONSISTENCY This rule change does not affect land use.

P.O. Box 1760
Portland, OR 97207

8/10/82

PUBN.H (8/82)
WG2018

FOR FURTHER INFORMATION:

Contact the person or division identified in the public notice by calling 229-5696 in the Portland area. To avoid long distance charges from other parts of the state, call 1-800-452-7813, and ask for the Department of Environmental Quality.

STATEMENT OF NEED FOR RULEMAKING

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

(1) Legal Authority

ORS 468.065(2) authorizes the Commission to establish a schedule of permit fees.

(2) Need for the Rule

The Water Quality Permit Fees were originally adopted by the Commission as a rule on April 30, 1976. When the fees were established the Department was instructed to increase the fees as necessary so that the fee revenues would continue to support approximately the same proportion of permit related costs. There have been some changes in the fee schedule each biennium. For the 1983-85 biennium budget, the fee revenue levels are projected to be increased by about 8 percent. This requires a rule change. In addition, other portions of the fee schedule, which are no longer applicable, will be removed or changed.

(3) Principal Documents Relied Upon in this Rulemaking

a. OAR 340-45-070, Table 2 - Permit Fee Schedule
b. ORS 468.065(2)
c. Current printout of water quality permittees

WG2019

VICTOR ATIYEH
GOVERNOR

Department of Environmental Quality

522 S.W. 5th AVENUE, BOX 1760, PORTLAND, OREGON 97207

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. N, May 20, 1983, EQC Meeting

Proposed Adoption of Rules Amending the Deschutes Basin Water Quality Management Plan to Include a Special Groundwater Quality Protection Policy for the LaPine Shallow Aquifer, OAR 340-41-580.

Background

On February 25, 1983 the Commission authorized the Department to conduct a public hearing in LaPine on whether to adopt a proposed rule to establish a special groundwater protection policy for the LaPine Shallow Aquifer, OAR 340-41-580.

Notice was given by publication in the Secretary of State's bulletin on March 15, 1983, and by direct mailing to the Department's rulemaking mailing list for water quality. The hearing was held on April 19, 1983, in LaPine. The Hearing Officer's summary of testimony is included in Attachment C.

Attachment B to this report is the February 25, 1983, agenda item which presents background information for the proposed rules.

Evaluation of Testimony

The proposed rule would amend the Water Quality Management Plan for the Deschutes Basin to specifically identify water quality protection policies for the shallow unconfined aquifer underlaying the community of LaPine. Data collected through the recent groundwater studies shows that nitrate-nitrogen (NO_3-N) levels in the shallow aquifer of the LaPine core area exceed the 10 mg/L public drinking water standard. The proposed rule supports the local aquifer management plan recommendation to sewer the core area and establishes a schedule for developing the sewerage facility and financial plan and constructing the facility. Outside the core area the Department would rely upon the existing on-site waste disposal rules to control waste water discharges.

The proposed rule also contains several general policy statements intended to encourage local residents to monitor their well water, seriously consider a community drinking water system, and to test liquid storage tanks to assure prompt detection and repair of leaks.

The public hearing was preceded by a public information session wherein staff solicited and answered questions on the groundwater study and the proposed rule. Questions and comments focused on who will pay for the facility and what would be the boundaries of the sewer district. Residents were informed that these decisions have not been made. The proposed rule calls for the development of a facility and financial play by January 1, 1985. Staff explained that it is during the preparation of this report that various financing options would be considered and evaluated and that the service area boundaries would be determined.

There was agreement at the meeting that sewers are needed but the difficulty will be in finding the funds to construct them. The Department's Construction Grants Program as well as other funding possibilities were discussed as possible funding sources.

At the conclusion of the informational session the hearing was formally opened. No testimony was received at this time. The Department received written testimony after the hearing which supports sewering the core area.

Summation

1. Deschutes County completed a Section 208 Water Quality Planning Study in August 1982 which showed that nitrate-nitrogen (NO_3-N) concentrations in the shallow aquifer of the LaPine core area exceeded the 10 mg/L drinking water standard.

2. Utilizing the results of the groundwater study, the County developed the LaPine Aquifer Management Plan which recommends sewering the core area of LaPine while using the current on-site waste disposal rules in the lands outside the core area. The County presented the study findings and management plan to the public at a county hearing on July 20, 1982; and subsequently adopted the plan; and directed their staff to implement it.

3. The Department reviewed the 208 Study findings and the Deschutes County actions; evaluated alternative courses of action; and developed a proposed rule amendment which would establish a schedule for developing a facility and financial plan for constructing the facility in the LaPine core area. It also encouraged several other actions which are designed to protect the shallow water aquifer.

4. The Department requested authorization at the February 1983 EQC meeting to hold a public rulemaking hearing in LaPine. Notice was given by publication in the Secretary of State's Bulletin on March 15, 1983, and by direct mailing to the Department's rulemaking list for water quality.

5. On April 19, 1983, the Commission Hearings Officer conducted a public rulemaking hearing in LaPine to receive testimony on the proposed rule. No oral testimony was received at the meeting; written testimony received later supported the proposed rule. Concern was expressed during the informational session preceding the hearing as to where the funds would be secured to build the needed facilities and what would be the final boundaries of the sewer service area.

6. The Commission has statutory authority to act on rules under the provisions of ORS 468.020 and 468.735.

Director's Recommendation

Based on the summation, it is recommended that the Commission amend the Deschutes Basin Water Quality Management Plan to include a special groundwater quality protection policy for the LaPine shallow aquifer, OAR 340-41-580 (Attachment A).

Bill

William H. Young

Attachments:

A. Proposed Rule OAR 340-41-580.
B. Staff Report and Attachments for Agenda Item No. G, February 25, 1983, EQC Meeting.
C. Hearing Officer's Report.
D. Written Testimony.

Neil J. Mullane:g
TG2301
229-6065
April 27, 1983

ATTACHMENT A

Add a new section to OAR Chapter 340, Division 41 as follows:

SPECIAL POLICIES AND GUIDELINES

340-41-580(1) In order to protect the shallow aquifer located in the vicinity of the community of LaPine in Deschutes County for present and future use as a drinking water source, it is the policy of the Environmental Quality Commission to support the implementation of the LaPine Aquifer Management Plan adopted by the Deschutes County Board of Commissioners on September 28, 1982, by requiring the following:

(a) The waste water generated within the core area of the community of LaPine as described within the management plan, shall be collected, treated and disposed of in a manner which prevents future pollution of the groundwater by not later than January 1, 1987. An engineering plan and financing plan (facilities plan report) shall be completed and submitted to the Department by not later than January 1, 1985.

(b) The waste water generated outside the core area of the community of LaPine but within the study area described in the LaPine Aquifer Management Plan, will be subjected to regulation under the Department's on-site waste disposal rules (OAR Chapter 340, Division 71).

(c) Waste disposal systems for new developments within the LaPine Aquifer Management Plan Boundary where development density exceeds 2 single family equivalent dwelling units per acre or which have an aggregate waste flow in excess of 5,000 gallons per day shall only be appoved if a study is conducted by the applicant which convinces the department that the aquifer will not be unreasonably degraded.

(2) In addition to the requirements set forth in subsection (1), the following actions are encouraged:

(a) Since the aquifer is presently degraded to the point where it does not meet Federal Drinking Water Standards, and the installation of sewer facilities will not immediately restore the quality to safe levels, Deschutes County should notify the citizens of the LaPine core area of the need to develop a safe drinking water supply for the community as soon as possible.

(b) Residents of the LaPine area are encouraged to test their drinking water frequently.

(c) Owners of underground liquid storage tanks are encouraged to periodically test the storage tanks to assure prompt detection and repair of leaks.

(d) Data on the quality of the shallow aquifer in and around LaPine should be obtained on a periodic basis to assess the effect of the above waste water management decisions on the quality of the groundwater.

Neil J. Mullane:g
TG1967.A
2/3/83

_____ Underlined Portion is New

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, February 25, 1983, EQC Meeting

Request for Authorization to Conduct a Public Rulemaking Hearing for Establishing a Special Groundwater Quality Protection Rule in the Deschutes Basin Water Quality Management Plan OAR 340-41-580(1) for the LaPine Shallow Aquifer.

Background and Problem Statement

LaPine, located in southern Deschutes County is characterized by scattered rural development around an unincorporated core community. There are no regional water supply or sewage treatment facilities. Individual water supply and sewage disposal systems are predominant. During 1978 and 1979, several agencies completed a survey of both ground and surface waters in and around LaPine. The results of this survey indicated that nitrate-nitrogen (NO_3-N) levels were elevated in the populated area. In the core area of LaPine (Attachment G, Figure 10-5), several samples exceeded 10 mg/L which is the established public drinking water standard.

Deschutes County requested and received in 1980, a Section 208 Water Quality Management Planning grant to investigate the existing and potential sources of contamination affecting the groundwater; and to develop an aquifer management plan to protect the identified uses. The County subsequently solicited proposals and selected a consultant to undertake the work.

The study was completed in August 1982 and concluded that:

- Domestic water is provided, for the most part, by individual wells located in the shallow alluvial aquifer (Attachment G, Figure 10-4).
- Depth to water in the shallow aquifer is between 10-25 feet.
- Soils in the study area are highly permeable and thus are rapidly draining and provide little if any protection to the aquifer.

- The general groundwater flow direction, outside of those areas immediately adjacent to the Little Deschutes River, is east to northeast (Attachment G, Figure 10-4).

- The groundwater flow velocity ranges between 0.39 and 0.95 feet per day or 142 to 345 feet per year.

- The average annual surplus precipitation available for aquifer recharge was calculated to be 7.7 inches.

- There are currently 11,236 platted lots in the study area, of which 2,351 are developed. Most lots range in size from one-half to two acres.

- The shallow aquifer has been found to be contaminated with nitrate-nitrogen, sulfate and chloride compounds near areas where on-site waste disposal systems are used.

- The LaPine core area (Attachment G, Figure 10-5) nitrate concentrations were found in most wells to exceed 5 mg/L and almost half exceeded 10 mg/L, while a few were as high as 40 mg/L or four times the allowable nitrate concentration for community and public water supplies.

- Although contamination is most severe in the core area, there are areas of elevated nitrate levels in the rural area where septic effluent recycling is suspected.

Based on these findings, the County developed a management plan (Attachment G) designed to protect the aquifer. The plan evaluates various alternative methods for controlling wastes including: collection, treatment and disposal, on-site treatment and disposal, development moratoriums, and control of waste disposal system density. The plan also evaluates the establishment of aquifer reserve areas, "writing off" the aquifer, and the establishment of special well construction regulations.

The proposed management plan is summarized as follows:

Areas With Lots Smaller Than One Acre (Outside the Core Area of the Community of LaPine)

The management activities recommended include: the development of on-site waste treatment technology to produce an effluent with less than 31 mg/L nitrogen, monitoring of the disposal system, aquifer, and water supplies and the construction of a domestic water supply system.

Areas With Lots One Acre or More in Size

The recommendations include: the utilization of current on-site waste disposal rules, monitoring of the aquifer and domestic water supplies, and if required, the construction of a domestic water supply system.

New Developments or Major Waste Systems

The recommendation is to perform a special waste load and aquifer investigation study to address the proposed development or situation.

Areas of Documented Contamination

This presently applies to the LaPine core area. In these situations the management recommendations include: prepare a facility plan, design and construct a community sewerage facility, construct a domestic drinking water system, and impose a building moratorium.

At the completion of the project, the county held a public hearing on July 20, 1982 to review the findings and receive comments on the proposed aquifer management plan. The Deschutes County Planning Commission unanimously recommended that the Board of County Commissioners (Attachment D) accept the LaPine Aquifer Management Plan and direct staff to utilize this document in making land use decisions in the LaPine area. The Board of Commissioners at their September 28, 1982 meeting approved the plan and directed staff to implement it (Attachment E).

Evaluation

The Department reviewed the LaPine groundwater report, the aquifer management plan, and other actions of the Deschutes County Planning Commission and Board of Commissioners. The Department concludes:

1. The LaPine area shallow aquifer is unconfined.

2. The core area of LaPine has urban densities on rapidly draining soils.

3. The shallow aquifer in the LaPine core area as outlined in Attachment G - Figure 10-5, has nitrate-nitrogen (NO_3-N) levels in excess of the 10 mg/L public drinking water standard.

4. The shallow aquifer within the study area as outlined in Attachment G - Figure 10-2, but outside of the LaPine core area, has NO_3-N levels below 10 mg/L.

5. The domestic wells downgradient from on-site waste disposal systems in some cases appear to "recycle" the discharged effluent.

6. For the core area of LaPine, the collection, treatment and disposal of waste is necessary to eliminate the continued NO_3-N loading to the aquifer.

7. Outside the core area individual on-site waste disposal systems can be utilized for lots meeting the current rules.

8. For new development densities exceeding two single family equivalent dwelling units per acre and for new developments and large waste

disposal systems with an aggregate or individual flow exceeding 5,000 gallons per day a special study and evaluation is needed prior to approval to assure that the aquifer is not unacceptably degraded.

9. The collection, treatment and disposal of waste within the LaPine core area will, over an extended period of time, enhance the quality of the shallow aquifer. However, to have a reliable and safe drinking water source, a domestic drinking water supply system should be developed for LaPine.

10. To maintain a data record for future waste management decisions, the LaPine shallow aquifer should be periodically sampled.

Alternatives

Based on these conclusions, two alternatives are suggested for further consideration.

A. Maintain the Present Approach.

Under this alternative the Department would continue its present approach and issue waste disposal systems approvals under the current administrative rules.

Discussion

Under this alternative the Department would continue to apply the current waste control strategy to the LaPine area. The County aquifer management plan would be partially supported. However, the shallow aquifer would continue to receive a NO_3-N loading in the core area of LaPine resulting in concentrations exceeding public drinking water standards. This action would run counter to the Commission's adopted groundwater protection policy which specifically requires the collection and treatment of wastes in urbanizing areas in rapidly draining soils overlying unconfined aquifers. Adopting this alternative would not support the completed technical report and local decisions to implement an aquifer management plan.

B. Adopt a Special Groundwater Quality Protection Rule

Establish a special groundwater quality protection rule (Attachment A) within the Deschutes Basin Water Quality Management Plan for the LaPine area shallow aquifer. The rule supports the local groundwater report and aquifer management plan and sets forth the Commission's policy for protecting the shallow aquifer. It also establishes a schedule for implementing waste management decisions in the core area, encourages the development of a domestic drinking water supply system in the core area, and establishes a special review condition for new developments and waste disposal systems.

Discussion

The protection of the LaPine area shallow aquifer for drinking water beneficial use is of primary concern. The management decisions to be determined focus on waste disposal in: (1) the core area and (2) the surrounding rural area. The core area is of special concern because the NO_3-N levels greatly exceed the drinking water standard. The management approach in the rural area should be preventative because NO_3-N levels are still below standards. However, in the core area abatement action is necessary to correct the existing problem. Implementation of the current subsurface regulations will protect the aquifer in the rural area but wastes in the core area must be collected and treated to correct the contamination problem. The recently adopted groundwater policy expressly calls for the collection and treatment of wastes in areas of urban densities in rapidly draining soils overlaying shallow unconfined aquifers. The core area of LaPine meets these conditions.

Based on the above conclusion and discussion, the Department supports the adoption of Alternative B. The Department now is requesting authorization to conduct a public rule-making hearing to receive comments on the proposed special water quality protection clause for the Deschutes Basin Water Quality Management Plan (Attachment A).

The Commission has statutory authority to act on rules under the provisions of ORS 468.020 and 468.735. These statutes authorize the Commission to enact such rules as are necessary to perform the function vested by law to them.

Summation

1. Water samples in 1978 and 1979 indicated that the LaPine area has elevated NO_3-N levels.

2. In June 1980 Deschutes County was given a Section 208 grant to complete a study of the groundwater in LaPine.

3. The 208 Study was completed in August 1982 and shows that NO_3-N concentrations in the shallow aquifer in the LaPine core area exceed the 10 mg/L drinking water standard.

4. Deschutes County developed the LaPine Aquifer Management Plan to address the identified problem. The plan recommends sewering the core area of LaPine while utilizing the current on-site waste disposal rules for the remaining lands within the study area.

5. The study findings and recommendations were presented to the public at a hearing on July 20, 1982.

6. The Deschutes County Planning Commission and County Board of Commissioners have accepted the report and have directed their staff to implement the aquifer management plan.

7. The Department has reviewed the 208 study and the Deschutes County actions and have evaluated alternative courses of action.

8. The Department recommends, based on the technical findings of the 208 study and the actions of Deschutes County, that a special groundwater quality protection rule be adopted for the Deschutes Basin Water Quality Management Plan.

Director's Recommendation

Based on the Summation, it is recommended that the Commission authorize the Department to conduct a public rulemaking hearing on whether to add a special groundwater quality protection rule to the Deschutes Basin Water Quality Management Plan for the LaPine Area Shallow Aquifer as set forth in Attachment A.

William H. Young

Attachments:
A. Proposed Rule OAR 340-41-580
B. Draft Statement of Need, Land Use Consistency, and Fiscal and Economic Impact
C. Draft Hearing Notice - Proposed Water Quality Management Plan Rule OAR 340-41-580
D. Deschutes County Planning Commission Recommendations
E. Deschutes County Board of Commissioners Adoption Actions
F. EPA Review Letter
G. LaPine Aquifer Management Plan and Environmental Impact Analysis, Chapter 10 of the Final Report, August 1982

Neil J. Mullane:g
229-6065
February 3, 1983

TG1967

ATTACHMENT A

Add a new section to OAR Chapter 340, Division 41 as follows:

SPECIAL POLICIES AND GUIDELINES

340-41-580(1) In order to protect the shallow aquifer located in the vicinity of the community of LaPine in Deschutes County for present and future use as a drinking water source, it is the policy of the Environmental Quality Commission to support the implementation of the LaPine Aquifer Management Plan adopted by the Deschutes County Board of Commissioners on September 28, 1982, by requiring the following:

(a) The waste water generated within the core area of the community of LaPine as described within the management plan, shall be collected, treated and disposed of in a manner which prevents future pollution of the groundwater by not later than January 1, 1987. An engineering plan and financing plan (facilities plan report) shall be completed and submitted to the Department by not later than January 1, 1985.

(b) The waste water generated outside the core area of the community of LaPine but within the study area described in the LaPine Aquifer Management Plan, will be subjected to regulation under the Department's on-site waste disposal rules (OAR Chapter 340, Division 71).

(c) Waste disposal systems for new developments where development density exceeds 2 single family equivalent dwelling units per acre or which have an aggregate waste flow in excess of 5,000 gallons per day shall only be appoved if a study is conducted by the applicant which convinces the department that the aquifer will not be unacceptably degraded.

(2) In addition to the requirements set forth in subsection (1), the following actions are encouraged:

(a) Since the aquifer is presently degraded to the point where it does not meet Federal Drinking Water Standards, and the installation of sewer facilities will not immediately restore the quality to safe levels, Deschutes County should notify the citizens of the LaPine core area of the need to develop a safe drinking water supply for the community as soon as possible.

(b) Residents of the LaPine area are encouraged to test their drinking water frequently.

(c) Owners of underground liquid storage tanks are encouraged to periodically test the storage tanks to assure prompt detection and repair leaks.

(d) Data on the quality of the shallow aquifer in and around LaPine should be obtained on a periodic basis to assess the effect of the above waste water management decisions on the quality of the groundwater.

Neil J. Mullane:l
TG1967.A
2/3/83

ATTACHMENT B

STATEMENT OF NEED

1. Citation of Statutory Authority: ORS 468.020 and 468.735, which authorize the Environmental Quality Commission to adopt rules as necessary to perform the functions vested by law to the Commission.

2. Need for Rule: Recent groundwater reports and information show that the LaPine area shallow aquifer is being contaminated by waste sources. The intent of the rule amendment is to provide support to a locally developed and adopted aquifer management plan and state the Department's policy for protecting the aquifer.

3. Documents relied upon in proposal of the rule:

   a. LaPine Aquifer Management Plan, August 1982

   b. Deschutes County Planning Commission Recommendation

   c. Deschutes County Board of Commissioners Action September 28, 1982

   d. Statewide Groundwater Protection Policy, August 1981. (OAR 340-41-029)

STATEMENT OF LAND USE CONSISTENCY

The proposed groundwater quality protection rule amendment to the Deschutes Basin Plan (OAR 340-41-580) appears to be consistent with statewide planning goals. The proposed amendment relates primarily to Goals 6 and 11. There is apparently no conflict with other goals.

With regard to Goal 6 (Air, Water and Land Resources Quality), the proposed groundwater quality protection rule will provide for sewerage facilities in areas of documented contamination (the LaPine core area). In the remainder of the study area, the rule will utilize existing on-site waste disposal rules. These measures are consistent with protection of groundwaters in the Deschutes Basin.

With regard to Goal 11 (public facilities), the proposed protection rule will necessitate the construction of public sewers and sewage treatment facilities within the LaPine core area. This measure is consistent with public health and safety both of LaPine area residents and other persons utilizing commercial facilities in the core area.

Public comment on these proposals is invited.

It should be noted that the Deschutes County Commissioners, in adopting the LaPine Aquifer Management Plan, directed staff to utilize the plan in making land use decisions in the LaPine area, and will further require that the plan be included in the next update of the Deschutes County Comprehensive Plan.

It is requested that local, state, and federal agencies review the proposed rules and comment on possible conflicts with their programs affecting land use and with statewide planning goals within their expertise and jurisdiction.

The Department of Environmental Quality intends to ask the Department of Land Conservation and Development to mediate any conflicts brought to our attention by local, state, or federal authorities.

STATEMENT OF FISCAL AND ECONOMIC IMPACT

Implementation of the proposed amendment to the Deschutes Basin Plan (OAR 340-41-580), should result in both positive and negative economic impacts.

Positive Impacts

1. Establishing sewerage facilities and careful implementation of on-site waste disposal rules will protect and improve the groundwater. This removes uncertainty regarding quality of the water and should allow for full residential development. In turn this will allow for continued development and extension of commercial facilities, particularly small businesses, prevalent in the LaPine area.

2. There will be a substantial increase in the protection of public health. This will also enhance the ability of the existing commercial facilities to fully serve the public.

3. The rule does not conflict with established zoning and land use policies; in fact it complements them.

4. The rule protects the water for the prime beneficial use of drinking water. Adequate and reasonable drinking water supplies are essential to future economic development of the LaPine area.

5. Small businesses in the LaPine area should benefit from improved water quality.

Negative Impact

The cost of sewering the LaPine core area will have to be borne by the benefited property owners, both residential and small business.

Neil J. Mullane:g
TG1967.B
2/3/83

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

A proposed rule directing responsible agencies to develop a plan to construct sewerage facilities for the LaPine core area; and identifying a general water quality program policy for protecting the LaPine shallow aquifer.

WHO IS AFFECTED:

Residents and Land Owners of Deschutes County in or near the community of LaPine, Oregon.

WHAT IS PROPOSED:

The Department of Environmental Quality is proposing to change the present rule which sets state water quality program policy and standards for the Deschutes River Basin in order to integrate recommendations made by the locally developed and adopted LaPine Aquifer Management Plan.

WHAT ARE THE HIGHLIGHTS:

The proposed rule directs the responsible agencies to develop the necessary plans and construct a sewerage facility for the LaPine core area. It also sets general water quality program policies for protecting the LaPine shallow aquifer.

HOW TO COMMENT:

Public Hearing

DEQ will hold a public hearing on the proposed rules at:

(Arrangements to be made for hearing in the LaPine Area)

Both oral and written comments will be accepted. Written comments also can be sent to the Department of Environmental Quality, Attention Neil Mullane, LaPine Rule, P.O. Box 1760, Portland, OR 97207. Written comments must be postmarked by _____ to be included in the hearing record.

P.O. Box 1760
Portland, OR 97207

8/10/82

FOR FURTHER INFORMATION:

Contact the person or division identified in the public notice by calling 229-5696 in the Portland area. To avoid long distance charges from other parts of the state, call 1-800-452-7813, and ask for the Department of Environmental Quality.

PUBN.H (8/82)
TL2283

WHERE TO OBTAIN ADDITIONAL INFORMATION:

Copies of the proposed rule changes for the LaPine area may be obtained from:

Department of Environmental Quality
Central Region Office
2150 N.E. Studio Rd.
Bend, OR 97701 Telephone: (503) 388-6146

OR

Department of Environmental Quality
Water Quality Division
P.O. Box 1760
522 S.W. Fifth Ave.
Portland, OR 97207 Telephone: (503) 229-6065

DEQ staff will be available to answer questions on the proposed rule changes.

FINAL ACTION:

Final action on these proposed rule changes will be taken by the Environmental Quality Commission subsequent to the scheduled public hearing. An additional public hearing before the Commission is not anticipated.

LAND USE CONSISTENCY:

The Deschutes County Board of Commissioners have taken formal action to adopt the local Aquifer Management Plan.

Citation of authority, statement of need, a statement of fiscal and economic impacts, and the detailed land use consistency statement are available from the DEQ at the addresses listed above.

Neil J. Mullane:l
February 9, 1983

ATTACHMENT D

Deschutes County Planning Department

COURTHOUSE ANNEX, ROOM 102 • PHONE 388-6556
BEND, OREGON 97701

TO: Board of County Commissioners

FROM: Deschutes County Planning Commission

SUBJECT: LaPine Aquifer Management Plan

It is the unanimous recommendation of the Deschutes County Planning Commission to the Board of County Commissioners to accept the LaPine Aquifer Management Plan and direct staff to utilize this document in making land use decisions in the LaPine area. Further, we recommend that the Board direct staff to include this management plan in the next update of the Deschutes County Comprehensive Plan.

Respectfully submitted,

John E. Andersen, Secretary
Deschutes County Planning Commission

JEA:ap

DESCHUTES COUNTY BOARD OF COMMISSIONERS
SEPTEMBER 28, 1982 - REGULAR MEETING

Chairman Shepard called the meeting to order at 10:00 A.M. Commissioner Paulson and Commissioner Young were also present.

Amendments to the agenda

There were four amendments to the agenda, which are listed as follows:

(1) Appointment of John Andersen as Administrator of the Energy Grant - Bob Paulson

(2) Discussion regarding Land Action with Earl Nichols - Bob Paulson

(3) Discussion regarding LaPine Wood Program - Clay Shepard

(4) Discussion regarding hours of operation during Christmas holiday - Clay Shepard

Acceptance & signature of contracts for LaPine Sheriff's substation

Doug Maul, Facilities Coordinator, was present to discuss this. He presented to the Board the contracts for the construction of the Sheriff's substation in LaPine. These had been signed by Argent Industries, who won the bid on the construction. Mr. Maul also stated that they have obtained insurance for Workmen's Comp and that there were no problems with the subcontractors.

MOTION: YOUNG moved to award the contract to Argent Industries of Aloha, Oregon.
PAULSON: Second.

VOTE: SHEPARD: AYE.
PAULSON: AYE.
YOUNG: AYE.

Mr. Maul noted that they expect the project to be completed in about five months. He then introduced representatives of Argent Industries who were present.

Discussion regarding Mining Reclamation

John Andersen, Planning Director, had sent a memo to the Board in regard surface mining reclamation authority. Mr. Andersen explained that they had been trying to obtain authority from DOGAMI to enforce surface mining reclamation. He stated that at this point they have not been successful with that, so they have decided to to use local authority through the comp plan and through the zoning ordinance to require a site plan, which would assure that the mining taking place would be compatible with the surrounding uses and that the surrounding uses would be compatible with the mining. He stated that the county also has the authority to require bonds.

MOTION: PAULSON moved that the Board direct staff to institute a program wherein the mining land reclamation of the comp plan will become a part of the Site Plan approval process.
YOUNG: Second.

VOTE: SHEPARD: AYE.
PAULSON: AYE.
YOUNG: AYE.

Discussion & Authorization for COIC to Pay for Economic Development Grants

Mr. Andersen stated that they have conducted a number of these grants through money obtained from Central Oregon Intergovernmental Council (COIC). He stated that Robin Bradley's study of the ordinance and procedures and the camera-ready copies of the LaPine Industrial Site have been completed. The camera-ready copies of the Bend Land Bank are also complete. He stated that these projects had been very successful. Chairman Shepard stated that the presention on the LaPine Industrial Site given before the Planning Commission had been very good. He also noted that no member of the LaPine Industrial Committee had been present at any of the meetings but it is assumed that they are satisfied with the study. He also commended Mr. Andersen for his work on these projects.

MOTION: YOUNG moved to authorize payment.
PAULSON: Second.

VOTE: SHEPARD: AYE.
PAULSON: AYE.
YOUNG: AYE.

Appointment to River Bend Estates Special

The Board had received a letter from the district recommending that Bruce McCoy be appointed to serve on the district's board. He would complete a term unfinished by another member, commencing on July 1, 1982 and would subsequently be appointed to a term beginning January 1, 1983 and ending December 31, 1985.

MOTION: PAULSON moved to approve the appointment of Bruce McCoy to the term indicated.
YOUNG: Second.

VOTE: SHEPARD: AYE.
PAULSON: AYE.
YOUNG: AYE.

Acceptance of 208 Water Study and Terrebonne Water Study

Jordan Maley, Planning Department, and Bob Shimek, Century West Engineering, were present for this. Mr. Andersen had sent the Board two memos indicating the Planning Commission's recommendation to the Board to accept these studies. Mr. Maley read these memos aloud.

MOTION: PAULSON moved that the Board approve both plans and direct staff to implement them.
YOUNG: Second.

Chairman Shepard commended Mr. Shimek on the exceptional work Mr. Shimek had done on these management

plans and the professional way in which the people in LaPine and the staff and consultant had worked together on this project. He noted that these projects were begun 26 months ago.

VOTE: SHEPARD: AYE.
PAULSON: AYE.
YOUNG: AYE.

Appointment of John Andersen as Administrator of Energy Grant

MOTION: PAULSON moved that the Board appoint John as administrator of the Deschutes County energy grant.
YOUNG: Second.

Commissioner Paulson explained that this was being done because he would not be in office for the duration of the grant. Also the grant coordinator, Betsy Shay, will be gone this year and the grant will be contracted out. Betsy had been a county employee. He had discussed this with Mr. Andersen, who had agreed to take charge of the administration of this grant.

VOTE: SHEPARD: AYE.
PAULSON: AYE.
YOUNG: AYE.

It was the concensus of the Board to amend the motion to instruct County Counsel to draft a resolution so appointing Mr. Andersen, for the Board's signature at a later time.

Discussion regarding LaPine Wood Program

Chairman Shepard stated that he had received a call from Diane Martin of CODE X in LaPine in regard to the possibility of obtaining county funds for the wood program. She had stated that the program is not functioning at this time because they have no funds to purchase gasoline to run the trucks. Mr. Whitney is no longer involved with the program. There is some wood stockpiled and volunteers are available. At this time their only problem is that they don't have funds to purchase gas. She had requested that the County provide funds for this purpose. Chairman Shepard had told her that he would place the matter on the agenda for Board decision.

Commissioner Paulson stated that it was his feeling that a nominal fee should be charged to the recipients of wood in order to pay for gas. He did not feel that it would be appropriate for the County to fund this program. Commissioner Young stated that that was his feeling as well, that this would only open the door for similar requests.

Chairman Shepard stated that he disagreed with that opinion. He stated that during the Budget Board meetings funds are given to Senior Citizens in Bend and Redmond because they are organized and each year make a funding request. He stated that although LaPine

seniors have not formed an organization, this program benefits many of the senior citizens in the area and this would provide the county the opportunity to assist the LaPine area seniors as well. He felt that to provide wood to these people was very important.

MOTION: SHEPARD moved that they take $1,000 from contingency and allocate it through COCOA for the purpose of buying gas for the LaPine Wood Program.
YOUNG: Second.

Commissioner Paulson stated that this was enough money to buy 10,000 gallons of gas. Mr. Isham stated that the County gave the program $3,000 last year through COCOA. There was some further discussion.

VOTE: SHEPARD: AYE.
PAULSON: NO.
YOUNG: AYE.

Discussion regarding Holiday closure

Chairman Shepard stated that he had been asked by a department head if it would be alright to close the afternoon of Christmas Eve. There was much further discussion.

MOTION: PAULSON moved that the County include Friday afternoon, the 24th of December, one of the County holidays starting at noon December 24.
YOUNG: Second.

There was much further discussion, in which it was discovered that the Friday prior to Christmas and New Year's had been deemed a holiday since the actual holiday fell on a Saturday. Because of this, the motion was withdrawn.

Discussion regarding Land Action

Earl Nichols was present to discuss this. He stated that this involved a 2500-acre parcel of county land, which was being partitioned to create an 80-acre parcel which will be transferred to Bend Metro Parks and Recreation. He stated that eventually this land would be traded to Diamond International and become part of their commercial forest. Mr. Nichols requested that John Andersen, Planning Director, make an administrative decision on this variance application. Mr. Andersen stated that private developers had submitted similar variance applications, but it was his feeling that this went beyond the scope of what the Board had intended to be covered by administrative decisions, and had requested a Board directive in this matter. Mr. Nichols stated that because there would be no development on this property, it would be used as commercial forest, there should be no problem with doing this administratively. He suggested that they put a covenant on the parcel restricting it from development, in order that the application could be processed administratively, which would be faster. There was some further general discussion.

MOTION: PAULSON moved that the Board set a policy clarifying the ordinance giving administrative review authority to the Planning Director, the policy being that partitions involving the exchange of property between two public bodies can be originally decided by the Planning Director.
YOUNG: Second.

Chairman Shepard stated that he felt that this is precedent setting and they could not always be guaranteed that someone of John Andersen's same caliber would always be in that position. This was discussed further. Commissioner Young stated that the policy could always be changed if it became necessary.

VOTE: SHEPARD: NO.
PAULSON: AYE.
YOUNG: AYE.

OLCC License Renewals

Before the Board were several OLCC Liquor License Renewal applications. All had been approved by the Sheriff's office and had paid the clerk's filing fee. One was for the Deschutes River Trout House in Sunriver and the other was for Jack's Saloon in Terrebonne.

MOTION: YOUNG moved that the Trout House and Jack's Saloon be approved.
PAULSON: Second.

VOTE: SHEPARD: AYE.
PAULSON: AYE.
YOUNG: AYE.

Request for Refund

Before the Board was a request for refund in the amount of $176.20 to William F. Perlicht. The Board approved the request.

Lease for Rainbow House

Mr. Isham stated that the lease form for the Rainbow had been changed at his request and he is satisfied with the current language of the document. He stated that this is the same house they had been using in the past.

MOTION: PAULSON moved to approve.
YOUNG: Second.

Mr. Isham noted that this would be the last year they would use this house, as this program will be housed in the Post Office building after remodelling is completed.

VOTE: SHEPARD: AYE.
PAULSON: AYE.
YOUNG: AYE.

There being no further business at this time, Chairman Shepard recessed the meeting until 10:00 A.M. the next day.

DESCHUTES COUNTY BOARD OF COMMISSIONERS

CLAY C. SHEPARD, CHAIRMAN

ROBERT C. PAULSON, JR., COMMISSIONER

ALBERT A. YOUNG, COMMISSIONER

/ss

ATTACHMENT F

U.S. ENVIRONMENTAL PROTECTION AGENCY

REGION X

1200 SIXTH AVENUE

SEATTLE, WASHINGTON 98101

NOV 23 1982

REPLY TO ATTN OF: M/S 433

Neil J. Mullane
208 Contract Administrator
Dept. of Environmental Quality
P.O. Box 1760
Portland, OR 97207

Dear Neil:

I have reviewed the final LaPine Aquifer Management Plan developed under EPA grant #P000182. The County and its contractor, Century West Engineering Corporation, has done a good job analyzing and documenting the groundwater problems in the area and developing alternatives for protection of the aquifer. After reviewing the outputs completed under this project, I have determined that all workplan commitments have been met and hereby authorize final payment on this project.

EPA is pleased with the adoption of the management plan by Deschutes County and we look forward to EQC adoption. I hope that during the EQC adoption process a schedule for implementation of the plan will be developed.

Should you have any further questions, do not hesitate to call me.

Sincerely,

Debbi Yamamoto
Water Planning Section

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

1982

WATER QUALITY CONTROL

CHAPTER 10

LAPINE AQUIFER MANAGEMENT PLAN AND ENVIRONMENTAL IMPACT ANALYSIS

INTRODUCTION

The LaPine study area (Figure 10-1) is in a low, sediment filled basin located between the Cascade Mountain Range on the west and Newberry Volcano to the east. The Deschutes, Little Deschutes, Fall and Spring Rivers, and Paulina and Long Prairie Creeks flow through the basin.

The study area is a 160 square mile part of the 600 square mile basin. The study area extends north from the Deschutes/Klamath County line to Spring River, and contains most of the private lands available for residential development in the Deschutes County portion of the basin (Figure 10-2).

The general stratigraphic conditions which occur are 1) a surface alluvial deposit up to 50 feet thick consisting mainly of sands and gravels, 2) an intermediate sedimentary deposit up to 500 feet thick composed of silts and clays with thin layers of sand, gravel and organic sediments, and 3) an older basalt lava flow at depths in excess of 500 feet in the center of the basin and decreasing toward the basin edges. Each of these three formations (Figure 10-3) contains a ground water aquifer.

Water quality in the basalt aquifer is believed to be very good. Water quality in the sedimentary aquifer meets drinking water standards in

some parts of the study area. Sedimentary aquifer wells near LaPine, however, produce water that is of poor quality, has a bad taste and odor and may reflect the influence of organic sediments. Shallow alluvial aquifer quality is very good except near areas where on-site sewage disposal systems are used. In these areas, elevated concentrations of contaminants, primarily nitrate nitrogen, were observed, sometimes far above drinking water and beneficial use standards.

Due to extensive subdivision of lands, primarily in the 1960's, there are currently 11,236 platted lots in the study area. Most lots range from one-half to two acres in size. Most lots range from one-half to two acres in size. Deschutes County records indicate that there are currently 2,351 dwelling units in the study area, leaving 8,885 lots vacant. Midstate Electric Cooperative records indicate that only 54 percent of existing dwelling units are used as permanent residences.

Approximately 3,320 additional dwelling units will be required in order to meet the projected 20 year growth needs in the study area. If only half of the existing vacant lots are suitable for building, there is still a surplus of lots to accommodate the 20 year growth needs of the area. For this reason development of a large number of new subdivision lots is not expected to occur in the foreseeable future.

Most dwelling units in the study area use on-site waste disposal systems for disposal of domestic wastes. Domestic water is provided primarily by individual shallow wells producing water from the alluvial aquifer. Individual deep wells or community water systems are used in some areas.

The shallow, alluvial aquifer (Figure 10-4) provides water for a large number of users, especially in the south and central parts of the study area. Depth to water in this aquifer is usually 10 to 20 feet and may be less in some areas. The soils which overlie this aquifer are highly permeable and offer little protection of the aquifer from contaminants which migrate downward from the ground surface.

The shallow aquifer has been found to be contaminated with nitrate nitrogen, sulfate and chloride compounds near areas where on-site waste disposal systems are used. Nitrate concentrations in the LaPine core area (Figure 10-5) were found in some wells to exceed 40 milligrams per liter, four times the allowable nitrate concentration for community and public water supplies.

Elevated nitrate levels and other forms of contamination have not been found in any portions of the shallow aquifer except in areas of on-site waste disposal system use.

BASIS FOR AN AQUIFER MANAGEMENT PLAN

The aquifer management plan must provide for protection of the shallow ground water for recognized beneficial uses. Ten beneficial uses of water in the study area have been identified by the DEQ. The beneficial use which requires the best quality water, and is the use for which the shallow aquifer must be protected, is that of domestic water supply. It is necessary to maintain nitrate nitrogen levels in the aquifer to below the ten milligram per liter drinking water limit to protect this beneficial use. Nitrate nitrogen in domestic wastewater poses the greatest threat to the identified highest beneficial use. In undeveloped areas, the DEQ recommends that a nitrate "planning limit" of five milligrams per liter be used in determining suitable waste system densities in new subdivisions. As a condition of approval of some on-site waste disposal systems, DEQ requires proof that a five milligram per liter nitrate concentration in the aquifer will not be exceeded.

In areas where nitrate levels exceed the drinking water limit (10 mg/l) remedial, rather than preventive, measures are required to protect the highest beneficial use of the ground water.

The management plan must also address other potential sources of contamination which can impact on beneficial uses. These include storage tanks, accidental spills of toxic chemicals or petroleum products, and future solid waste and septage disposal sites.

AQUIFER MANAGEMENT ALTERNATIVES

Several alternatives exist for protecting the beneficial uses of ground water in the study area. The alternatives differ with respect to effectiveness, cost, and ease of implementation. A balance of these three factors must be considered in developing a management plan, since the most effective alternative for aquifer protection may have prohibitive costs, or may not be implementable, and the simplest method to implement may not be effective for its intended use. These alternatives are discussed below.

Community Collection, Treatment and Disposal of Wastes

This has been identified by DEQ as being the highest and best practicable method of protecting beneficial uses of water in areas with shallow ground water and highly permeable soils. These are the conditions which exist in the study area.

This alternative entails construction of a sewage collection system, a treatment facility and an effluent disposal system.

One appropriate community treatment facility for use in the LaPine basin is the waste stabilization lagoon. A lagoon is a shallow, quiescent basin which stores wastewater while contaminants are reduced or removed by natural biological processes. Nitrogen removal in lagoons can be very good, and is typically significantly greater than other proven waste treatment processes, such as the activated sludge or trickling filter process. A lagoon can also provide the ability to store waste flows during winter months.

Due to DEQ restrictions on discharging treated wastes to surface water, effluent disposal in the study area must be accomplished by discharge to land. In a land disposal system, disposal is accomplished by seepage and percolation into the soil, by uptake of water and nutrients (nitrogen) by plants, and by evaporation. During winter months, the primary mechanism for disposal of treated wastewater on land is seepage and percolation. During summer months, significant losses of water through evaporation and plant uptake can occur. Summer discharge of treated effluent to land can effectively supplement irrigation needs.

Advantages of community systems include positive control and monitoring of the waste treatment process, the ability to remove contaminants from wastewater prior to disposal, and the ability to dispose of wastes in areas away from domestic water supplies and where there will be minimal impact on ground water.

The disadvantages of a community system are implementability and cost. With few exceptions, community waste collection, treatment and disposal systems are required to be under the control of a legal entity such as a district or municipality. Where no entity exists, one must be formed with the consent of the majority of the affected residents of the incorporation area. Often this is a very time-consuming process. The cost of community systems is highly variable and is dependent on local conditions which affect construction, and on the type of system being considered. Before any design or construction is started, a facility planning study is necessary to identify what type of system will do the best job for the least cost. When costs are identified, consent of the majority of affected persons or property owners in the service area is

again required in order to generate funds to pay either the entire cost of the system or local share costs if outside funding is available.

On-Site Treatment and Disposal of Domestic Wastes

This alternative involves use of septic tank or other pretreatment of wastes followed by additional treatment and disposal of effluent in a soil absorption system. This technology is extensively used in the study area at this time. The septic tank/absorption field system is effective in removing many contaminants, including bacteria, from domestic sewage. Nitrogen which is not removed by on-site systems is diluted by precipitation and is attenuated in ground water by dilution and dispersion mechanisms. The impact on ground water nitrogen levels is dependent on the amount of nitrogen discharged and by the number of systems in use in a given area (system density).

Nitrogen discharge to on-site waste disposal systems cannot be effectively controlled due to varying personal water use habits, occupancy patterns and family size. In undeveloped areas, density can be controlled by defining minimum lot sizes in new subdivisions. In the LaPine basin, this is not feasible since the subdivisions are already in place.

Because of variables caused by peak waste flows, temperature, soil conditions and construction control, nitrogen removal performance cannot be "guaranteed" in on-site systems in the same way that it can be "guaranteed" in community waste treatment systems. Community systems offer positive observation and control of most treatment process variables, including process measurement, chemical addition (if required), and

physical manipulation of waste flow by the use of pumps and piping.

Because on-site treatment process control typically is not possible, actual nitrogen removal capability can be highly variable. It is important, therefore, that "typical" or expected nitrogen removal capability of on-site systems be established in the area of their proposed use. This can be done by monitoring septic tank or other pretreatment system effluents, and monitoring absorption field performance with lysimeters and/or tensiometers. Performance monitoring is necessary to determine the most cost-effective nitrogen removal system for use in the LaPine basin. Determination of nitrogen removal performance in on-site waste systems by field testing was not within the scope of this investigation.

Except in areas where nitrogen is "recycled" through shallow well systems, the maximum nitrogen concentration in the aquifer should not exceed the nitrogen concentration in water which recharges the aquifer. The recharge nitrogen concentration is dependent on the amount of nitrogen discharged from waste disposal systems and the annual precipitation in the area. The impact of nitrogen loading from different size lots is shown in Figure 10-6, and the worst-case cumulative impact on aquifer nitrogen concentrations is shown in Figure 10-7.

A reduction in total nitrogen in effluent to 30 milligrams per liter (10.1 pounds per dwelling unit) is necessary to maintain the beneficial use limit in areas with on-site waste disposal on half acre lots, as shown in Figure 10-6. This level of nitrogen reduction may require development and use of advanced on-site waste treatment technology.

If extensive use of advanced on-site treatment technology is proposed for improving nitrogen removal, a comparative cost analysis between the on-site systems and a community collection, treatment and land disposal system should be done to determine the most cost-effective, area-wide alternative.

Most on-site technology can also be applied to community application subject to the regulatory and implementation conditions applicable to community systems.

Building and Development Moratorium

This alternative involves preventing further development within a geographically defined area until some action takes place to improve existing conditions. A moratorium usually accomplishes two objectives, 1) it keeps conditions from getting worse and 2) it provides an incentive for implementing remedial actions. A moratorium will generally not cause existing conditions to improve.

A moratorium is appropriate in an area where documented conditions show substantial impairment of beneficial uses of water or the potential for, or existence of, a public health hazard. The first of these conditions, and possibly the second, have been documented in the LaPine core area.

Control Waste Disposal System Density

This alternative has two variations, neither of which is particularly suited to the study area for either technical or legal reasons.

Down-Zone Existing Lots. This entails combining two or more existing lots into one larger lot. If this were attempted on a large scale, the resulting litigation and implementation costs in both time and money would be unestimable.

Increased Well/Waste System Setbacks. In some areas, this would be appropriate and in others it would not. Where deep wells are properly constructed, the existing 100 foot setback distance from waste disposal systems is probably excessive. In areas where the shallow aquifer supplies water to many individual wells, the 100 foot setback may be insufficient. Due to a large number of natural variables in the study area it is not appropriate to recommend a greater setback than 100 feet for general application.

Creation of Aquifer Reserve Areas

This concept involves prohibiting development over defined portions of the aquifer to allow a source of relatively clean precipitation recharge to the aquifer. This aids in dilution of contaminants generated in developed areas. Due to the presence of a large amount of land in the study area under the control of the U.S. Forest Service and Bureau of Land Management, aquifer reserve areas are considered to be pre-existing.

"Writing Off" Parts of the Aquifer

This alternative equates to changing the rules to meet existing conditions. This is not an appropriate alternative in areas where the aquifer is used for domestic water supply, and therefore is not recommended.

Special Well Construction Regulations or Provision for Water Supply from an Alternative Source.

Both of these concepts would improve water quality for domestic use in contaminated aquifer areas. Neither one, however, offers any degree of protection for beneficial uses of the shallow aquifer.

It has not been demonstrated that "special" well construction regulations are needed if existing regulations are strictly enforced. Where extensive contamination of the shallow aquifer is occurring, provision of an alternate water source may be the most feasible alternative to protect public health until remedial measures to reduce contamination in the shallow aquifer were implemented.

Special Studies for Major or Unique Projects

This alternative entails requiring special studies of waste loading and local hydrogeologic conditions as part of the site approval process for any new residential, commercial or industrial development likely to impact on the beneficial uses of the ground water resource. The study should address waste loading from the project, local aquifer characteristics based on aquifer tests and aquifer gradients, and uses of ground water in adjacent areas.

AQUIFER MANAGEMENT PLAN

The LaPine Aquifer Management Plan is designed to improve conditions through remedial actions where required and to prevent contamination of the shallow aquifer to the maximum practicable extent in developing areas.

In order to assess the need for and determine the effectiveness of aquifer management actions, a continuing ground water monitoring program is necessary. The monitoring wells installed for this project should be sampled for nitrate concentration in the spring and fall to observe long-term changes in ground water quality. When appropriate, additional monitoring wells should be constructed in developing areas or near new waste disposal systems to refine predictions of waste impacts made in this report. Monitoring could be required as a condition of the site approval or waste disposal system permit process. Residents with individual shallow wells should sample their wells annually to determine the nitrate level. If high nitrate levels are found, a decision can be made by the resident or property owner to relocate or upgrade the well or waste disposal system, construct a deep well, buy bottled water for drinking water use, or support a community water or sewerage system.

Because of varying lot size, availability of community water and variable occupancy patterns, a single approach to aquifer management is not possible. In order to address differing needs, the study area is described in terms of management categories as shown in Table 10-1 and discussed below.

TABLE 10-1

AQUIFER MANAGEMENT CATEGORIES

A. Lots smaller than one acre.

   1. Individual shallow well and on-site sewage disposal.
   2. Community water or individual deep well and on-site sewage disposal.
   3. Community water and sewage disposal.

B. Lots one to two acres in size.

C. Lots greater than two acres in size.

D. New development with significant potential to impact on beneficial uses.

E. Spills, storage tanks, or other potential sources of contamination.

F. Areas with documented ground water contamination impacting on beneficial uses or water supply.

Aquifer Management Category A-

Lots Smaller Than One Acre

Category A areas include all parts of the study area containing lots smaler than one acre in size. Different combinations of existing sewer and water utilities influence the aquifer management approach as described below.

A-1 Individual Shallow Well and On-Site Sewage Disposal. Land in this Management Category is most susceptible to aquifer contamination and water supply contamination caused by nitrogen loading and recycling of wastes. Nitrogen loading on half acre lots is predicted to cause the ten milligram per liter beneficial use nitrate nitrogen limit to be exceeded in the shallow aquifer as shown in Figure 10-6.

In order to stay within allowable limits at full buildout and occupancy, total nitrogen concentration in domestic wastewater will need to be reduced to less than 31 milligrams per liter. This can be achieved by nitrogen removal in waste treatment systems or by construction of community sewerage facilities.

As buildout occurs in these areas, monitoring of downgradient water quality in the aquifer is necessary to determine area-wide impacts. Periodic testing of domestic wells is needed to determine local impacts (Figure 10-8).

A-2 Community Water Supply or Individual Deep Well and On-Site Sewage Disposal. The main difference between Category A-1 and Category A-2 is that drinking water supplies would not be threatened by contamination in the shallow aquifer. In areas experiencing buildout beyond an average density of one dwelling unit per acre, the cumulative nitrate levels in the shallow aquifer are expected to eventually exceed the ten milligram per liter beneficial use limit.

In Category A-2 areas there should be a more even mixing of contaminants in the aquifer without the interference on aquifer gradients caused by shallow pumping wells. Monitoring of aquifer water quality in Category A-2 areas will provide the most reliable information on area-wide impacts caused by residential development.

A-3 Community Water Supply and Community Collection, Treatment and Disposal of Wastes. This Category contains the small-lot areas which offer the greatest protection of public health and beneficial uses of ground water. Proper design, construction and operation of community sewerage facilities can effectively prevent nitrogen contamination in the ground water.

In order to achieve maximum buildout in future years, Category A-1 and A-2 areas may need to achieve Category A-3 status by addition of community water and/or sewer utilities.

Aquifer Management Category B

One to Two Acre Lots

Full development on one acre lots where conventional on-site waste disposal systems are used should not result in exceeding the ten milligram per liter drinking water beneficial use limit for nitrate nitrogen. The greatest concern in Category B areas is local contamination of shallow wells by adjacent upgradient waste disposal systems (Figure 10-8). Residents using individual wells are encouraged to have their water supply tested annually for nitrate nitrogen. Monitoring the aquifer downgradient from Category B development areas should continue in order to verify the estimated impacts from development on one to two acre lots shown in Figure 10-6.

Aquifer Management Category C

Lots Greater than Two Acres in Size

Category C Management Areas require monitoring only on a case-by-case basis. Residents using individual shallow wells should test their water for nitrate concentration annuall

Aquifer Management Category D

New Development Which May Impact on Beneficial Uses of Ground Water

All proposals for new development or waste disposal projects which, in the opinion of Deschutes County or the Department of Environmental Quality, may significantly impact on beneficial uses of the ground water, should include a detailed waste load and ground water investigation report. The report should demonstrate that the project will not impair beneficial uses of the ground water or cause the five milligram per liter nitrate planning limit to be exceeded.

The report should describe waste loads and proposed waste treatment methods; explain aquifer characteristics as determined by aquifer tests, water table gradient determinations, and water samples. It should also include a description of each Aquifer Management Category area within one mile of the proposed project.

Aquifer Management Category E

Management of Spills, Leaks and Other Sources of Contamination

The Department of Environmental Quality is developing policies and guidelines for dealing with these "miscellaneous" sources of contamination which are relevant in the study area. The work by DEQ is being done in conjunction with other agencies which have technical expertise or regulatory control, or both. These agencies include the U.S. Department of Transportation, U.S. Environmental Protection Agency and the Oregon Department of Water Resources.

It is recommended that Category E situations be addressed by the appropriate agency or agencies having jurisdiction.

Aquifer Management Category F

Areas with Documented Ground Water Contamination Impacting Existing or Potential Beneficial Uses

Areas with documented ground water contamination which causes regulatory limits for drinking water to be exceeded are classified in Category F. The documentation of contamination should represent a detailed technical study of the problem area. The LaPine core (Figure 10-5) is considered to be a Category F area.

Contamination not addressed by domestic water standards but which may impact on other beneficial uses or on public health is also reason to classify an area as a Category F Aquifer Management Area.

As a guide in identifying appropriate action needed in any given Management Category area, a Management Action Activity List was developed and is shown in Table 10-2. The list identifies planning objectives to work toward in future land use decisions, and regulatory and monitoring guidelines to follow as construction and development takes place in the future.

Table 10-3 presents the LaPine Aquifer Management Plan components. This table lists each Management Category and the appropriate corresponding Management Action Activity. It also identifies the parties responsible for implementing, carrying out, and providing funds or personnel to implement the recommended actions.

TABLE 10-2

MANAGEMENT ACTION ACTIVITIES

Activity		Recommended Action
1	a.	Prepare Facility Plan Report, design and construct facilities to attain maximum level of nitrogen removal from wastes.
	b.	Construct alternative domestic water source(s), or provide bottled water for drinking water supplies.
	c.	Impose a building moratorium in areas of ground water contamination where beneficial uses of ground water are impaired.
2.	a.	Develop and use on-site waste treatment technology which will produce 30 mg/l or less of total nitrogen in domestic waste effluent.
	b.	Monitor nitrogen concentration in on-site systems.
	c.	Monitor impact on aquifer and domestic water supplies by 1) sampling domestic wells and (2) constructing and sampling monitoring wells at the downgradient edge of lots where on-site systems are used.
	d.	Construct alternative domestic water source(s), or provide bottled water for drinking water supplies.
	e.	If nitrogen removal technology is proven by monitoring to be inadequate, reclassify to Priority 1 status. If nitrogen removal technology is shown to not be needed, reclassify area to Priority 3 status.
3.	a.	Continue current on-site waste disposal practices. If monitoring shows current practices to be inadequate, reclassify the area to Priority 2 level and implement appropriate Priority 2 recommendations.
	b.	Monitor impact on aquifer and domstic water supplies by 1) sampling domestic wells for nitrate and 2) constructing and sampling monitoring wells at downgradient edge of selected lots where on-site treatment systems are used.
	c.	Construct alternative domestic water source(s), or use bottled water for drinking water supplies, if required.

TABLE 10-2 (Continued)

4.	a.	Perform a waste load and aquifer investigation study appropriate to address the proposed project or situation.
5.	a.	No action is required unless a problem is found. In that case, reclassify to the appropriate Activity Category.

TABLE 10-3

LAPINE AQUIFER MANAGEMENT PLAN

Aquifer Management Category		Management Action Activity		Initiates Action	Provides Monitoring, Investigation or Enforcement	Provides Funding/ Personnel
A	Lots Smaller Than One Acre					
	A-1 Shallow well and on-site waste disposal	2a	Develop and use on-site waste treatment technology which will produce effluent containing less than 31 mg/l total nitrogen.	DEQ	County/DEQ	Private
		2b	Monitor performance of waste treatment/disposal systems.	DEQ	DEQ	DEQ/Private
		2c	Monitor impact on aquifer and domestic water supplies.	DEQ	DEQ	DEQ/Private
		2d	Construct alternative domestic water source(s), or use bottled water for drinking water supplies.	Private/OSHD	OSHD	Private
		2e	If on-site nitrogen removal is shown by monitoring to be inadequate, reclassify to Activity 1 status. If advanced nitrogen removal shown to not be needed, reclassify area to Activity 3 status.	DEQ/County	DEQ/County	-
	A-2 Community water or deep well source and on-site waste disposal	2a	Develop and use on-site waste treatment technology which will produce effluent containing less than 31 mg/l total nitrogen.	DEQ	County/DEQ	Private
		2b	Monitor performance of waste treatment/disposal systems.	DEQ	DEQ	DEQ/Private
		2c	Monitor impact on aquifer and domestic water supplies.	DEQ	DEQ	DEQ/Private
		2e	If on-site nitrogen removal is shown by monitoring to be inadequate, reclassify to Activity 1 status If advanced nitrogen removal shown to not be needed, reclassify area to Activity 3 status.	DEQ/County	DEQ/County	-
	A-3 Community water and sewer	5a	No action is required.	DEQ/County	DEQ/County	-
B	Lots One to Two Acres in Size	3a	Continue current on-site waste disposal practices. If monitoring shows current practices to be inadequate, reclassify the area to Activity 2 level and implement appropriate Activity 2 recommendations.	County/DEQ	County/DEQ	County/DEQ
		3b	Monitor impact on aquifer and domestic water supplies.	County	County	County
		3c	If required, construct alternative domestic water source(s) or use bottled water for drinking water supplies.	Private/OSHD	OSHD/Private	OSHD/Private
C	Lots Larger Than Two Acres	3a	Continue current on-site waste disposal practices. If monitoring shows current practices to be inadequate, reclassify the area to Activity 2 level and implement appropriate Activity 2 recommendations.	County/DEQ	County/DEQ	County/DEQ
		3b	Monitor impact on aquifer and domestic water supplies.	County	County	County
D	New Development or Major Waste Systems	4a	Perform a waste load and aquifer investigation study appropriate to address the proposed project or situation.	DEQ/County	Private/DEQ	Private
E	Spills, Leaks, Miscellaneous	4a	Perform a waste load and aquifer investigation study appropriate to address the proposed project or situation.	DEQ/County	Private/DEQ	Private
F	Areas of Documented Contamination	1a	Prepare a Facility Plan Report, design and construct community sewerage facilities or the equivalent.	DEQ	DEQ	Private/DEQ
		1b	Construct alternative domestic water sources(s), or use bottled water for drinking water supplies.	Private/DEQ	DEQ/OSHD	Private
		1c	Impose a building moratorium.	EQC	DEQ/County	DEQ/County

County = Deschutes County
DEQ = Department of Environmental Quality
EQC = Environmental Quality Commission
OSHD = Oregon State Health Division
Private = Municipality, District, Corporation or Individuals
County/DEQ = Requires agreement between agencies or parties

TABLE 10-4

ENVIRONMENTAL IMPACT RATING

Aquifer Management Category	Management Action Activity	No Action		Implementation Impact	
		Short-Term	Long-Term	Short-Term	Long-Term
F	1a	-	-	-	++
F	1b	-	-	+	+
F	1c	-	0	0	0/+
A-1, A-2	2a	-	-	++	++
A-1, A-2	2b	0	0	0	0
A-1, A-2	2c	0	0	0	+
A-1	2d	-	-	+	+
A-1, A-2	2e	0	0	++	++
B, C	3a	0	0	++	++
B, C	3b	0	0	0	+
B	3c	-	-	+	+
D, E	4a	0	-	++	++
A-3	5a	0	0	0	0

- = Adverse Impact
0 = No Impact
+ = Beneficial (Protects Domestic Water Supplies)
++ = Beneficial (Protects Domestic Water Supplies and Other Beneficial Uses)

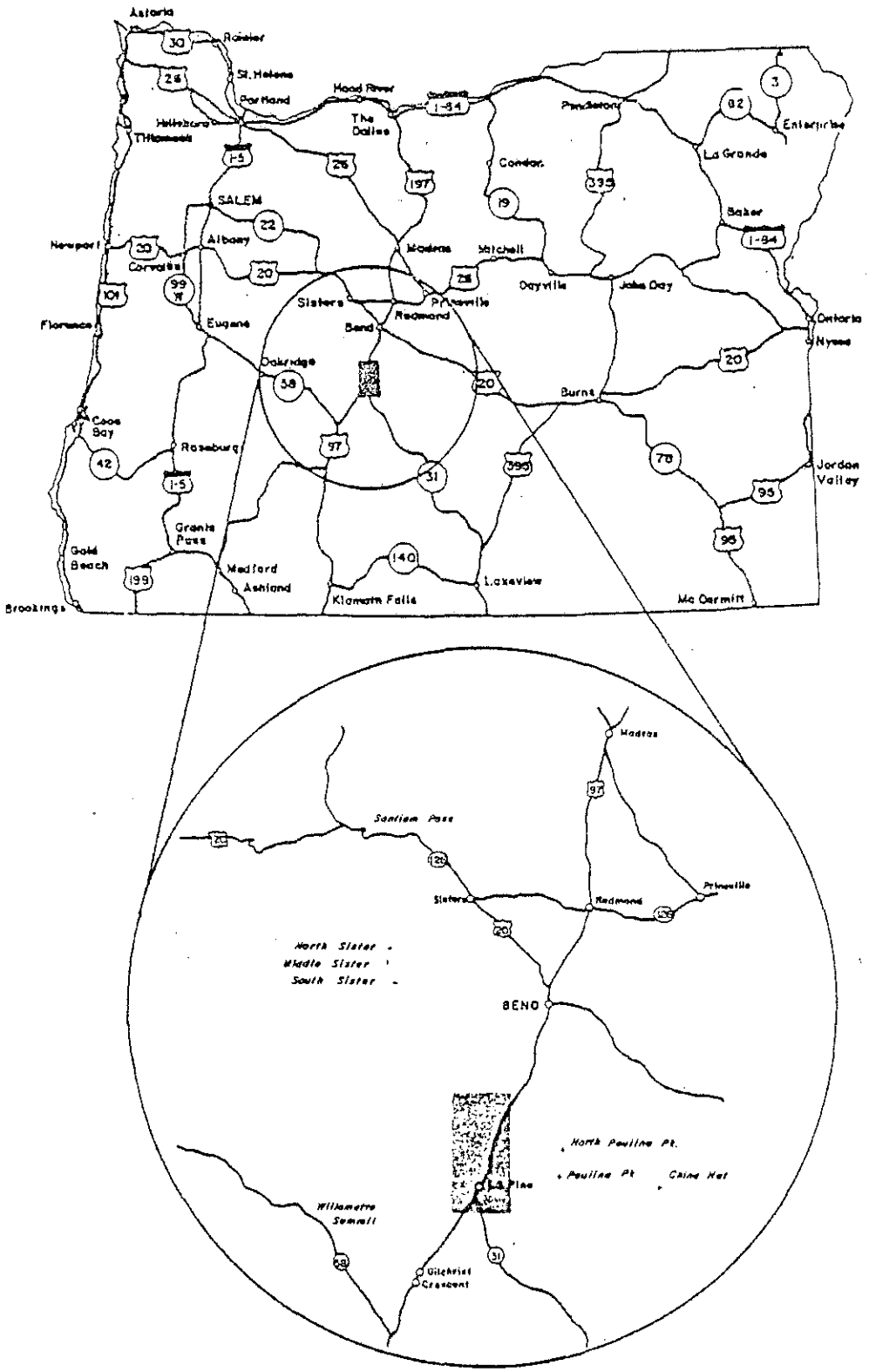
ENVIRONMENTAL IMPACT ANALYSIS

The assessment of environmental impacts caused by implementation of the Aquifer Management Plan must address adverse and beneficial, and long and short-term impacts.

An adverse impact is one that allows degradation of the aquifer or an existing or potential threat to public health to occur. A beneficial impact is one that maintains beneficial use quality or provides improvement in areas where aquifer contamination is taking place. A short-term impact is one which lasts only for the duration of a construction project or other chronologically short term period. A long-term impact is one which is expected to last through the 20 year planning period.

Each of the Management Action Activity levels was evaluated and rated and the results are shown in Table 10-4. Since each Activity level applies to a different situation, there is not a basis for comparison between levels.

From the rating it is felt that the impacts from the identified Management Action Activity levels represent the best practicable balance of long and short-term beneficial and adverse impacts which will allow protection of the LaPine Aquifer in future years.

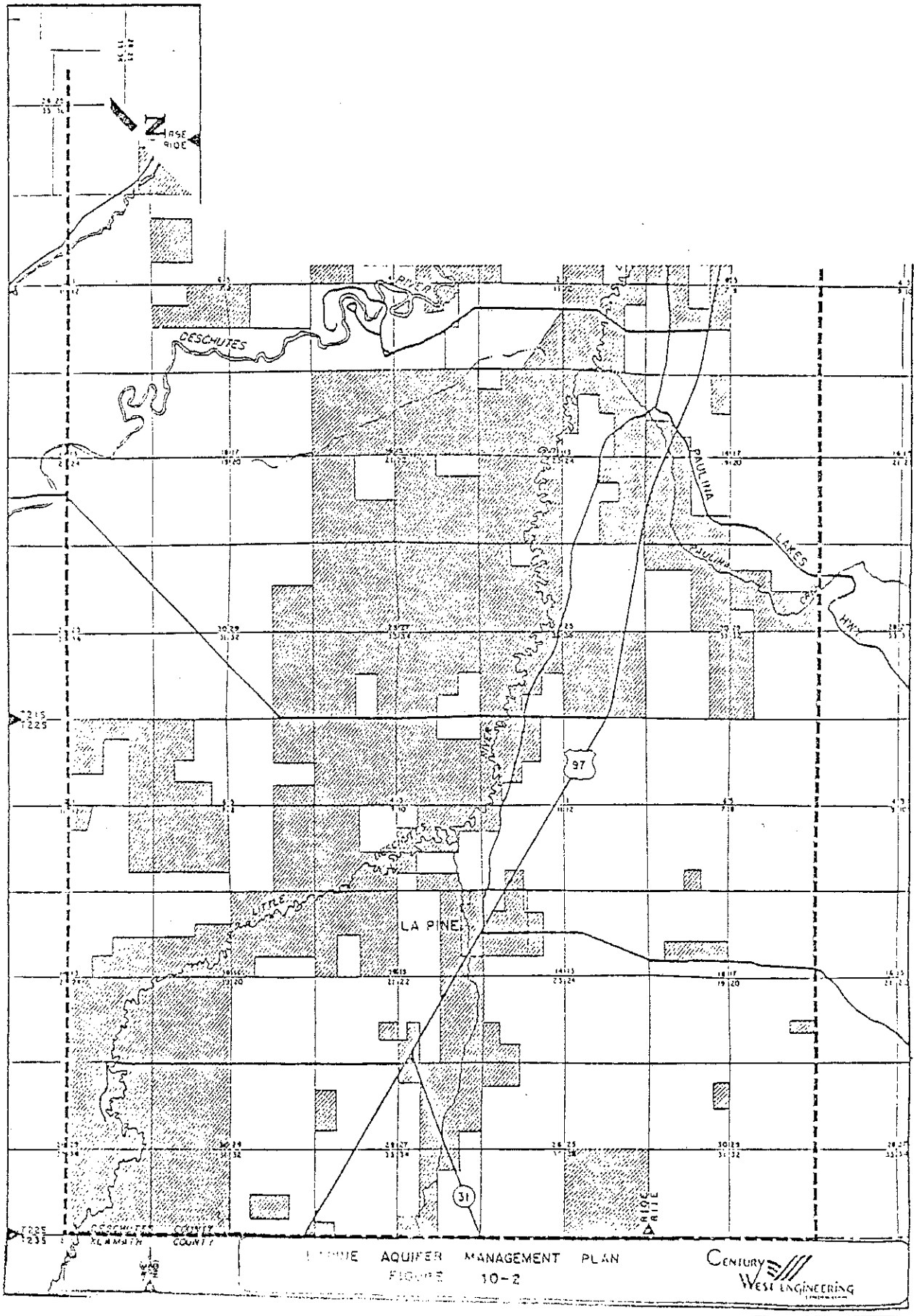


STUDY AREA LOCATION

LAPINE AQUIFER MANAGEMENT PLAN

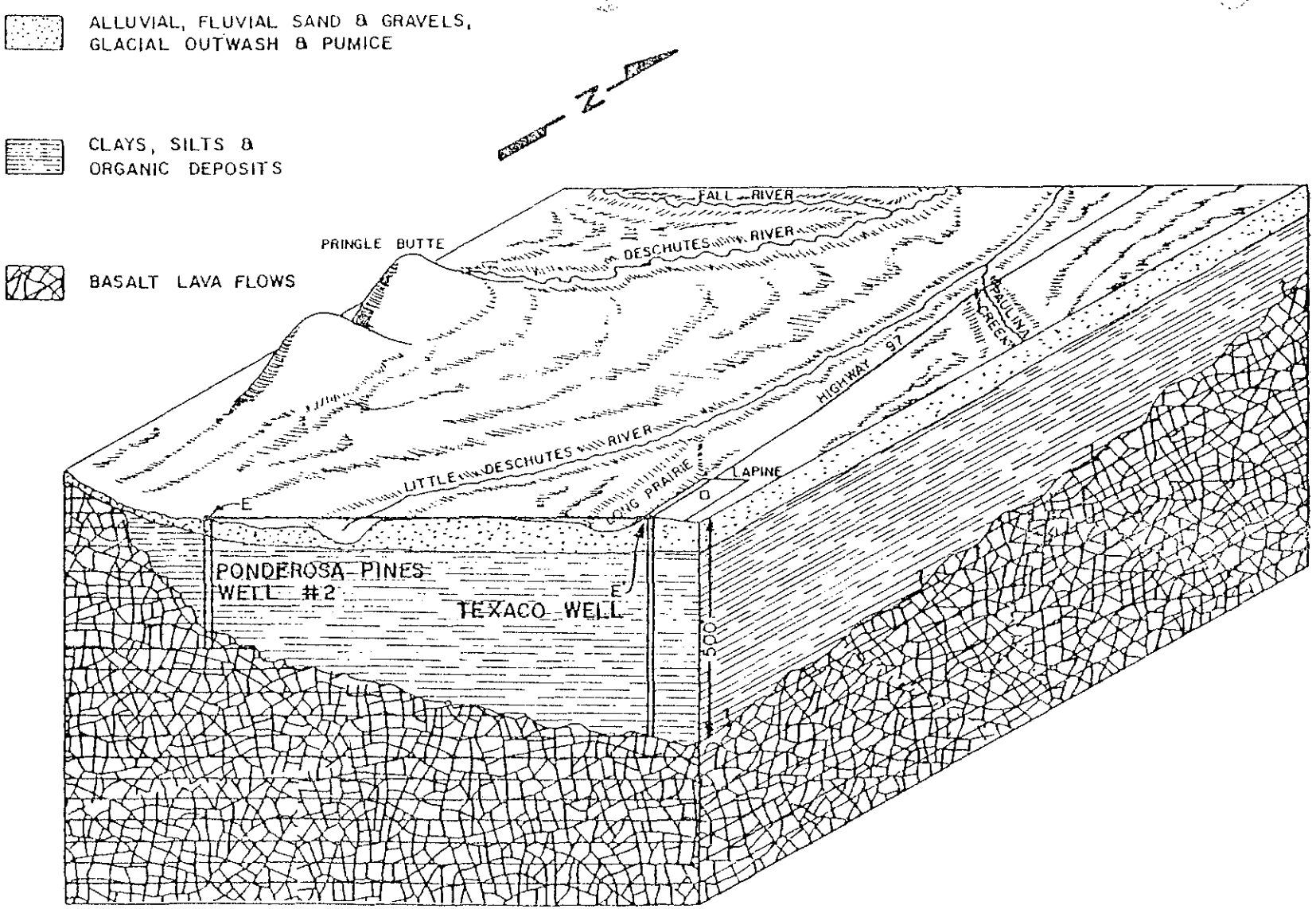
FIGURE 1G-1

CENTURY WEST ENGINEERING CORPORATION



LA PINE AQUIFER MANAGEMENT PLAN
FIGURE 10-2

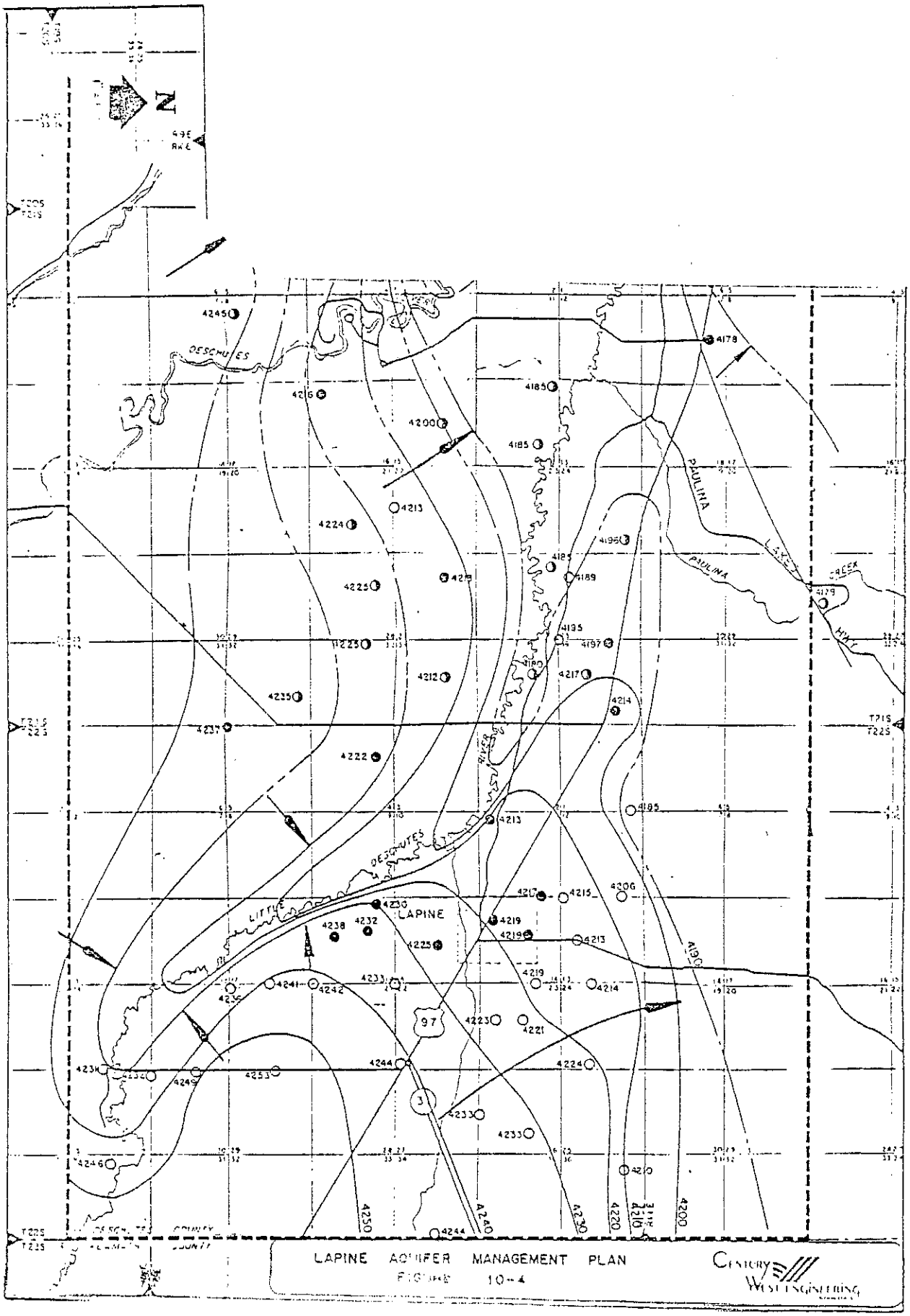
CENTURY WEST ENGINEERING

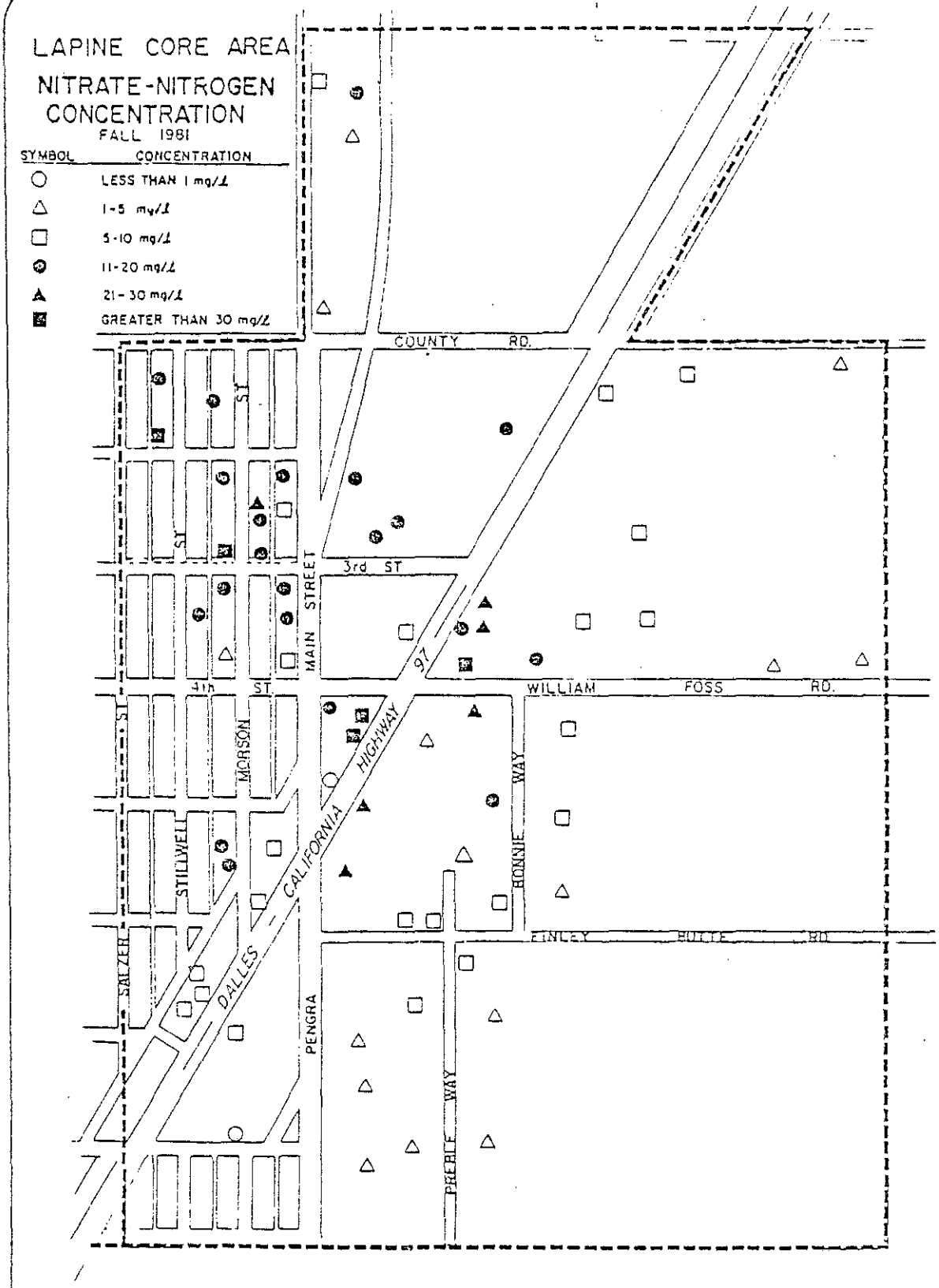


GENERALIZED TOPOGRAPHIC & GEOLOGIC CROSS SECTION
of LAPINE BASIN

LAPINE AQUIFER MANAGEMENT PLAN
FIGURE 10-3

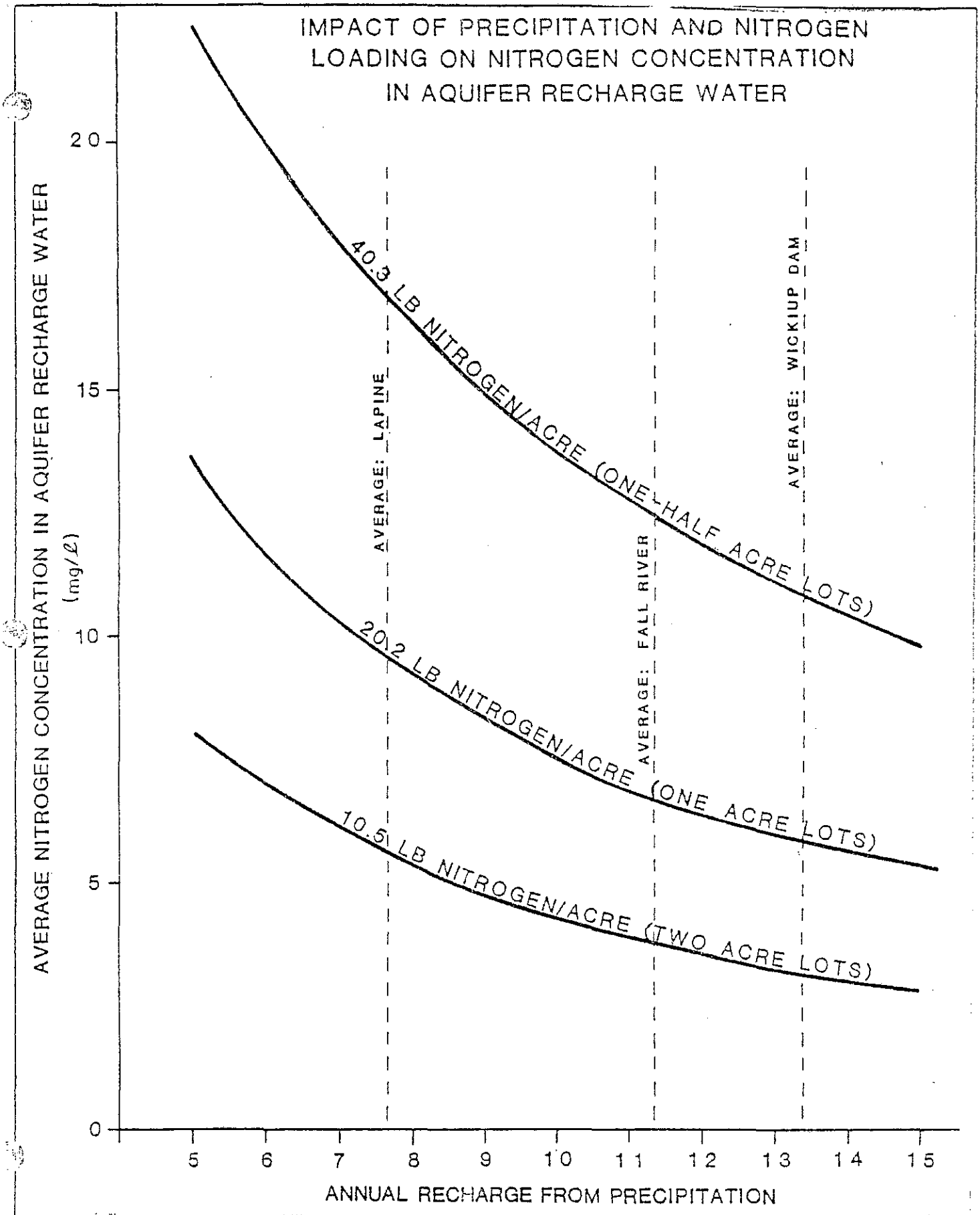
CENTURY WEST ENGINEERING CORPORATION


N
DESCHUTES
PAULINA
LAKE
CREEK
HWY
LITTLE
LAPINE
DESCHUTES
97
3
4245
4178
4185
4200
4213
4224
4225
4212
4235
4237
4222
4214
4217
4219
4215
4206
4238
4232
4230
4241
4242
4233
4223
4221
4244
4253
4246
4249
4250
4240
4220
4210
4200
LAPINE AQUIFER MANAGEMENT PLAN
FIGURE 10-4
CENTURY WEST ENGINEERING



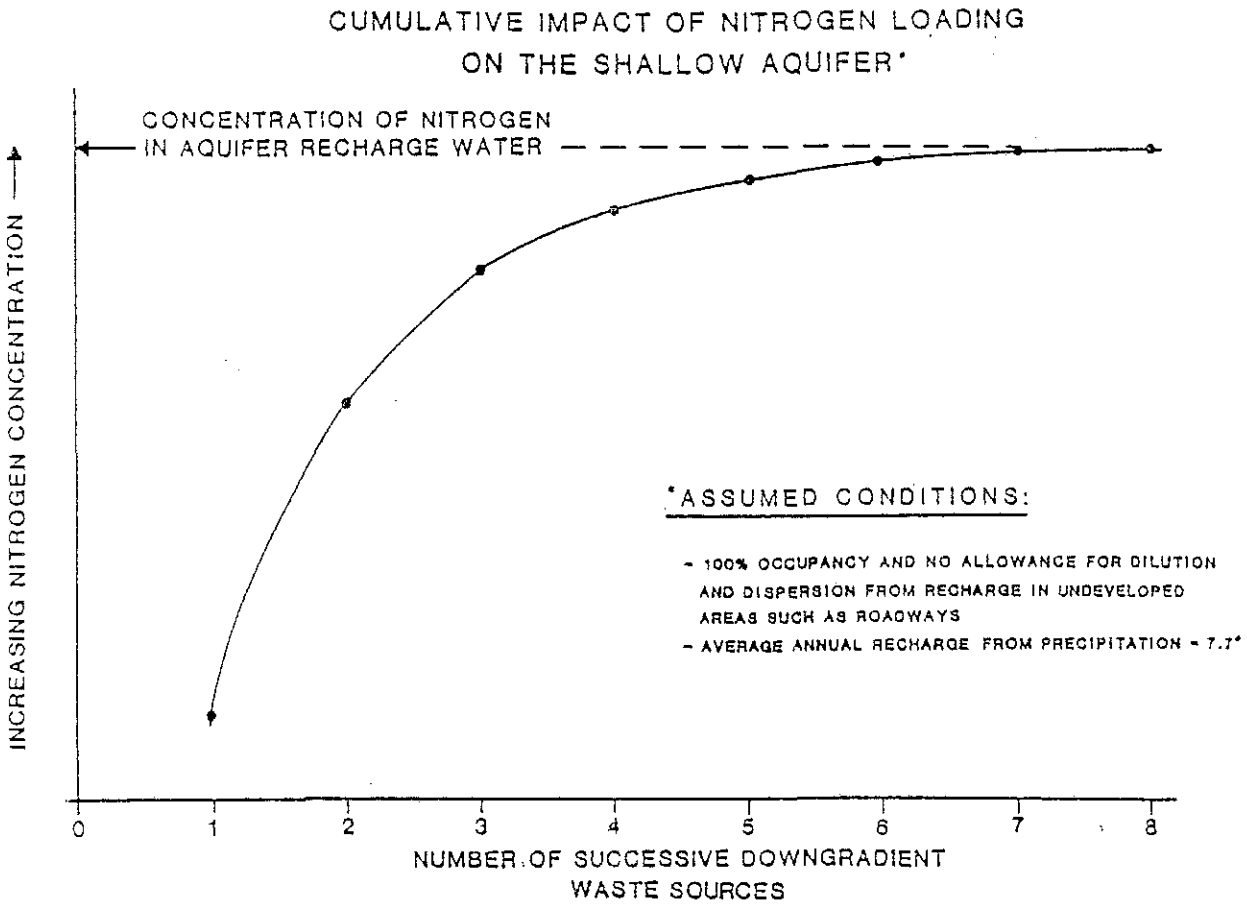
LAPINE AQUIFER MANAGEMENT PLAN
FIGURE 10-6

Century West Engineering



LAPINE AQUIFER MANAGEMENT PLAN
FIGURE 10-6

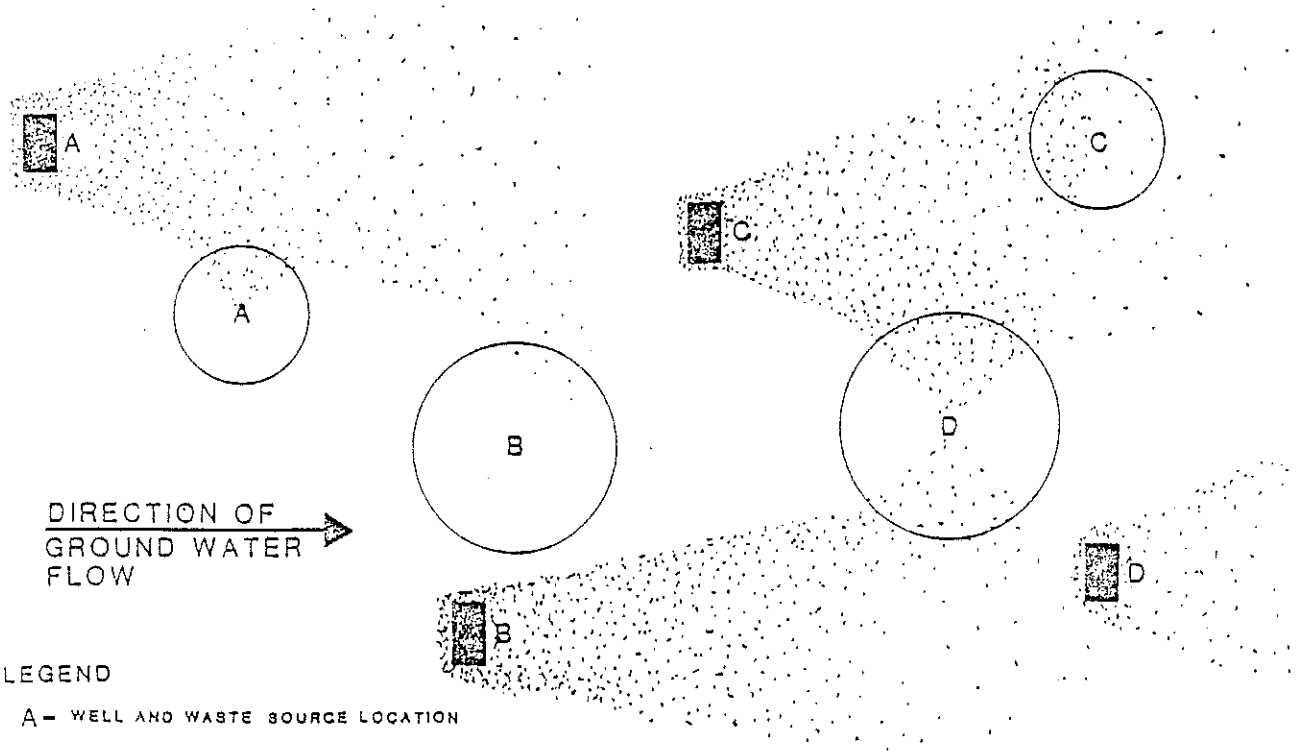
CENTURY WEST ENGINEERING



LAPINE AQUIFER MANAGEMENT PLAN

FIGURE 10-7

CENTURY WEST ENGINEERING CORPORATION



LEGEND

A – WELL AND WASTE SOURCE LOCATION

(A) ZONE OF INFLUENCE FROM WELL BEING PUMPED. (SIZE WILL VARY WITH QUANTITY OF WATER PUMPED AND WITH AQUIFER CHARACTERISTICS.)

AREAS OF HIGH NITRATE NITROGEN CONCENTRATIONS

WASTE DISPOSAL SYSTEM

SIMPLIFIED DIAGRAM SHOWING HOW WASTE DISPOSAL SYSTEMS CAN INFLUENCE NITRATE NITROGEN LEVELS IN DOMESTIC WATER WELLS AND IN A SHALLOW UNCONFINED AQUIFER

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: Linda K. Zucker, Hearings Officer

SUBJECT: Public Hearing on OAR 340-41-580(1), a Proposed Rule to Establish a Special Ground Water Quality Protection Policy for the La Pine Shallow Aquifer.

As announced by public notice, a hearing was conducted at the La Pine Fire District office in La Pine, Oregon on April 19, 1983. Department staff was present as planned at 6:00 p.m. to answer questions about how the proposed rule would affect individual residents. Many people took advantage of this informal meeting to locate their property on the map and to determine whether their property was in the La Pine core area most directly affected by the rule proposal.

By 7:00 p.m., the time scheduled for beginning the formal meeting, approximately 50 area residents had arrived at the meeting hall. No one wished to provide "testimony." The informal discussion that followed recognized that the area needed some increased level of water use planning, and that the community needed to organize for effective planning so that any sewer project would be undertaken with sound administration and financing. The residents used the meeting time for an exchange of information among themselves and with Department staff. Of particular concern was how to organize to operate a water district, and how to qualify for grant funding or low-interest loans.

The meeting ended with local residents expressing general support for the proposal.

In written testimony submitted after the hearing Kitty Shields, who owns property bordering the core area, said that a sewer system was necessary to the physical and economic health of the La Pine area.

LKZ:k
HK1864
229-5383
April 29, 1983

ATTACHMENT D

Kitty Shields
P.O. Box 931
La Pine, OR 97739

April 20, 1983

Neil Mullane
DEQ, La Pine Rule
P.O. Box 1760
Portland, OR 97207

Dear Mr. Mullane:

I was not able to attend the April 19, 1983, La Pine groundwater hearing, but as a resident of the La Pine core area (16516 William Foss Road) and as a property owner of two properties bordering the core area, I would like to make my opinion known on the question of the need for a sewer system.

I believe a sewer system is definitely needed in the core area of La Pine, and the system should encompass all of the area outlined by the La Pine Sewer District.

This area is already congested to the point that it is not feasible to continue much longer with just the existing number of septic systems, much less to consider any expansion with a need for new systems.

Both for our physical and economical health, the La Pine core area does need a sewer system.

Sincerely,

Kitty Shields

Kitty Shields
La Pine resident

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, May 20, 1983, EQC Meeting

Proposed Adoption of Amendments to Rules Governing On-Site Sewage Disposal, OAR 340-71-100 through 340-71-600 and 340-73-080.

Background and Problem Statement

ORS 454.625 provides that the Commission, after hearing, may adopt rules for on-site sewage disposal. ORS 454.745(4) provides that the Commission may, by rule, increase the maximum fees contained in ORS 454.745(1), provided the fees do not exceed actual costs for efficiently conducted minimum services.

On July 17, 1981, the Commission adopted several amendments to the on-site sewage disposal rules, including revisions to the fee schedule. Since that time, the Department finds it necessary to increase fees in order to continue to provide an adequate level of minimum services. Funding for the program comes from two sources (state general fund revenue and income derived from fees for services). The contribution from the general fund has been continually shrinking, while inflation has caused the overall costs to rise. The proposed fees include an increase due to inflation and an increase due to the shift in the funding base. Using the Roseburg Branch Office as an example, staff have analyzed the various field activities from which fees are generated and determined the proposed fees more closely approximate actual costs for those activities occurring twenty miles from the office. The cost of a permit to repair a failing system is an exception in that the fee collected is approximately one half the estimated cost to the program. Beginning with the July 1, 1984, license period the sewage disposal service license fee is proposed to be increased by fifty percent. This fee has not been adjusted since first adopted by the Commission in 1974.

In addition, the Department has found that several substantive and housekeeping rule amendments are needed to correct identified deficiencies and inconsistencies to allow smoother rule administration. The proposed housekeeping amendments will not change how a particular rule has been applied. Many of the housekeeping amendments concern terminology changes.

The proposed substantive amendments will generally affect how an existing rule is interpreted and implemented. The rules being proposed for substantive amendments are as follows:

1. Existing System Evaluation Report. A new rule is proposed to address an oversight in the existing rules. Many banks and other home loan institutions require an inspection of the on-site sewage disposal system serving a home or business before a loan is granted. An inspection performed by the Department or Agreement County would result in a report being issued rather than a permit or Authorization Notice. The proposed rule provides the tool to do this.

2. Authorization Notice. Generally, an Authorization Notice must be issued before an existing system is placed into service, the use of the system is changed, or the sewage flow into the system is increased (to a limit). Criteria for issuing the Authorization Notice is missing when a system is proposed to be placed into service. The proposed amendment would correct for this deficiency.

3. Alteration of Existing Systems. Alterations are accomplished by making physical changes to the existing system, and may result in an increase in the system's design capacity. The proposed amendments would affect alterations that increase the system's design capacity by more than three hundred gallons per day or fifty percent of the existing design capacity, whichever is less. All other system alterations are not impacted.

4. Manhole Riser on Septic Tank. Installation of a manhole riser to the ground surface is required when a septic tank has more than eighteen inches of backfill or when it is part of a sand filter system. Septic tanks without risers are not readily accessible for necessary periodic maintenance and when buried their location is easily forgotten. The proposed amendment would add pressurized systems and systems serving commercial facilities. Pressurized systems use small diameter piping and are susceptible to clogging if the septic tank is not pumped periodically. Systems serving commercial facilities may also require frequent septic tank maintenance due to the nature of the sewage being discharged.

5. Seepage Trench Systems. Use of this system is limited to lots created prior to January 1, 1974, that have insufficient area to physically locate a standard subsurface system. The proposed amendments would place a maximum limit on the design flow (four hundred fifty gallons per day, equivalent to a four-bedroom home) and allow deeper disposal trenches.

6. Sand Filter Systems. The substantive amendment would allow the Agent to determine the construction sequence when use of a capping fill is necessary.

7. Steep Slope Systems. Staff have determined the length of disposal trench required on this system is excessive. The proposed amendment would reduce the trench length by twenty-five percent.

8. Tile Dewatering Systems. The existing rule does not identify criteria to be used in determining how effective the field collection drainage tile is at lowering groundwater levels. The proposed amendments would establish the level of performance and would allow for installation of shallow field collection drainage trenches at sites with high temporary groundwater levels.

9. Sewage Disposal Services. The sewage disposal service definition is proposed to be modified to clearly state that persons who place, pump out or clean, dispose of materials pumped or cleaned from, lease or rent portable toilets to another person are obligated to obtain a license from the Department. This amendment is considered to be housekeeping in nature because a portable toilet is a non-water carried system, which is one of several on-site sewage disposal systems that may be used in this state. The Department also proposes that a separate license application be submitted for each business. Proposed amendments will allow licenses to be amended or transferred, and provides a mechanism for reinstatement of suspended licenses.

At its February 25, 1983 meeting, the Commission authorized public hearings on the proposed amendments. Notice of public hearing was provided by publication of notice in the March 15, 1983 edition of the Secretary of State's Bulletin, and mailing of hearing notice to: Public Affairs statewide "Media" list; the On-Site mailing list; all DEQ Regional, Branch, and Agreement County offices; the On-Site Consultants list; and all currently licensed Sewage Disposal Service businesses. Five public hearings were held at various locations around the state (Portland, Newport, Medford, Bend, and Pendleton). The Hearings Officers' reports are enclosed as Attachment "A". Upon completion of the hearings, staff reviewed the Hearings Officers' reports and revised several of the proposed rule amendments. The staff analysis of testimony is contained within Attachment "D".

The "Statement of Need", "Statutory Authority", Principal Documents Relied Upon", and "Statement of Fiscal Impact" are addressed within Attachment "B".

Alternatives and Evaluation

The alternatives appear to be as follows:

1. Adopt the proposed substantive and housekeeping technical rule amendments, including the proposed amendments to the general fee schedule.

2. Adopt all or a part of the proposed substantive and/or housekeeping technical rule amendments, including or excluding all or a part of the proposed amendments to the general fee schedule.

3. Do not adopt the proposed amendments.

It is the staff's opinion the logical alternative is to adopt the proposed substantive and housekeeping technical rule amendments, including the proposed amendments to the general fee schedule, as identified in Attachment "C".

Summation

1. ORS 454.625 provides that the Commission, after hearing, may adopt rules for on-site sewage disposal.

2. ORS 454.745(4) provides that the Commission may, by rule, increase maximum fees contained in ORS 454.745(1), provided the fees do not exceed actual costs for efficiently conducted minimum services.

3. A number of technical rule amendments are necessary to provide for smoother rule administration.

4. On February 25, 1983, the Commission authorized public hearings on the proposed amendments.

5. After proper notice, five public hearings were held at various locations around the state on April 5, 1983.

Director's Recommendation

Based upon the summation, it is recommended that the Commission adopt the proposed amendments to OAR 340-71-100 through 340-71-600 and OAR 340-73-080, as set forth in Attachment "C".

Michael Downs for
William H. Young

Attachments: (4)

"A" - Hearings Officers' Reports
"B" - Statement of Need and Fiscal Impact
"C" - Proposed Rule Amendments
"D" - Staff Analysis of Testimony

Sherman O. Olson:l
229-6443
May 6, 1983

XL2415

ATTACHMENT A

VICTOR ATIYEH
GOVERNOR

Department of Environmental Quality

CENTRAL REGION

2150 N.E. STUDIO ROAD, BEND, OREGON 97701 PHONE (503) 388-6146

MEMORANDUM

To: Environmental Quality Commission

From: Donald L. Bramhall, Hearing Officer

Subject: Report on Public Hearing Held April 5, 1983, concerning proposed Amendments to OAR 340-71-100 through 340-71-600 and 340-73-080

Summary of Procedure

Pursuant to Public Notice, a public hearing was convened in the City of Bend on April 5, 1983, at 10:14 a.m. The purpose of the hearing was to receive testimony concerning several amendments to the rules governing on-site sewage disposal.

Summary of Oral Testimony

Fred Hansen of Fred Hansen Excavation provided general comments supporting most of the rule package. He commented that the proposed fee increases for sand filter, aerobic and cap fill systems appears excessive.

Mr. Hansen also offered testimony questioning the need for OAR 340-71-220(8)(g) which requires lining disposal trench sides and covering the filter material with filter fabric in certain coarse textured soils. He indicated that for an average size drainfield of 300 lineal feet, it costs him $288 for the fabric to line the sides and cover the top of the trenches. It costs $98 to cover the trench with fabric. The standard drainfield craft paper to cover 300 lineal feet of trench costs $12.00.

Mr. Hansen understands that the purpose of the rule is to prevent soil particle migration into the filter material (gravel) in the trench, thereby causing a drainfield failure. In his nine years of drainfield construction experience, he has not observed any drainfield failures that could be attributed to soil particle migration into the filter material.

Mr. Hansen's construction foreman, Shane Van Winkle, also offered testimony concerning the filter fabric requirement. He testified that the installation procedures for filter fabric require the use of additional personnel. The

result of this is another increase in the cost of the system. The two witnesses have not observed a need for or a benefit which would justify the additional cost of utilizing filter fabric in coarse textured soils.

No other oral testimony was received.

Summary of Written testimony

No written testimony was received.

Respectfully submitted,

Donald L. Bramhall

Donald L. Bramhall
Hearing Officer
April 5, 1983

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: David H. Couch, Hearings Officer

Subject: Report on Public Hearing Held April 5, 1982 on Amendments to Rules Governing On-Site Sewage Disposal (Including Proposed Fee Increases), OAR 340-71-100 through 340-71-600 and 340-73-080.

Summary of Procedure

Pursuant to public notice, a public hearing was convened at 10:00a.m. on April 5, 1983 in Room 300, Jackson County Courthouse, 10 South Oakdale, Medford, Oregon. The purpose of the public hearing was to receive testimony on the question of amending rules governing on-site sewage disposal, including fee increases, as contained in OAR 340-71-100 through 340-71-600 and 340-73-080.

Summary of Verbal Testimony

1. Brad Prior, Supervising Sanitarian, Jackson County Department of Planning and Development:

   In opposition to a change in OAR 340-71-205(3)(c): Authorization to Use Existing System. Existing wording allows more flexibility to establish if a health hazard exists. New wording would exclude health hazards created in ground water. Any change should include consideration of groundwater.

   In favor of OAR 340-71-315(2)(j) which adds a condition that tile dewatering systems use equal or pressurized distribution in the absorption facility.

Summary of Written Testimony

None

Respectfully submitted,

David H. Couch
Hearings Officer

DHC:fs
encls: 1. Hearing Tape
2. Witness Registration Forms (1)
3. Hearing Attendance List

STATE OF OREGON

INTEROFFICE MEMO

TO: Sherm Olsen, DEQ On-Site Sewage Disposal Section

DATE: April 6, 1983

FROM: Gary Messer, Hearings Officer

SUBJECT: Hearings Officer's Report
April 5, 1983, Public Hearing On Proposed Amendments To The On-Site Sewage Disposal Rules
Lincoln County Public Service Building
Newport

Ten persons attended this hearing, of which five offered testimony. The testimony is summarized below:

1. Cliff Gillette, licensed septic installer, No. 36000, from Florence testified in opposition to raising of the fees as proposed in OAR 340-71-140. Mr. Gillette feels this is an inappropriate time to raise fees because of the current building recession, slow economy, and the existing difficulty involved in selling property. He suggests improving service by cutting down on numerous property reviews and associated paperwork.

2. John Clark, licensed septic tank pumper, Lincoln County, testified in opposition to increasing the pumper annual licensing fees provided for in OAR 340-71-140 (1))i). Mr. Clark questions why septic tank pumpers must be licensed when refuse haulers are not. He questioned what enforcement powers DEQ had over pumpers, and he wanted to know where the increased fee monies would go.

3. Harold Schlicting, Neskowin Regional Sanitary Authority, stated he wished an opportunity to submit written comments, as he needed more time to adequately review the proposed amendments.

4. Ken Kimsey, Lincoln County Permits, Utilities, and Resources Dept., testified in opposition to the proposed wording of OAR 340-71-205(3)(b), 340-71-205(3)(c), and 340-71-220(2)(b)(C).

   In regard to OAR 340-71-205(3)(b), he feels the rule is too limited in scope, and provisions should be made to include other items such as wells. He cited a recent incident where an authorization request was received to use a drainfield located 40 feet away from a neighbor's well. Under the proposed wording, this would be acceptable.

   In regard to OAR 340-71-205(3)(c), he feels consideration should be given toward protection of ground water and well supplies. The proposed rule limits the area of concern to the ground surface and surface waters, but disregards ground waters or wells.

In regard to OAR 340-71-220(2)(b)(C), Mr. Kimsey feels allowing placement of curtain drains on the property line could result in a neighbor's drainfield being located only 10 feet away from it. As such, the neighbor's sewage would be picked up in the curtain drain.

5. Doug Marshall, Tillamook County Supervising Sanitarian, testified he felt previous comments he has submitted on proposed rules have been lost by higher-ups, and want to assure his comments this time are included in the record. Mr. Marshall submitted into the record a letter he sent on March 29, 1983, to Jack Osborne that contained 17 comments, proposed changes, and additions. Mr. Marshall's letter is attached as part of the hearing record.

   In summary, he proposes:

   a. To reword OAR 340-71-160(10) to allow a 10 day grace period for renewing permits.

   b. Amending OAR 340-71-205(2)(a) to prohibit doubling up of recreational vehicles on mobile home park spaces without written approval, as currently allowed by State Health Division rules.

   c. To word OAR 340-71-205(3)(c) with the same wording used in proposed OAR 340-71-210(2)(c) to assure compliance with the EQC Groundwater Protection Policy.

   d. To modify OAR 340-71-220(4)(c)(C) so access manholes are only required on commercial systems and those installed below 18 inches.

   e. To modify OAR 340-71-280(3)(a) to allow 48 inch deep installation of seepage trenches so proper backfill depths can be attained on steeper slopes.

   f. To keep the 66 inch depth requirement rather than the more restrictive proposed 74 inch depth requirement regarding permanent water tables in OAR 340-71-315(i)(b). He also proposes allowing loop systems in regard to proposed OAR 340-71-315(2).

Items 7 through 17 in Mr. Marshall's letter address additional rule changes and/or housekeeping modifications suggested to improve the current rules. Since they are outside the scope of what the EQC will be considering in this proposed rule package, they are not summarized. They are attached for the Department to consider in future proposed rule changes.

Mr. Marshall also submitted an 18th item verbally into the record which may, or may not, be pertinent to the proposed rule package. Basically, he had a general comment regarding the alternative systems. He feels contract agents should be able to combine the use of approved alternative systems, such as a sand filter and a seepage trench. The current rules do not allow this; however, many approved variances do authorize this. In order to save both time and money, he proposed that the contract agents should be authorized to approve the use of combined alternative systems.

Attachments:
1. Attendance List for the Newport Public Hearing.
2. Witness registration forms (5).
3. Tape of the hearing.
4. March 29, 1983, letter from Doug Marshall.

Gary Messer, R.S., Hearings Officer

wr

Tillamook County Environmental Health

201 Laurel Avenue
Tillamook, Oregon 97141
842-5511 • Ext. 354

March 29, 1983

TO: Jack Osborne, On-Site Sewage Systems Section

FROM: Douglas Marshall, Tillamook County

RE: Proposed amendments to on-site sewage disposal rules.

This letter is for the purpose of addressing comments on the Department of Environmental Quality (DEQ) prepared package of proposed rule changes. I wish to propose some minor housekeeping changes that should eliminate duplication and confusion and address several changes that are necessary due to problems I have encountered within the current rules.

Some of these proposals are being presented for the second time. I attended the Newport hearing, last year and presented many changes that were virtually ignored. None of the suggestions I read into the tape recorder were presented at the later Environmental Quality Commission (EQC) hearing. I was later told that major changes require more time and they would be presented at next year rule changes. The present DEQ prepared rule package contains only one of the many changes I have requested in the past two years.

In light of this fact I am sending copies of my proposals to all interested parties. I feel that I am facing a stacked deck at this point, with very few options. Any help you could give me would be appreciated.

Respectfully,

Douglas Marshall, R.S.
Senior Sanitarian

cc: Mss Shaw, EQC Secretary
Sherm Olson, DEQ
Bill Young, DEQ
Bill Zekon, Lincoln County
John Smits, DEQ
Jerry Woodward, Tillamook County
Paul Hanneman, Representative

(18) combining Ref.
ie: sf + seepage trenches.

Tillamook County wishes to go on record as favoring the package of proposed changes with the following additions and comments:

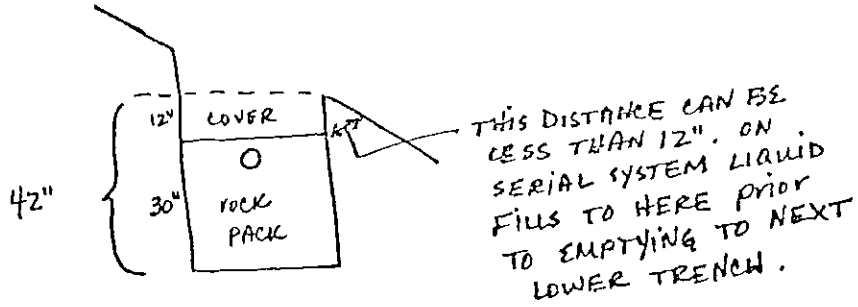
1. OAR 340-71-160(10) should be reworded to allow a ten day grace period for renewing permits. I would suggest changing "filed prior to" to "Filed within ten (10) days of...".

2. OAR 340-71-205(2)(a) amendments are necessary since the Commerce Department does not license Mobile Home Parks. One problem that needs to be addressed is Health Division Rules allow doubling up in Recreational Vehicle (RV) Parks, at the owners discretion, which causes periods of intense overload on the drainfield. I would suggest prohibiting the practice on parks connected to disposal systems, without written approval and working with the Health Division to set a maximum number of spaces on the license or certification.

3. OAR 340-71-205(3)(c) wording changes proposed would allow me to issue more authorization notices. Limiting the question of a hazard to "surface public water" is an attempt by the department office staff to legalize previous decisions concerning pollution of several dunal aquifers. These unwritten decisions are in direct conflict with the stated EQC groundwater protection policy (I can discuss specifics of this problem or supply written documentation if you desire). This simple re-wording changes the departments stance on ground water protection and circumvents the current EQC ground water policy. To understand the change compare the proposed wording with that proposed on OAR 340-71-210(2)(c). I would suggest using the same wording in both cases.

4. OAR 340-71-220(4)(c)(C) wording changes are to allow easy access for regular pumping of the tank but they will add additional costs for many Tillamook County residents. We are installing many pressurized and sand filter systems. Risers must be custom built for steel septic tanks, which are the only tank readily available in Tillamook County. Concrete tanks must be individually trucked in from Portland or Salem and this adds $300-400 to the system costs. Fiberglass or plastic tanks add approximately $200.00 to a system and no satisfactory method of anti-buoyancy is available for them (We can discuss problems between a coastal community, an engineering firm, a bankrupt tank manufacturer and the department concerning anti-buoyancy problems with glass tanks if you wish). I would suggest requiring access manholes on all commercial systems and on septic tanks installed deeper than 18" below ground surface.

5. OAR 340-71-280(3)(a) proposed changes will allow 42" seepage trenches but do not eliminate all of the problems within this rule. OAR 340-71-260(3) requires standard sytem rules to apply to alternatives unless noted otherwise and OAR 340-71-220(9)(b) requires a minimum of 12" backfill on serial systems.



In some cases the distance from top of rock pack to sideslope is less than 12". I would propose raising total trench depth to 48" to allow the option of placing the system deeper in-ground on steeper slopes.

6. Since tile dewatering systems have been approved, I have approved three sites. Two of those three would not comply with the proposed rule of 74" to permanent water as per changes in OAR 340-71-315(i)(b). Theoretically this additional requirement could eliminate 2/3 of the future tile dewatering sites in Tillamook County. I propose keeping the 66" depth as the current rules require. Systems installed under the existing rule appear to be functioning without difficulties and I find no reason for a stricter rule. Proposed wording to OAR 340-71-315(2)(j) is too restrictive. I would suggest adding loop systems as well.

This concludes my remarks on the DEQ prepared rule changes. I wish to propose additional rule changes, of a housekeeping nature, in the following paragraphs.

7. Prior lots of record are mentioned in several different sections of the rules with several different dates. They can be confusing.

OAR 340-71-280(2)	Allows seepage trenches on lots created prior to 1-1-74
OAR 340-71-220(2)(i)(B)	Allows setback exemptions on lots prior to 5-1-73
OAR 340-71-200(1)	Defines prior permits as those before 1-1-74
OAR 340-71-285(2)	Allows redundant systems on lots prior to 1-1-74
DEQ MEMO DATED 7-22-81	Mentions lot size exemptions on lots prior to 3-1-78

I would suggest picking one date for rule uniformity and simplification, such as January 1, 1974. This would entail changing only OAR 340-71-220(i)(B) from May 1973 to January 1974. This change of approximately seven months would allow a small number of additional lots to use the current setback exemptions. The DEQ memo mentioned (copy enclosed) can be modified to comply with the same date. This memo is discussed in the following section.

8. Since receipt of the previously mentioned DEQ memo, acreage exemptions have been utilized for sand filter, low pressure and standard systems. Since this criteria is in general usage for the coastal counties it should be incorporated into the current rules. This would involve additions to OAR 340-71-220(2)(c)-c-:

-c- The projected daily sewage flow does not exceed [A]the load values of: [four hundred fifty (450) gallons per acre per day]

Four bedroom dwelling	450 gal. per 43,560 sq. ft. per day
Three bedroom dwelling	375 gal. per 36,300 sq. ft. per day
Two bedroom dwelling	300 gal. per 29,040 sq. ft. per day

Amend OAR 340-71-275(3) and OAR 340-71-290(3)(c) to:

Four bedroom dwelling	450 gal. per 21,780 sq. ft. per day
Three bedroom dwelling	375 gal. per 18,395 sq. ft. per day
Two bedroom dwelling	300 gal. per 14,375 sq. ft. per day

At this point I would like to mention two problems encountered with regard to ½ acre parcels. The county planning department has a 20,000 square foot minimum for newly created lots. The Surveyor figures lot sizes mathmatically so 0.45 acre (19,602 sq. ft.) is rounded up and 0.54 acres (23,522 sq. ft.) is rounded down to ½ acre. Assessors maps will in both cases read ± ½ acre, when in fact the lot can be less than the DEQ required 21,780 sq. ft. Even counting the roadway, as the DEQ memo of July 22, 1981 mentions, some of these lots will get approvals restricting the maximum number of bedrooms to three. Past experience has shown that restricting bedrooms is an impossible task to enforce and unpopular.

9. OAR 340-71-150(5) is quite similar in wording to OAR 340-71-165. I would suggest changing the title of OAR 340-71-165 to "Site Evaluation and Permit Denial Review" and deleting OAR 340-71-150(5) completely.

10. Table 4 is the chart for figuring drainfield sizes based on soil groups and effective soil depth. The chart is logically and symmetrical except for soil group C of 48" or more depth. I would suggest changing the 125 figure in the column to 100. This will correct what appears to be a typographical error.

11. OAR 340-71-205(6) amend as follows:

(6)(a) Only one (1) Authorization Notice for an increase up to three hundred (300) gallons beyond the design capacity, or increased by no more than fifty (50) percent of the design capacity, whichever is less, will be allowed per system.

(b) Authorization Notices issued pursuant to these rules are effective for one (1) year from the date of issuance, are not transferable and may be renewed as per OAR 340-71-140 (1)(b)(E)

At this point I would like to mention some problem areas which I feel need to be included within the rules.

12. Building permits under Department of Commerce rules expire in 180 days unless work is progressing. Septic permits are valid for 1 year. If you department is to encourage one stop permits for the public, these time limits must be the same. I would suggest meeting with Commerce much like the State Health Division did for licensing of bakeries.

13. Every church I have worked on, in the past eight years as a sanitarian, has added a school or day care center at a later date. Drainfield sizing should be modified to reflect this. I suggest adding sub-catagories under churches on Table 2 as follows:

Churches	5 (per seat)	150 gal. min.
with day care or school	20 (per seat)	600 gal. min.

14. Setbacks, as required in Table 1, should be upgraded to conform to soil groups A through C as mentioned in Table 4 and 5. Well setbacks in sandy soils (Group A) should be greater than in clayey soils (Group C). Amend Table 1 as follows:

TABLE 1

Items requiring setbacks	Soil Group A	B	C
1. Ground water supplies, temporary abandoned wells *, surface public waters, downslope from springs.	150	100	50
2. Upslope from springs, intermittent streams, ag. tiles, canals, ditches, downsope from curtain drains or irrigation canals, cuts in excess of 30" and escarpments that intersect layers that limit soil depth.	70	50	20
3. Upslope from curtain drains or irrigation canals, cuts in excess of 30" and escarpments that do not intersect layers that limit soil depth.	30	20	10
4. Power lines, water lines, building foundation.	10	10	10

The above separation distances apply for the sewage disposal area and replacement area. Divide the above distances in half for separation distances from septic tank, effluent sewer, distribution and other treatment units.

15. DEQ engineers need to work up a nomograph for figuring anti-buoyancy of approved septic tnaks and dosing chambers. This should be added as Table 10 and mentioned in OAR 340-71-220(4)(c)(B) and OAR 340-71-220(7)(d).

16. Exact boundaries of sewer and water districts are a problem. Municipal and private sewer districts should be required to submit maps showing their boundaries with their WPCF or NPDES permits. Copies of these permits should then be given to contract counties. After three years in Tillamook County I still have not found the boundaries of the privately-owned Neskowin Sewer Facility.

17. DEQ needs to take a public stand and the EQC should endorse a policy concerning biodegradable soaps and approved septic tank enzymes and additives. Perhaps a DEQ approved list of these products is in order. Many products are available at supermarkets and some pumpers also sell additives. If DEQ licenses these businesses shouldn't they also regulate the additives they sell?

* This does not prevent stream crossings of pressure effluent sewers.

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: Sherman O. Olson, Jr., Hearings Officer

Subject: Report on Public Hearing Held April 5, 1983, in Pendleton, on Proposed On-Site Sewage Disposal Rule Amendments.

Summary of Procedure

Pursuant to public notice, a public hearing was convened in Suite 360 of the State Office Building, 700 S.E. Emigrant, Pendleton, Oregon, on April 5, 1983, at 10:08 a.m. The purpose of the hearing was to receive testimony regarding proposed amendments to the On-Site Sewage Disposal Rules, OAR 340-71-100 through 340-71-600 and 340-73-080. Two persons attended the hearing. A copy of the attendance list is attached.

Summary of Verbal Testimony

No verbal testimony was offered by those in attendance.

Summary of Written Testimony

Cecil's Backhoe Service, Coos Bay, Oregon, provided a letter stating that the proposed fee increases will cause more systems to be installed without permits, and more unlicensed installers will be providing sewage disposal services. Cecil's Backhoe Service suggests that enforcement be more vigorous and that the fines be used to supplement program funding. A copy of the letter is attached.

Mr. Michael J. O'Mara, Mike O'Mara Construction, Roseburg, Oregon, supports the proposed fee amendments providing the Department more actively enforces its licensing and bond requirements on the unlicensed contractors. He suggests that the homeowner who installs his own system be required to obtain a bond. A copy of the letter is attached.

Mr. Steve Wert, Northwest Soil Consulting, Roseburg, Oregon, submitted several comments on the proposed amendments. He feels the proposed fee increases will cause fewer people to use consultants. To reduce this potential business loss he suggests the site evaluation fee be reduced by

$35 when a consultant does the preliminary work. He believes that costs to the DEQ are less when a private consultant is involved. In addition, he would like to be able to place tile dewatering systems on slopes up to 6 percent, and that tile spacing be based on the same criteria as used by the Soil Conservation Service. He favored several of the other proposed amendments. A copy of his letter is attached.

Respectfully submitted,

Sherman O. Olson, Jr.
Hearings Officer

Attachments:

1. Attendance List for the Pendleton Hearing
2. Written Testimony

SOO:g
XG2224

Sirs:

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
MAR 25 1983
WATER QUALITY CONTROL

I my opinion the raising of the fee's for Home owners and Installers is going to accomplish one thing and that is there will be more illigal systems going in and more unlicensed Installers than what there is right now, and believe me there is plently of that now.

The people that try to do right are the ones that always end up getting the Shaft. I don't think you should raise any of the prices because people can't afford it, and neither can the Installers.

I also think the licensed installers are the ones being penalized for trying to do according to the rules and regulations of the State. Instead of all these unlicensed installers putting in systems that God only knows if they

work or not and could care less if they do.

If you keep the price as is or even lower you will find more people willing to go along with the laws weather than disobey them. The general public opposes the D.E.Q. as it is right now and if you raise the prices you will find a lot more of it.

I think you should be inforcing the laws and fines for the illigal systems and illigal Installers or even rise them. That would help you with the extra funds you need and it would help the ones that pay to operate under your rules and regulations.

In Conclusion people or getting damn tired of paying to the State and Goverment for services and always getting additional cost put on them

They just arn't going to do it anymore. We get calls all the time wanting us to put in illegal systems. We don't do it because it jeopardizes our liscens.

The people would like to see the D.E.Q. out of bussines and I am afaird this will put the frosting on the Cake.

Cecil's Backhoe Service
340 N. Broadway
Coos Bay, Or. 97420
267-4702 — 267-6209

Mike O'MARA
CONSTRUCTION
2724 OLD HWY. 99 SOUTH • ROSEBURG, OREGON 97470 • TELEPHONE 672-3523

March 10, 1983

Department of Environmental Quality
On-Site Sewage Systems Section
Box 1760
Portland, Oregon 97207

Re: A CHANCE TO COMMENT ON ...

Gentlemen:

The proposed fee change does not bother me nearly as much as the poor policing of installations. Anyone can rent a backhoe and install sewer work. If we are going to pay a license and bonding fee, isn't there some way to alleviate this problem? If not why not drop the license to begin with. Many contractors in this area already have and we are still trying to compete with them. What about requiring to know who the installer is before final inspection? What about requiring homeowners installing their own systems, to buy the bond for one year we are required to have on the same system. Some of these so called homeowners build and sell a house every year. I believe the above should be considered now, because a promise in policing will be plenty of reason for accepting a reasonable increase in our fees. Thank you.

Sincerely,

Michael J. O'Mara

Michael J. O'Mara

MJO:nr

NORTHWEST SOIL CONSULTING

STEVE WERT, C.P.S.S.
CONSULTING SOIL SCIENTIST
(503) 673-4148

On-Site Waste Disposal
- Locating Septic Tank Drainfields
- Innovative Systems

Soil Surveys
Forest Soils
Vineyard Soils

9480 Garden Valley Road Roseburg, OR. 97470

March 8, 1983

Jack Osborne
P.O. Box 1760
Portland, Oregon 97207

Dear Jack;

Thanks for sending the rule changes and soliciting my comments.

Page 2. Glad to see permanent ground water defined.

Page 3. The hike in fees disturbs me. The fee increase will reduce the number of people using consultants. Right now the cost of a site evaluation and permit is about $400.

$150	DEQ site evaluation
$ 55	Permit
$ 75	Backhoe
$125	Consultant fee
$405	

As I've mentioned before, a site evaluation for a site that has been prepared by a consultant goes faster. There are fewer trips to the site for DEQ and fewer problems.

Business is very tight for consultants, as you know. The pay hike will not help us at all. People cannot eliminate the DEQ fees, but they can dig holes by hand and eliminate the consultant.

I feel the person who hires the consultant should receive a break. By giving them a break, you'll also be saving yourself money. DEQ will not have to spend as much time on the site. Encouraging people to use a consultant by giving a reduced DEQ rate could actually help make money for DEQ because of being able to do more sites in a day.

Consultants help DEQ solve problems. We should be compensated for it without raising the price to the customer. I suggest reducing the fees to the people who use a qualified consultant by $35.00. That is about the price of one extra trip by the DEQ to a site.

Page 13. Like the added sentence in 340-71-220 (2) (b) (c).

Page 17. Recommend slope requirements under tile dewatering system be increased to 6%.

Page 18. 2 (b) Suggest the spacing be based on the same criteria as that used by S.C.S. Spacing depends on soil series. Some soils work well with a 100' spacing while others need 20 feet.

I note there is no mention of allowing standard systems to be installed in saprolite. (Dixonville-Philomath Sites). I recommend they be allowed. We have enough evidence to support it.

Sincerely;

Steve Wert

CC. Roseburg DEQ

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: Mark P. Ronayne, Hearings Officer

Subject: Report on Public Hearing Held April 5, 1983, on Amendments to Rules Governing On-Site Sewage Disposal (Including Proposed Fee Increases), OAR 340-71-100 through 340-71-600 and 340-73-080.

Summary of Procedure

Pursuant to public notice, a public hearing was convened at 10:05 a.m. on April 5, 1983, in Room 1400, 522 S.W. Fifth Avenue, Portland, Oregon, to receive testimony on the question of amending rules governing on-site sewage disposal (OAR 340-71-100 through 340-71-600 and 340-73-080).

The hearing concluded at 10:47 a.m. after all in attendance (10 persons) were given the opportunity to testify.

Summary of Testimony

Five individuals (Richard Polson, Stanley Petrasek, John Smits, Richard Brentano and Bruce Phillips) provided verbal testimony. All supported the rule changes. Three individuals who presented verbal testimony, (Richard Polson, Stanley Petrasek and John Smits) summarized written comments (Exhibits 1 through 3 respectively - attached).

One additional piece of written testimony (Exhibit 4) was provided by a USFS representative. The Forest Service felt on-site rules, in general, are too technically restrictive and limiting of design solutions.

Specific comments made by individuals who provided testimony are indicated below:

Summary of Verbal Testimony

1. Richard Polson - Chief Soils Scientist, Development Services Division, Clackamas County Department of Environmental Services (Exhibit 1)

    - o Felt limiting the maximum daily sewage flow proposed for systems permitted under OAR 340-71-280 are too restrictive. The County recommended proposed design criteria OAR 340-71-280(2)(b) and (3)(c) be deleted.

- o Felt mention of a specific distribution technique (i.e., gravity equal distribution or pressure distribution) should be eliminated. Contended pressure distribution system studies indicate such systems offer no benefit over gravity systems in medium and fine-textured soils, costs associated with such systems were too high and serial distribution might be suitable for site development [particularly if proposed amendment OAR 340-71-315(d) is adopted].

- o Felt the requirement for threaded end caps on sand filter system pressure distribution piping turnups should be eliminated from rules.

- o Felt the Department should adopt legal counsel's language (formerly proposed) for property lines crossed (OAR 340-71-130). Strongly urged DEQ to develop appropriate rule language for easements whenever on-site sewage disposal systems would cross property lines if proposed legislation dealing with this issue does not pass.

2. Roy Burns, Acting Director, Lane County Department of Planning and Community Development, via Stanley Petrasek, On-Site Field Services Supervisor (Exhibit 2)

   - o Felt proposed minimum criteria for Authorization Notice issuance where flows would be increased by not more than 300 gallons beyond design capacity or not more than 50 percent beyond design capacity (OAR 340-71-205(5)(b) would be too restrictive. Opined the proposed rule should be further amended to permit the Agent and the local building official the discretion to allow a lesser setback between the existing system and proposed structural modifications.

   - o Felt OAR 340-71-330(2) should be amended to exclude the requirement that licensed sewage disposal services obtain written authorization from the Agent when chemical toilets are placed at special public gathering sites or construction sites. Opined that neither the DEQ nor its Agents currently enforced the written approval requirement concerning chemical toilet placement, thus that portion of the rule should be eliminated.

     (Note: This proposal did not relate to any specific rule changes presented in the Commission's discussion package.)

3. John Smits - DEQ, Astoria Branch (Exhibit 3)

   - o Felt proposed rule amendment OAR 340-71-140(1)(c)(C) should be amended to include the word "Notice" between "Authorization" and "Denial."

   - o Felt mobile homes, placed through hardship connection authorization should have their on-site systems checked annually and authorizations renewed biennially. Opined it is more important to look at

hardship connection systems each year because rules do not require a replacement area be available to obtain authorization to connect to such systems as they do in other instances where Authorization Notices are granted. Recommended rules to that effect be adopted under OAR 340-71-205(8)(b) and a related rule be adopted under proposed OAR 340-71-140(1)(c) which would require a $60 fee for the annual evaluation of a system used by a mobile home authorized under hardship connection.

- Felt proposed rule OAR 340-71-140(1)(k) was too limiting and should be further amended to provide for a $60 fee where a field examination would be required and $10 where a field visit would not be required and proposed rule OAR 340-71-155(3)(B) be amended to allow the Agent to determine where a field visit is appropriate.

- Felt OAR 340-71-150(4)(c) should be amended to indicate "Technical rule changes may require the use of an alternative system" so persons originally granted standard system approval might be made aware that their sites, though acceptable, may not be or remain acceptable for standard system placement.

- Felt OAR 340-71-205(2)(a) should be amended to exclude mobile homes attached to WPCF permitted facilities since such facilities are routinely monitored under WPCF permit terms. Also opined all mobile home parks using on-site systems eventually should be permitted under the WPCF program rather than under on-site rules.

- Felt OAR 340-71-205(5)(d) should be amended to have language identical to that appearing under proposed rule amendment OAR 340-71-205(3)(c). That is, a public health hazard should be defined in terms of whether sewage would be likely to appear "on the ground surface or on surface public waters." Opined this modification would result in clearer, more easily interpreted on-site rules.

- Felt limiting flow to 300 gallons or less per day as proposed through OAR 340-71-280(2)(b) and (3)(c) too limiting. Recommended proposed design criteria allow flows up to 450 gpd and suggested proposed design criteria OAR 340-71-280(2)(b) and (3)(c) be eliminated.

- Felt holding tanks (OAR 340-71-340) and aerobic systems (OAR 340-71-345) should be eliminated from on-site rules and included under WPCF rules since the WPCF program has a well developed structure for monitoring the systems O & M.

  (Note: This was not a specific part of the Commission's proposed rule package.)

- Felt the use of filter fabric to line sidewalls of disposal trenches placed in rapidly draining materials required under OAR 340-71-220(8)(g) should be eliminated since he has not observed sand migration into trench filter material, installers are reluctant to line trenches as currently required for fear the filter fabric will cause premature trench clogging and the use of such materials adds approximately $300 to the cost of an average system.

  (Note: This was not a specific part of the Commission's proposed rule package)

4. Richard Brentano - United Septic Service, Inc., 180 South Pacific Hwy., Woodburn, Oregon

   - Made a general comment that licensed septage pumpers seemed to be treated differently by DEQ, stating the Department has authorized some contractors to land apply septage at private sites while other pumpers are required to take their septage to municipal facilities. Opined this gave persons with access to private sites an unjust economic edge over other pumping businesses in some circumstances.

     (Note: Comments did not relate to the issue of proposed adoption of on-site rule amendments)

5. Bruce Phillips - Phillips Sanitary Service, 801 Polk St., Oregon City, Oregon

   - Made several comments about DEQ's apparent lack of enforcement over unlicensed pumpers and licensed pumpers disposing of septage and holding tank pumpings by unauthorized methods. Phillips strongly recommended the Department strengthen its enforcement capability against pumper violators.

     (Note: Comments did not speak specifically to proposed on-site rule amendments.)

Summary of Written Testimony

D. B. Trask - Director of Engineering, U.S. Forest Service, Region 6, Portland, Oregon

- Felt proposed rule amendment OAR 340-71-105(55) was too restrictive and would bear an economic hardship at many sites without benefit to the groundwater. Recommended the proposed rule amendment be deleted.

- Felt fee increases proposed under OAR 340-71-140 were too extreme. Suggested a gradual fee schedule increase would be more reasonable than such an abrupt fee increase.

- Felt proposed amendment to OAR 340-71-520(2) which would limit design flow received by each drainfield unit to 1250 gallons or less per day is too restricting. Opined some mechanism to waive that requirement should be provided under large system rules.

- Generally opined the on-site rules are too technically restrictive and limiting of design solutions and the variance procedures are too cumbersome to allow for reasonable design variability without considerable expense to the applicant.

Respectfully submitted,

Mark P. Ronayne

Mark P. Ronayne
Hearings Officer

MPR:l
XL2444

Attachments: Exhibits (4)
Witness Registration Forms (5)

Exhibit #1

DEPARTMENT OF ENVIRONMENTAL SERVICES
COUNTY OF CLACKAMAS STATE OF OREGON

DEVELOPMENT SERVICES DIVISION

JOHN C. McINTYRE
Director

RICHARD L. DOPP
Development Services
Administrator

April 4, 1983

Hearings Officer
Department of Environmental Quality
P. O. Box 1760
Portland, OR 97207

SUBJ: Proposed Revisions in the
Rules Governing On-Site Sewage Disposal
(OAR 340-71-100 through OAR 340-71-600 and 340-73-080)

As per your request, I have reviewed the proposed rule revisions dated February 25, 1983. On the basis of our review, we have the following comments on the proposed rule package.

The proposed amendments to OAR 340-71-280 limit the maximum projected daily sewage flow that can be used with seepage trench systems. It does not appear to be prudent to limit the size of seepage trench systems to 300 gallons sewage flow per day. These systems have traditionally been used on small lots for single family residences where standard systems could not be used. By limiting sewage flow to 300 gallons per day, you have efffectively eliminated the potential that such systems could be used for most home designs. If soil conditions are suitable for the construction of seepage trenches, there does not appear to be any reasons to limit sewage flows under this section, particularly if all other conditions of the section can be met. Thus, we recommend any reference to sewage flow be deleted from this section of the rules.

In OAR 340-71-315(2)(j), you have asked that all absorbtion facilities use equal or pressurized distribution. Since tile dewatering systems can be used on slopes of up to 3%, serial distribution systems may be appropriate. The use of pressurized distribution in finer textured soils has been shown to be of little or no value in the treatment of the sewage effluent. Therefore, the requirement for pressurized distribution where serial distributions systems might otherwise be used appears to be a burdensome requirement on the property owner. Obviously, a pressurized distribution system will cost significantly more than a standard serial distribution network. The additional cost does not appear to be useful in assuring that the system functions adequately. Therefore, we recommend that this particular section be removed from the regulations for construction of tile dewatering systems.

The construction requirements for sand filters have been modified to eliminate the need for turnups and threaded caps on the end of the distribution laterals. OAR 340-71-275(4)(b)(D) requires "the ends of all lateral piping shall be provided with threaded plugs or caps". Since in all pressure distrubition systems, the ends of the laterals will be buried and hence not easily serviced, it seems prudent to eliminate the requirement for a threaded plug or cap. Rather, it appears better to simply say that the end of the lateral piping shall be sealed off with a water-tight plug or cap. We recommend that wording to this affect be placed under the pressurized distribution system's rules and modifications to the sand filter requirements under Section 290 also be made as necessary.

Finally, this office notes the deletion of modifications to OAR 340-71-130. These modifications would have required some changes in the way easements are handled for on-site sewage disposal systems. This office strongly supports the maintenance of appropriate easement agreements whenever sewage disposal systems cross property lines or lot lines. If proposed legislation to accomplish this is not passed by the current legislature, this office would recommend that immediate steps be taken to revise the On-Site Sewage Regulations to accommodate some reasonable regulations when property lines are crossed.

If the above matters can be attended to, this office has no objections to the amendments as proposed. We ask your consideration on these proposals and hope for a positive response.

If you have any questions concerning these proposals, please feel free to contact our office.

Richard L. Polson

RICHARD L. POLSON - Chief Soils Scientist
Development Services Division

/mb

MEMORANDUM

Exhibit 2

lane county

TO Environmental Quality Commission

FROM Roy Burns, Acting Director/Planning & Comm. Development

SUBJECT Proposed On-site Rule-Amendments DATE March 9, 1983

Lane County sanitation staff have reviewed the proposed rule amendments and concur with the Department of Environmental Quality staff recommendations. Our staff however, does request that two additional items be considered for adoption.

Item 1.) Amend OAR 340-71-205(5)(b) as follows:

(5)

(b) All set-backs between [from] the existing system and the structure can be maintained [; and] unless in the opinion of both the agent and the local Building Official a lessor set-back will not adversely affect either the proposed addition to the structure or the existing system; and

Item 2.) Amend OAR 340-71-330(2) as follows:

(2) Criteria for Approval:

(a) Nonwater-carried waste disposal facilities shall not be installed or used without prior written approval of the Agent.

Exceptions [Exception]:

-a- Temporary use pit privies used on farms for farm labor shall be exempt from approval requirements.

-b- Sewage Disposal Service businesses licensed pursuant to OAR 340-71-600 may install self-contained construction type chemical toilets (portable toilets) without written approval of the Agent, providing all other requirements of this rule are met.

Note: Underlined ___ material is new.
Bracketed [ ] material is deleted.

SEP/jbw

Exhibit 3

To: Presiding Officer April 5, 1983

From: John Smits

Subject: Proposed On-Site Sewage Disposal Rule Amendments

I have reviewed the proposed amendments and support all changes with the following comments:

340-71-140 Fees General

140(1)(c)(C) Authorization Insert Notice Denial Review . . . $60

Insert between 140(1)(f) and (g) Annual Evaluation of Hardship Mobile Home $60

then renumber the rest of the section. In my opinion, hardship placed mobile homes should have systems checked annually and authorizations renewed biennially. A field visit is needed each year. The renewal fee every other year would cover the field visit. It is more important to look at hardship authorizations every year than temporary mobile homes because hardship rules do not require a replacement area to be available.

Change 340-71-140(1)(k) to Existing system evaluation report
(A) If field visit required . . $60
(B) No field visit required . . $10

340-71-150(4)(c) Technical rule changes shall not invalidate a favorable site evaluation.
Add However, technical rule changes may require the use of an alternative system in place of a standard system. Example - approved site evaluation issued 1976 for a lot having soil with rapid permeability and less than 1 acre would require permitted system to be alternative low pressure distribution.

Change 340-71-155(3)(B) to: May conduct a field evaluation of the existing system; and 340-71-205 Authorization to use Existing Systems.

(2)(a) This should also include a statement referring to except mobile home parks served by an existing on-site system operated under a valid Water Pollution Control Facilities Permit (WCPF). All these facilities should eventually come under WPCF permit requirements with a specific enforceable design flow which is not to be exceeded by permit condition.

340-71-205(5)(d) I feel this should be changed to language such as 71-205(3)(c) health hazard . . . on the ground surface on in surface public waters. I see no reason to make a distinction between 205(3) and 205(5). I am concerned that public health hazard or water pollution will be interpreted incorrectly unless there is a specific reference, the interpretation of which cannot be disputed.

340-71-280(2)(b) and (3)(c) The 2-bedroom (300 GPD) limit is too restrictive. I think if there is insufficient area to install a standard system to serve a proposed 3-bedroom (375 GPD) or 4-bedroom (450 GPD) dwelling and all other requirements are met, the applicant ought to be able to use seepage trenches to meet his 3- or 4-bedroom needs. I would rather see a 3- or 4-bedroom using seepage trenches than a 2-bedroom on standard trenches. The more we use a 2-bedroom limit the more we build in an enforcement problem (adding a bedroom later) that we choose not to get into. And, what is the difference between steep slope seepage trenches and seepage trenches except a specific effective soil depth requirement. I would rather see seepage trenches on a slope up to 30% than on a slope up to 45% having deep soil.

Suggestions that may be too substantive to make this rule package:

1. Place aerobic systems and holding tanks with the other alternative systems like sewage stabilization ponds and spray irrigation systems under WPCF requirements. This is more appropriate due to required maintenance provisions, annual inspections and automatic billing with WPCF program for annual compliance determination fees. In Clatsop County there are six (6) installed holding tanks that are in use. I think one is pumped as required. The others have had holes placed in them, outlet caps removed or they just aren't pumped. If we are going to continue with holding tank approvals, we need a better handle for enforcement and operation afforded by WPCF permits. Aerobic systems serving small flows have problems, period. They also need WPCF permit provisions and control.

2. We should discontinue the use of filter fabric down the disposal trench sidewall in soils with rapid or very rapid permeability, for these reasons:

   (a) It adds at least $300 to system cost.

   (b) The systems in sand that I have seen needing repair have not failed because sand has entered the filter material. The system fails because of the bio-mat formation. On Clatsop Plains, cesspools have "worked" for as long as 30 years without a filter fabric lining, pipe or "foot" tile without rock has "worked" for years and systems with only one 30-ft. trench have also worked for 20-30 years. These are successes!

   (c) I think (contrary to studies) that the use of filter fabric will speed up the formation of a bio-mat.

   (d) Most "old" installers say they worry about systems they have put in using fabric down the sidewall and they feel failures in sand are due to bio-mat not sand infiltrating filter material.

Thank you for your consideration.

United States Department of Agriculture
Forest Service
Pacific Northwest Region
319 S. W. Pine
P.O. Box 3623
Portland, OR 97208

Reply to: 7430

Date: April 5, 1983

Department of Environmental Quality
On-Site Sewage Systems Section
P.O. Box 1760
Portland, OR 97207

Gentlemen:

We offer the following comments on the proposed amendments to the On-Site Sewage Disposal Rules, OAR 340-71-100 through 340-71-600 and OAR 340-73-080:

1. Ref. OAR 340-71-105(55). The proposed change in definition of "Permanent Ground Water Table" from year-round to 9 months would include a great many more sites that have a 9-month water table but do not have a year-round water table. We interpret the proposed change to mean that any site with a 9-month water table will be subject to all the restrictions which previously applied to a site with year-round water table. If so, many additional sites will require significantly more costly disposal practices, many without benefit to the ground water.

2. Ref. OAR 340-71-140. The proposed fee increases are quite extreme in the present economy. For example, the combined New Site Evaluation and Construction-Installation Permit fees increased nearly 50 percent, from $185 to $270, and several of the Construction-Installation Permit fees for Alternative Systems more than doubled. A more gradual fee schedule increase would be reasonable.

3. Ref. OAR 340-71-520(2). The proposed special design requirement limiting disposal area units to 1250 gpd is significantly more restrictive than the allowable 1800 gpd for some situations where the maximum of 600 linear feet of drainfield per unit was allowed. This type of parameter should be a guide, subject to engineered design, rather than an arbitrary limitation.

We again take this opportunity to suggest that these rules are, in general, too technically restrictive and limiting of design solutions. Also, the variance procedures are too cumbersome to allow for reasonable design variability without the time and expense of obtaining a variance.

Sincerely,

For D. B. TRASK
Director of Engineering

Enclosures

ATTACHMENT B

Before the Environmental Quality Commission
of the State of Oregon

In the Matter of Amendment
to Rules OAR 340-71-100
through 71-600 and
OAR 340-73-080, On-Site
Sewage Disposal Rules

Statutory Authority
Statement of Need
Fiscal and Economic Impacts
Land Use Consistency Statement
Principal Documents Relied Upon

1. Citation of Statutory Authority

ORS 454.625, which requires the Environmental Quality Commission to adopt rules pertaining to On-Site Sewage Disposal.

2. Statement of Need

The Department of Environmental Quality requires an increase in fees for permits and services in the On-site Sewage Disposal Program in order to carry on an efficient and effective level of service. In addition, some technical rule amendments are necessary to provide smoother administration of the On-Site Sewage Disposal rules.

3. Fiscal and Economic Impacts

Fiscal and economic impacts would affect persons applying for a permit or service under the statewide rules for on-site sewage disposal. Such applicants would pay an increased fee for a permit or service. In addition, the new fee schedule will result in additional revenue for the Department and Contract Counties to use for program operation. Small businesses will be impacted by the increased fees at the time they apply for the permits and services. Further, the increased license fee and associated fees for transfer of license, amendment of license, and reinstatement of suspended license will impact all sewage disposal service businesses.

4. Land Use Consistency Statement

The proposed rule amendments will not generally affect land use. However, the proposed rule amendments to several alternative systems may allow installation of some systems that could not have been installed previously.

5. Principal Documents Relied Upon

A. Letter of February 17, 1982, to Sherman Olson (Department of Environmental Quality) from Anne Cox (Columbia County).

B. Letter of September 28, 1982, to Sherman Olson (Department of Environmental Quality) from Douglas Marshall (Tillamook County).

C. Interoffice Memo of October 26, 1982, to Sherman Olson (Department of Environmental Quality) from Don Bramhall (Department of Environmental Quality).

D. Letter of November 17, 1982, to Jack Osborne (Department of Environmental Quality) from D. C. Mace (Yamhill County).

E. Letter of January 4, 1983, to Sherman Olson (Department of Environmental Quality) from Roy Eastwood (Columbia County).

F. Letter of January 17, 1983, to Sherman Olson (Department of Environmental Quality) from Richard Polson (Clackamas County).

G. Letter of January 21, 1983, to Sherman Olson (Department of Environmental Quality) from Daniel Bush (Clackamas County).

The documents may be viewed at the Department of Environmental Quality, 522 S.W. Fifth Avenue, Portland, Oregon, during regular business hours, 8 a.m. to 5 p.m. Monday through Friday.

ATTACHMENT C

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Rule Amendments

OAR 340-71-100 through OAR 340-71-600

and

OAR 340-73-080

May 20, 1983

Amend OAR 340-71-100(17) as follows:

(17) "On-Site Sewage Disposal System [(System)]" means any [installed] existing or proposed on-site sewage disposal [facility] system including, but not limited to a standard subsurface, alternative, experimental or non-water carried sewage disposal system, installed or proposed to be installed on land of the owner of the system or on other land as to which the owner of the system has the legal right to install the system.

Amend OAR 340-71-105(3) as follows:

(3) "Alternative System" means any Commission approved on-site sewage disposal system used in lieu of [, including modifications of,] the standard subsurface system.

Amend OAR 340-71-105(4) as follows:

(4) "Authorization Notice" means a written document issued by the Agent which establishes that an existing on-site sewage disposal system appears adequate to serve the purpose for which a particular application is made.

Amend OAR 340-71-105(19) as follows:

(19) "Curtain Drain" [(in excess of thirty (30) inches)] means a groundwater interceptor introduced upslope from a disposal field to intercept and divert groundwater or surface water from the absorption facility . [, which] It may be required to be installed as a condition for approval of a system.

Amend OAR 340-71-105(23) as follows:

(23) "Disposal Trench" means a ditch or trench with vertical sides and substantially flat bottom with a minimum of twelve (12) inches of clean, coarse filter material into which a single distribution [line] pipe has been laid, the trench then being backfilled with a minimum of six (6) inches of soil. (See Diagram 12)

Amend OAR 340-71-105(34) as follows:

(34) "Emergency Repairs" means repair of a failing system where immediate action is necessary to relieve a situation in which sewage is backing up into a dwelling or building, or repair of a broken pressure sewer [line] pipe.

Amend OAR 340-71-105(43) as follows:

(43) "Groundwater Interceptor" means any natural or artificial groundwater or surface water drainage system including agricultural drain tile, cut banks, and ditches. (See Diagram 13)

NOTE: Underlined _____ material is new.
Bracketed [ ] material is deleted.

Amend OAR 340-71-105(78) as follows:

(78) "Sewage Disposal Service" means:

(a) The installation of on-site sewage disposal systems (including the placement of portable toilets) , or any part thereof; or

(b) The pumping out or cleaning of on-site sewage disposal systems (including portable toilets) , or any part thereof; or

(c) The disposal of material derived from the pumping out or cleaning of on-site sewage disposal systems (including portable toilets) ; or

(d) Grading, excavating, and earth-moving work connected with the operations described in subsection (a) of this section, except streets, highways, dams, airports or other heavy construction projects and except earth-moving work performed under the supervision of a builder or contractor in connection with and at the time of the construction of a building or structure; or

(e) The construction of drain and sewage lines from five (5) feet outside a building or structure to the service lateral at the curb or in the street or alley or other disposal terminal holding human or domestic sewage[.] ; or

(f) Leasing or renting portable toilets to any person.

Amend OAR 340-71-105(89) as follows:

(89) "Temporary Groundwater Table" means the upper surface of a saturated zone that exists only on a seasonal or periodic basis. Like a permanent groundwater table, the elevation of a temporary groundwater table may fluctuate. However, a temporary groundwater table and associated saturated zone will dissipate (dry up) for a period of time [at least three (3) months] each year.

Amend OAR 340-71-130(4) as follows:

(4) Discharges Prohibited. No cooling water, air conditioning water, water softener brine, ground water, oil, hazardous materials or roof drainage shall be discharged into any system.

Amend OAR 340-71-140 as follows:

340-71-140 FEES-GENERAL.

(1) Except as provided in section (5) of this rule, the following nonrefundable fees are required to accompany applications for site evaluations, permits, licenses and services provided by the Department.

NOTE: Underlined _____ material is new.
Bracketed [ ] material is deleted.

ON-SITE SEWAGE DISPOSAL SYSTEMS	MAXIMUM FEE

(a) New Site Evaluation:

(A) Single Family Dwelling:

(i) First Lot..... $ 150 [135]

(ii) Each Additional Lot Evaluated During Initial Visit ..... $ 130 [110]

(B) Commercial Facility System:

(i) For First One Thousand (1000) [1000] Gallons Projected Daily Sewage Flow ..... $ 150 [135]

(ii) Plus For Each Five Hundred (500) [500] Gallons or Part Thereof Above One Thousand (1000) [1000] Gallons , for Projected Daily Sewage Flows up to Ten Thousand (10,000) Gallons ..... $ 50 [40]

(iii) Plus For Each One Thousand (1000) Gallons or Part Thereof Above Ten Thousand (10,000) Gallons ..... $ 20

(C) Site Evaluation Denial Review ..... $ 60 [50]

(D) Fees for site evaluation applications made to an agreement county shall be in accordance with that county's fee schedule.

(E) Each fee paid entitles the applicant to as many site inspections on a single parcel or lot as are necessary to determine site suitability for a single system. The applicant may request additional site inspections within ninety (90) [90] days of the initial site evaluation, at no extra cost.

(F) Separate fees shall be required if site inspections are to determine site suitability for more than one (1) system on a single parcel of land.

(b) Construction-Installation Permit:

(A) For First One Thousand (1000) [1000] Gallons Projected Daily Sewage Flow:

(i) Standard On-Site System ..... $ 120 [50]

NOTE: Underlined _____ material is new.
Bracketed [ ] material is deleted.

(ii) Alternative System:

(I)	Aerobic System.....	$ 120	[90]
(II)	Capping Fill	$ 240	[90]
(III)	Cesspool.....	$ 120	[50]
(IV)	Evapotranspiration-Absorption	$ 120	[90]
(V)	Gray Water Waste Disposal Sump	$ 60	[50]
(VI)	Holding Tank	$ 120	[90]
(VII)	Pressure Distribution	$ 120	[90]
(VIII)	Redundant	$ 120	[90]
(IX)	Sand Filter	$ 280	[130]
(X)	Seepage Pit	$ 120	[50]
(XI	Seepage Trench	$ 120	[50]
(XII)	Steep Slope	$ 120	[50]
(XIII)	Tile Dewatering	$ 120	[90]

(iii) The permit fee required for standard, cesspool, seepage pit, steep slope and seepage trench systems may be reduced to sixty dollars ($60), providing the permit application is submitted to the Agent within six (6) months of the site evaluation report date, the system will serve a single family dwelling, and a site visit is not required before issuance of the permit.

(B) For systems with projected daily sewage flows greater than one thousand (1000) [1000] gallons, the construction-installation permit fee shall be equal to the fee required in OAR 340-71-140 (1)(b)(A) plus $10 for each five hundred (500) [500]gallons or part thereof above one thousand (1000) [1000] gallons.

NOTE: Fees for construction permits for systems with projected daily sewage flows greater than five thousand (5,000) [5000] gallons shall be in accordance with the fee schedule for WPCF permits.

(C) Commercial Facility System, Plan Review:

(i) For a system with a projected daily sewage flow of less than six hundred (600) gallons, the cost of plan review is included in the permit application fee.

[i] (ii) For a system with a projected daily sewage flow of six hundred (600) gallons, but not more than [For first] one thousand (1000) [1000] gallons projected daily sewage flow ..... $60 [$ 50]

[(ii)] (iii) Plus for each five hundred (500) [500] gallons or part thereof above one thousand (1000) [1000] gallons, to a maximum sewage flow limit of five thousand (5000) [5,000] gallons per day ..... $15 [$ 10]

NOTE: Underlined _____ material is new.
Bracketed [ ] material is deleted.

[(iii)] (iv) Plan review for systems with projected sewage flows greater than five thousand (5,000) [5,000] gallons per day shall be pursuant to OAR 340, Division 52.

[(D) Permit Denial Review ..... $50]

(D) [(E)] [Construction-Installation] Permit Renewal:

(i) If Field Visit Required..... $60 [$ 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. Refer to OAR 340-71-160(10).

(E) [(c)] Alteration Permit ..... $95 [$ 50]

(F) [(d)] Repair Permit:

(i) [(A)] Single Family Dwelling ..... $35 [$ 25]

(ii) [(B)] Commercial Facility ... The appropriate fee identified in paragraphs (1)(b) (A) and (B) of this rule applies.

(G) Permit Denial Review $60

(c) [(e)] Authorization Notice:

(A)	If Field Visit Required	$ 60 [$ 50]
(B)	No Field Visit Required	$ 10
(C)	Authorization Notice Denial Review	$ 60

(d) [(f)] Annual Evaluation of Alternative System (Where Required) ..... $ 60 [$ 50]

(e) [(g)] Annual Evaluation of Large System (2501 to 5000 GPD) $ 60 [$ 50]

(f) [(h)] Annual Evaluation of Temporary or Hardship Mobile Home..... $ 60 [$ 50]

(g) [(i)] Variance to On-Site System Rules $225

NOTE: The variance application fee may be waived if the applicant meets the requirements of OAR 340-71-415(5).

[An applicant for a variance is not required to pay the application fee, if at the time of filing, the owner:

(A) Is 65 years of age or older; and

NOTE: Underlined _____ material is new.
Bracketed [ ] material is deleted.

(B) Is a resident of the State of Oregon; and

(C) Has an annual household income, as defined in ORS 310.630, of $15,000 or less.]

(h) [(j)] Rural Area Variance to Standard Subsurface Rules:

(A) Site Evaluation..... $150 [$135]

NOTE: In the event there is on file a site evaluation report for that parcel that is less than ninety (90) days old, the site evaluation fee shall be waived.

(B) Construction-Installation Permit....The appropriate fee identified in subsection (1)(b) of this rule applies.

(i) [(k)] Sewage Disposal Service:

(A) Annual Business License ..... $150 [$100]

EXCEPTION: The application fee for a license valid during the period July 1, 1983 through June 30, 1984 shall be $100.

(B) Transfer of or Amendments to License ..... $ 75

(C) Reinstatement of Suspended License $100

[(B)] (D) Pumper Truck Inspection, Each Vehicle .... $ 25

(j) [(l)] Experimental Systems:
Permit $100

(k) Existing System Evaluation Report ..... $ 60

NOTE: The fee shall not be charged for an evaluation report on any proposed repair, alteration or extension of an existing system.

(2) Contract County Fee Schedules. Pursuant to ORS 454.745(4), fee schedules which exceed maximum fees in ORS 454.745(1), and Section (1) of this rule, are established for Contract Counties as follows:

(a) Lane County: See OAR 340-72-050.

(b) Clackamas County: See OAR 340-72-060.

(c) Multnomah County: See OAR 340-72-070.

(d) Jackson County: See OAR 340-72-080.

NOTE: Underlined _____ material is new.
Bracketed [ ] material is deleted.

(3) Contract County Fee Schedules, General:

(a) Each county having an agreement with the Department under ORS 454.725 shall adopt a fee schedule for services rendered and permits and licenses to be issued.

(b) A copy of the fee schedule and any subsequent amendments to the schedule shall be forwarded to the Department.

(c) Fees shall not:

(A) Exceed actual costs for efficiently conducted services; or

(B) Exceed the maximum established in Section (1) of this rule, unless approved by the Commission pursuant to ORS 454.745(4).

(4) Surcharge. In order to offset a portion of the administrative costs of the statewide on-site sewage disposal program, a surcharge for each activity, as set forth in the following schedule, shall be levied by the Department and by each Agreement County. Proceeds from surcharges collected by the Department and Agreement Counties shall be accounted for separately. Each Agreement County shall forward the proceeds to the Department as negotiated in the memorandum of agreement (contract) between the county and the Department.

Activity	Surcharge
(a) Site evaluation: [per lot or site; or] for each <u>one thousand (1000)</u> [1,000] gallons projected daily sewage flow or part thereof, [whichever is greater,] up to <u>a maximum surcharge of seventy five dollars ($75)</u> [5,000 gallons] ..	$ 15
(b) [New] Construction-Installation Permit ..... <u>EXCEPTION: Repair permits are not subject to a surcharge.</u>	$ 5
(c) Alteration Permit	$ 5
(d) Authorization Notice	$ 5

(5) Refunds. The Agent may refund a fee accompanying an application if the applicant withdraws the application before the Agent has done any field work or other substantial review of the application.

Amend OAR 340-71-150(4) as follows:

(4) Approval or Denial:

(a) In order to obtain an approved site evaluation report the following conditions shall be met:

NOTE: Underlined _____ material is new.
Bracketed [ ] material is deleted.

(A) All criteria for approval as outlined in rules 340-71-220 and/or 340-71-260 through 340-71-355 shall be met.

(B) Each lot or parcel must have [contain] sufficient usable area available to accommodate an initial and replacement system. The usable area may be located within the lot or parcel, or within the bounds of another lot or parcel if secured pursuant to OAR 340-71-130(11). Sites may be approved where the initial and replacement systems would be of different types, e.g., a standard subsurface system as the initial system and an alternative system as the replacement system. The site evaluation report shall indicate the type of the initial and type of replacement system for which the site is approved.

EXCEPTION: A replacement area is not required in areas under control of a legal entity such as a city, county, or sanitary district, provided the legal entity gives a written commitment that sewerage service will be provided within five (5) years.

(b) A site evaluation shall be denied where the [above] conditions identified in subsection (4)(a) of this rule are not met.

(c) Technical rule changes shall not invalidate a favorable site evaluation ,but may require use of a different kind of system .

Amend OAR 340, Division 71 by adding a new rule, OAR 340-71-155, as follows:

340-71-155 EXISTING SYSTEM EVALUATION REPORT.

(1) Any person, upon application, may request an evaluation report on an existing on-site sewage disposal system. The application shall be on a form provided by the Agent and approved by the Department.

(2) The application is complete only when the form, on its face, is completed in full, signed by the owner or the owner's legally authorized representative, and is accompanied by all necessary exhibits including the fee. A fee shall not be charged for an evaluation report on any proposed repair, alteration or extension of an existing system.

(3) The Agent shall:

(a) Examine the records, if available, on the existing system; and

(b) Conduct a field evaluation of the existing system; and

(c) Issue a report of findings to the applicant.

NOTE: Underlined _____ material is new.
Bracketed [ ] material is deleted.

Amend OAR 340-71-160(9) as follows:

(9) A permit issued pursuant to these rules shall be effective for one (1) year from the date of issuance for construction of the system. [and] The construction-installation permit is not transferable. Once a system is installed pursuant to the permit, and a Certificate of Satisfactory Completion has been issued for the installation, conditions imposed as requirements for permit issuance shall continue in force as long as the system is in use.

Amend OAR 340-71-160 by adding a new section as follows:

(10) Renewal of a permit may be granted to the original permittee if an appication for permit renewal is filed prior to the original permit expiration date. Application for permit renewal shall conform to the requirements of sections (2) and (4) of this rule. The permit shall be issued or denied consistent with sections (5), (6), (8), and (9) of this rule.

Amend OAR 340-71-205 as follows:

340-71-205 AUTHORIZATION TO USE EXISTING SYSTEMS.

(1) For the purpose of these rules, "Authorization Notice" means a written document issued by the Agent which establishes that an existing on-site sewage disposal system appears adequate to serve the purpose for which a particular application is made. Applications for Authorization Notices shall conform to requirements of OAR 340-71-160(2) and (4).

(2) Authorization Notice Required. No Person shall place into service, change the use of, or increase the projected daily sewage flow into an existing on-site sewage disposal system without obtaining an Authorization Notice , Construction-Installation Permit or Alteration Permit as appropriate.

EXCEPTIONS:

-a- An Authorization Notice is not required when there is a change in use (replacement of mobile homes or recreational vehicles with similar units) in mobile home parks or recreational vehicle facilities . [operated by a public entity or under a license or Certificate of Sanitation issued by the Oregon State Health Division or Oregon State Department of Commerce.]

-b- An Authorization Notice is not required for placing into service [use of] a previously unused system for which a Certificate of Satisfactory Completion has been issued within one (1) year of the date such system is placed into service, providing the projected daily sewage flow does not exceed the design flow.

NOTE: Underlined _____ material is new.
Bracketed [ ] material is deleted.

(3) For placing into service or for changes in the use of an existing on-site sewage disposal system where no increase in sewage flow is projected, or where the design flow is not exceeded; an Authorization Notice shall be issued if:

(a) The existing system is not failing; and

(b) All set-backs between [from] the existing system and the structure can be maintained; and

(c) In the opinion of the Agent the proposed use would not create a public health hazard[.] on the ground surface or in surface public waters.

(4) If the condition s [(a) or (b)] of section (3) of this rule cannot be met, an Authorization Notice shall be withheld until such time as the necessary alterations and/or repairs to the system are made.

(5) For changes in the use of a system where projected daily sewage flow would be increased by not more than three hundred (300) gallons beyond the design capacity or by not more than fifty (50) percent of the design capacity for the system, whichever is less; an Authorization Notice shall be issued if:

(a) The existing system is shown not to be failing; and

(b) All set-backs between [from] the existing system and the structure can be maintained; and

(c) Sufficient area exists so that a complete replacement area meeting all requirements of these rules (except those portions relating to soil conditions and groundwater) is available; and

(d) In the opinion of the Agent the proposed increase would not create a public health hazard or water pollution.

(6) Only one (1) Authorization Notice for an increase up to three hundred (300) gallons beyond the design capacity, or increased by not more than fifty (50) percent of the design capacity, whichever is less, will be allowed per system.

(7) For changes in the use of a system where projected daily sewage flows would be increased by more than three hundred (300) gallons beyond the design capacity, or increased by more than fifty (50) percent of the design capacity of the system, whichever is less, a Construction-Installation [an Alteration] Permit shall be obtained. [Such permit may be issued only if the proposed installation will be in full compliance with these rules.] Refer to rule 340-71-210.

NOTE: Underlined _____ material is new.
Bracketed [ ] material is deleted.

(8) Personal Hardship:

(a) The Agent may allow a mobile home to use an existing system serving another dwelling, in order to provide housing for a family member suffering hardship, by issuing an Authorization Notice, if:

(A) The Agent receives satisfactory evidence which indicates that the family member is suffering physical or mental impairment, infirmity, or is otherwise disabled (a hardship approval issued under local planning ordinances shall be accepted as satisfactory evidence); and

(B) The system is not failing; and

(C) The application is for a mobile home; and

(D) Evidence is provided that a hardship mobile home placement is allowed on the subject property by the governmental agency that regulates zoning, land use planning, and/or building.

(b) The Authorization Notice shall remain in effect for a specified period, not to exceed cessation of the hardship. The Authorization Notice is renewable on an annual or biennial basis. The Agent shall impose conditions in the Authorization Notice which are necessary to assure protection of public health.

(9) Temporary Placement:

(a) The Agent may allow a mobile home to use an existing system serving another dwelling in order to provide temporary housing for a family member in need, and may issue an Authorization Notice provided:

(A) The Agent receives evidence that the family member is in need of temporary housing; and

(B) The system is not failing; and

(C) A full system replacement area is available; and

(D) Evidence is provided that a temporary mobile home placement is allowed on the subject property by the governmental agency that regulates zoning, land use planning, and/or building.

(b) The Authorization Notice shall authorize use for no more than two (2) years and is not renewable. The Agent shall impose conditions in the Authorization Notice necessary

NOTE: Underlined _____ material is new.
Bracketed [ ] material is deleted.

to assure protection of public health. If the system fails during the temporary placement and additional replacement area is no longer available, the mobile home shall be removed from the property.

(10) An Authorization Notice denied by the Agent shall be reviewed at the request of the applicant. The application for review shall be submitted to the Department in writing within thirty (30) days of the authorization notice denial, and be accompanied by the denial review fee. The denial review shall be conducted and a report prepared by the Department.

Amend OAR 340-71-210 as follows:

340-71-210 ALTERATION OF EXISTING ON-SITE SEWAGE DISPOSAL SYSTEMS.

(1) Permit Required:

(a) No person shall alter , or increase the design capacity of, an existing on-site sewage disposal system without first obtaining an Alteration Permit or Construction-Installation Permit, as appropriate . [See] Refer to rule 340-71-160.

(b) No person shall increase the projected daily sewage flow into an existing on-site sewage disposal system by more than three hundred (300) gallons beyond the design capacity or increase by more than fifty (50) percent of the design capacity of the system, whichever is less, until [an Alteration] a Construction-Installation Permit is obtained. [Such permit may be issued only if the proposed installation will be in full compliance with these rules.] Refer to rule 340-71-160.

(2) An application for an Alteration Permit shall be submitted to the Agent for proposed alterations to an existing system that do not increase the existing system's design capacity, or do not exceed the existing system's design capacity by more than three hundred (300) gallons per day or fifty (50) percent, whichever is less. The permit may be issued if:

(a) The existing system is not failing; and
(b) The setbacks in Table 1 can be met; and
(c) In the opinion of the Agent, use of the on-site system would not create a public health hazard or water pollution.

(3) An application for a Construction-Installation Permit shall be submitted to the Agent when the existing system's design capacity is proposed to be exceeded by greater than three hundred (300) gallons per day or greater than fifty (50) percent, whichever is less. The permit may be issued if:

NOTE: Underlined _____ material is new.
Bracketed [ ] material is deleted.

(a) The existing system is not failing; and
(b) A favorable site evaluation report has been obtained from the Agent (refer to rule 340-71-150); and
(c) The proposed installation will be in full compliance with these rules.

(4) [(2)] Certificate of Satisfactory Completion Required. Upon completion of installation of that part of a system for which an Alteration Permit or Construction-Installation Permit has been issued, the permittee shall obtain a Certificate of Satisfactory Completion from the Agent pursuant to rule 340-71-175. An increase in the projected daily sewage flow into the system shall be prohibited until the Certificate is issued.

[(3) Criteria for Permit Issuance. Except as provided in subsection (1)(b) of this rule the Agent may issue an Alteration Permit if:

(a) The existing system is not failing; and
(b) In the opinion of the Agent use of the on-site system would not create a public health hazard or water pollution.]

Amend OAR 340-71-220(2)(b)(C) as follows:

(C) Curtain Drains. (Diagram 13) A curtain drain may be used to intercept and/or drain temporary water from a disposal area, however, it may be required to demonstrate that the site can be de-watered prior to issuing a Construction-Installation permit. Curtain drains may be used only on sites with adequate slope to permit proper drainage. Where required, curtain drains are an integral part of the [disposal] system[.] , but do not need to meet setback requirements to property lines, streams, lakes, ponds or other surface water bodies.

Amend OAR 340-71-220(2)(c)(Exception -b-) as follows:

-b- A layer of non-gravelly (less than 15% gravel) soil with sandy loam texture or finer at least eighteen (18) inches thick occurs between the bottom of the disposal trenches and the groundwater table; or

Amend OAR 340-71-220(4)(c)(C) as follows:

(C) All septic tanks installed with the manhole access deeper than eighteen (18) inches , or when used within a sand filter system, commercial system, or pressurized [or as part of a sand filter] system shall be provided with a watertight riser extending to the ground surface or above. The riser shall have a minimum inside dimension equal to or greater than that of the tank manhole. The cover shall be securely fastened or weighted to prevent easy removal.

NOTE: Underlined _____ material is new.
Bracketed [ ] material is deleted.

Amend OAR 340-71-265(3)(c) and (d) as follows:

(c) The disposal area [drainfield site] and the borrow site shall be scarified to destroy the vegetative mat.

(d) The system [Drainfield] shall be installed as specified in the construction permit. There shall be a minimum ten (10) feet of separation between the edge of the fill and the absorption facility [nearest trench sidewall].

Amend OAR 340-71-265(4)(a) and (b) as follows:

(a) Both the disposal area [drainfield site] and borrow material must be inspected for scarification, soil texture, and moisture content, prior to cap construction.

(b) Pre-cover inspection of the installed absorption facility [drainfield].

Amend OAR 340-71-275(4)(c)(B) as follows:

(B) Disposal [Drainfield] trenches shall be constructed using the specifications for the standard disposal [drainfield] trench unless otherwise allowed by the Department on a case-by-case basis.

Amend OAR 340-71-275(4)(d)(B) as follows:

(B) The effective seepage area shall be based on the bottom area of the seepage bed. The minimum area shall be not less than two hundred (200) square feet per one hundred fifty (150) gallons projected daily sewage flow. [that specified in Table 9.]

Amend OAR 340-71-280 as follows:

(1) For the purpose of these rules "Seepage Trench System" means a system with disposal trenches with more than six (6) inches of filter material below the distribution pipe.

(2) Criteria for Approval. Contruction permits may be issued by the Agent for seepage trench systems on lots created prior to January 1, 1974, for sites that meet all the following conditions:

(a) Groundwater degradation would not result.

(b) Lot or parcel is inadequate in size to accommodate standard subsurface system disposal trenches[.] with a projected flow of four hundred fifty (450) gallons per day.

(c) All other requirements for standard subsurface systems can be met.

NOTE: Underlined _____ material is new.
Bracketed [ ] material is deleted.

(3) Design Criteria:

(a) The seepage trench may have a maximum depth of forty-two (42) inches;

(b) The seepage [Seepage] trench system [dimensions] shall be sized according to [determined by] the following formula:

Length of seepage trench = (4) (length of standard system disposal trench) [/] divided by (3+ 2D), where D = depth of filter material below distribution pipe in feet. Maximum depth of filter material (D) shall be two (2) feet.

(c) The projected daily sewage flow shall be limited to a maximum of four hundred fifty (450) gallons.

Amend OAR 340-71-290(3)(a)(B) as follows:

(B) Twelve (12) inches or more below ground surface on sites requiring serial distribution where [distribution] disposal trenches are covered by a capping fill, provided: trenches are excavated twelve (12) inches into the original soil profile, slopes are twelve (12) percent or less, and the capping fill is constructed according to provisions under OAR 340-71-265(3) and 340-71-265(4)(a) through (c)[. A construction-installation permit shall not be issued until the fill is in place and approved by the Agent]; or

Amend OAR 340-71-290(3)(b) as follows:

(b) The highest level attained by a permanent water table would be equal to or more than distances specified as follows:

	Soil Groups	*Minimum Separation Distance from Bottom Effective Seepage Area
(A)	Gravel, sand, loamy sand, sandy loam	24 inches
(B)	Loam, silt loam, sandy clay loam, clay loam	18 inches
(C)	Silty clay loam, silty clay, clay, sandy clay	12 inches

*NOTE: Shallow disposal trenches (placed not less than twelve (12) inches into the original soil profile) may be used with a capping fill to achieve separation distances from permanent groundwater. The fill shall be placed in accordance to the provisions of OAR 340-71-265(3) and 340-71-265(4)(a) through (c). [A construction-installation permit shall not be issued until the fill is in place and approved by the Agent.]

NOTE: Underlined _____ material is new.
Bracketed [ ] material is deleted.

Amend OAR 340-71-290(4) and (5) as follows:

(4) [Minimum Length Disposal Trench Required.] The minimum [seepage area] <u>length of disposal trench</u> required for sand filter absorption facilities is indicated in the following table:

Soil Groups	Minimum Length (Linear Feet) Disposal Trench Per One Hundred Fifty (150) Gallons Projected Daily Sewage Flow
(a) Gravel, sand, loamy sand, sandy loam	35
(b) Loam, silt loam, sandy clay loam, clay loam	45
(c) Silty clay loam, silty clay, sandy clay, clay	50
(d) Saprolite or fractured bedrock	50
(e) High shrink-swell clays (Vertisols)	75 <u>*</u>

<u>* NOTE: Disposal trenches in Vertisols shall contain twenty-four (24) inches of filter material and twenty-four (24) inches of soil backfill.</u>

<u>(5)</u> [NOTE:] Sites with saprolite, fractured bedrock, gravel or soil textures of sand, loamy sand, or sandy loam in a continuous section at least two (2) feet thick in contact with and below the bottom of the sand filter, that meet all other requirements of section 340-71-290(3), may utilize either a conventional sand filter without a bottom or a sand filter in a trench that discharges biologically treated effluent directly into those materials. The application rate shall be based on the design sewage flow in OAR 340-71-295(1) and the basal area of the sand in either type of sand filter. A minimum twenty-four (24) inch separation shall be maintained between a water table and the bottom of the sand filter.

<u>(6)</u> [(5)] Materials and Construction:

(a) All materials used in sand filter system construction shall be structurally sound, durable and capable of withstanding normal installation and operation stresses. Component parts subject to malfunction or excessive wear shall be readily accessible for repair and replacement.

(b) All filter containers shall be placed over a stable level base.

(c) In areas of temporary groundwater at least twelve (12) inches of unsaturated soil shall be maintained between the bottom of the sand filter and top of the disposal trench.

NOTE: Underlined _____ material is new.
Bracketed [ ] material is deleted.

(d) Piping and fittings for the sand filter distribution system shall be as required under pressure distribution systems, OAR 340-71-275.

(e) The specific requirements for septic tanks, dosing tanks, etc. are found in OAR 340-71-220.

Amend OAR 340-71-310(2) as follows:

(2) Construction Requirements:

(a) Seepage trenches shall be installed at a minimum depth of thirty (30) inches and at a maximum depth of thirty-six (36) inches below the natural soil surface on the downhill side of the trench, and contain a minimum of eighteen (18) inches of filter material and twelve (12) inches of native soil backfill.

(b) The system shall be sized at a minimum of [one hundred (100)] seventy-five (75) linear feet per one hundred fifty (150) gallons projected daily sewage flow.

Amend OAR 340-71-315 as follows:

340-71-315 TILE DEWATERING SYSTEM.

(1) General conditions for approval. On-site system construction permits may be issued by the Agent for tile dewatering systems provided the following requirements can be met:

(a) The site has a natural outlet that will allow a field tile [(]installed on a proper grade around the proposed absorption facility [drainfield area at a depth of not less than sixty-six (66) inches)] to daylight above annual high water.

(b) Soils must be silty clay loam or coarser textured and be drainable, with a minimum effective soil depth of at least [sixty-six (66) inches.] thirty (30) inches in soils with temporary groundwater, and at least seventy-two (72) inches in soils with permanent groundwater.

(c) Slope does not exceed three (3) percent.

(d) All other requirements for the system [standard on-site systems], except depth to groundwater, can be met. However, after the field collection drainage tile is installed, the groundwater levels shall conform to the requirements of OAR 340-71-220(2) or 340-71-290(3).

NOTE: Underlined _____ material is new.
Bracketed [ ] material is deleted.

(2) Construction Requirements:

(a) Field collection drainage tile shall be installed [a minimum of sixty-six (66)inches deep] on a uniform grade of two-tenths to four-tenths (0.2-0.4) feet of fall per one hundred (100) feet , [.] and either
(A) A minimum of thirty-six (36) inches deep in soils with temporary groundwater, or
(B) A minimum of sixty-six (66) inches deep in soils with permanent groundwater.

(b) Maximum drainage tile spacing shall be seventy (70) feet center to center.

(c) Minimum horizontal separation distance [of] between the drainage tile [from] and [disposal trenches] absorption facility shall be twenty (20) feet [center to center].

(d) Field collection drainage tile shall be rigid smooth wall perforated pipe with a minimum diameter of four (4) inches.

(e) Field collection drainage tile shall be enveloped in clean filter material to within thirty (30) inches of the soil surface in soils with permanent groundwater, or to within twelve (12) inches of the soil surface in soils with temporary groundwater . Filter material shall be covered with filter fabric, treated building paper or other nondegradable material approved by the Agent.

(f) Outlet tile shall be rigid smooth wall solid PVC pipe with a minimum diameter of four (4) inches. The outlet end shall be protected by a short section of Schedule 80 PVC or ABS or metal pipe, and a flap gate[.] or grill to exclude rodents.

(g) A silt trap with a thirty (30) inch minimum diameter shall be installed between the field collection drainage tile and the outlet pipe[.] unless otherwise authorized by the Department. The bottom of the silt trap shall be a minimum twelve (12) inches below the invert of the drainage [line] pipe outlet.

(h) The discharge pipe and [dewatering] tile drainage system [is an] are integral parts [part] of the system[.] , but do not need to meet setback requirements to property lines, streams, lakes, ponds or other surface water bodies.

(i) The Agent has the discretion of requiring demonstration that a proposed tile dewatering site can be drained prior to issuing a Construction-Installation permit.

(j) The absorption facility shall use equal or pressurized distribution.

NOTE: Underlined _____ material is new.
Bracketed [ ] material is deleted.

Amend OAR 340-71-320(2) as follows:

(2) Criteria for Approval. In split waste systems wastes may be disposed of as follows:

(a) Black wastes may be disposed of by the use of State Department of Commerce approved nonwater-carried plumbing units such as recirculating oil flush toilets or compost toilets.

(b) Gray water may be disposed of by discharge to:

(A) An existing on-site system which is not failing; or

(B) A new oni-site system with a soil absorption [system] facility two-thirds (2/3) normal size. A full size initial [drainfield] disposal area and replacement disposal area of equal size are required; or

(C) A public sewerage system.

Amend OAR 340-71-330(2)(a) as follows:

(2) Criteria for Approval:

(a) Nonwater-carried waste disposal facilities shall not be installed or used without prior written approval of the Agent.

EXCEPTIONS [Exception]:

-a- Temporary use pit privies used on farms for farm labor shall be exempt from approval requirements.

-b- Sewage Disposal Service businesses licensed pursuant to OAR 340-71-600 may install self-contained construction type chemical toilets (portable toilets) without written approval of the Agent, providing all other requirements of this rule are met.

Amend OAR 340-71-345(4) as follows:

(4) [Drainfield] Disposal Field Sizing. [Drainfields] Disposal fields serving systems employing aerobic sewage treatment facilities shall be sized according to Tables 4 and 5 of these rules. Where a NSF Class I plant is installed, the linear footage of [drainfield] disposal trench installed may be reduced by twenty (20) percent, provided a full sized standard system replacement area is available.

NOTE: Underlined _____ material is new.
Bracketed [ ] material is deleted.

Amend OAR 340-71-400(5)(b)(C) as follows:

(C) The a lot or parcel does not violate the Department's Water Quality Management Plan or any rule of this Division, except the projected maximum sewage loading rate would exceed the ratio of four hundred fifty (450) gallons per one-half (1/2) acre per day. The on-site system shall be either a sand filter system or a pressurized distribution system; or

Amend OAR 340-71-520(2) as follows:

(2) Special Design Requirements. Unless otherwise authorized by the Department, large systems shall comply with the following requirements:

(a) Large system [drainfields] absorption facilities shall be designed with pressure distribution.

(b) [Drainfields] The disposal area shall be divided into relatively equal units . [with a maximum of six hundred (600) linear feet of drainfield per unit.] Each unit shall receive no more than thirteen hundred (1300) gallons of effluent per day.

(c) [Drainfield] The replacement (repair) disposal area shall be divided into relatively equal units , with a replacement disposal area unit located adjacent to an initial [drainfield] disposal area unit.

(d) Effluent distribution shall alternate between the [drainfield] disposal area units.

(e) Each [distribution] system shall have at least two (2) pumps or siphons.

(f) The applicant shall provide a written assessment of the impact of the proposed system upon the quality of public waters and public health.

Amend OAR 340-71-600 as follows:

340-71-600 SEWAGE DISPOSAL SERVICE.

(1) For the purpose of these rules "Sewage Disposal Service" means:

(a) The installation of on-site sewage disposal systems (including the placement of portable toilets) , or any part thereof; or

(b) The pumping out or cleaning of on-site sewage disposal systems (including portable toilets) , or any part thereof; or

NOTE: Underlined _____ material is new.
Bracketed [ ] material is deleted.

(c) The disposal of material derived from the pumping out or cleaning of on-site sewage disposal systems (including portable toilets) ; or

(d) Grading, excavating, and earth-moving work connected with the operations described in subsection (1) (a) of this rule, except streets, highways, dams, airports or other heavy construction projects and except earth-moving work performed under the supervision of a builder or contractor in connection with and at the time of the construction of a building or structure; or

(e) The construction of drain and sewage lines from five (5) feet outside a building or structure to the service lateral at the curb or in the street or alley or other disposal terminal holding human or domestic sewage[.] ; or

(f) Leasing or renting portable toilets to any person.

(2) No person shall perform sewage disposal services or advertise or represent himself/herself as being in the business of performing such services without first obtaining a license from the Department. [Licenses are not transferable.] Unless suspended or revoked at an earlier date, a Sewage Disposal Service license issued pursuant to this rule expires on July 1 next following the date of issuance.

(3) Those persons making application for a sewage disposal service license shall:

(a) Submit a [Complete an] complete license application form to [supplied by] the Department for each business ; and

(b) File and maintain with the Department original evidence of surety bond, or other approved equivalent security, in the penal sum of two thousand five hundred dollars ($2,500) for each business ; and

(c) Shall have pumping equipment inspected by the Agent annually if intending to pump out or clean systems and shall complete the "Sewage Pumping Equipment Description/Inspection" form supplied by the Department. An inspection performed after January 1st shall be accepted for licensing the following July 1st; and

[(d) Provide evidence of registration of business name with State Department of Commerce.]

(d) [(e)] Submit the appropriate fee as set forth in subsection 340-71-140(1) (i) [(k)] for each business.

NOTE: Underlined _____ material is new.
Bracketed [ ] material is deleted.

(4) A Sewage Disposal Service license may be transferred or amended during the license period to reflect changes in business name, ownership, or entity (i.e. individual, partnership, or corporation), providing:

(a) A complete application to transfer or amend the license is submitted to the Department with the appropriate fee as set forth in subsection 340-71-140(1)(i); and

(b) The Department is provided with a rider to the surety, or a new form of security as required in subsection (3)(b) of this rule; and

(c) A valid Sewage Disposal Service license (not suspended, revoked, or expired) is returned to the Department; and

(d) If there is a change in the business name, a new "Sewage Pumping Equipment Description/ Inspection" form for each vehicle is submitted to the Department.

[(4)] (5) The type of security to be furnished pursuant to OAR 340-71-600(3)(b) may be:

(a) Surety bond executed in favor of the State of Oregon on a form approved by the Attorney General and provided by the Department. The bond shall be issued by a surety company licensed by the Insurance Commissioner of Oregon. Any surety bond shall be so conditioned that it may be cancelled only after forty five (45) days notice to the Department, and to otherwise remain in effect for not less than two (2) years following termination of the sewage disposal service license, except as provided in subsection (e) of this section; or

(b) Insured savings account irrevocably assigned to the Department, with interest earned by such account made payable to the depositor; or

(c) Negotiable securities of a character approved by the State Treasurer, irrevocably assigned to the Department, with interest earned on deposited securities made payable to the depositor.

(d) Any deposit of cash or negotiable securities under ORS 454.705 shall remain in effect for not less than two (2) years following termination of the sewage disposal service license except as provided in subsection (e) of this section. A claim against such security deposits must be submitted in writing to the Department, together with an authenticated copy of:

NOTE: Underlined _____ material is new.
Bracketed [ ] material is deleted.

(A) The court judgment or order requiring payment of the claim; or

(B) Written authority by the depositor for the Department to pay the claim.

(e) When proceedings under ORS 454.705 have been commenced while the security required is in effect, such security shall be held until final disposition of the proceedings is made. At that time claims will be referred for consideration of payment from the security so held.

[(5)] (6) Each licensee shall:

(a) Be responsible for any violation of any statute, rule, or order of the Commission or Department pertaining to his licensed business.

(b) Be responsible for any act or omission of any servant, agent, employee, or representative of such licensee in violation of any statute, rule, or order pertaining to his license privileges.

(c) Deliver to each person for whom he performs services requiring such license, prior to completion of services, a written notice which contains:

(A) A list of rights of the recipient of such services which are contained in ORS 454.705(2); and

(B) Name and address of the surety company which has executed the bond required by ORS 454.705(1); or

(C) A statement that the licensee has deposited cash or negotiable securities for the benefit of the Department in compensating any person injured by failure of the licensee to comply with ORS 454.605 to 454.745 and with OAR Chapter 340, Divisions 71 and 73.

(d) Keep the Department informed on company changes that affect the license, such as[,] business name change, change from individual to partnership, change from partnership to corporation, change in ownership, etc.

[(6)] (7) Misuse of License:

(a) No licensee shall permit anyone to operate under his license, except a person who is working under supervision of the licensee.

NOTE: Underlined _____ material is new.
Bracketed [ ] material is deleted.

(b) No person shall:

(A) Display or cause or permit to be displayed, or have in his possession any license, knowing it to be fictitious, revoked, suspended or fraudulently altered.

(B) Fail or refuse to surrender to the Department[, upon demand,] any license which has been suspended or revoked.

(C) Give false or fictitious information or knowingly conceal a material fact or otherwise commit a fraud in any license application.

[(7)] (8) Personnel Reponsibilities:

(a) Persons performing the service of pumping or cleaning of sewage disposal facilities shall avoid spilling of sewage while pumping or while in transport for disposal.

(b) Any accidental spillage of sewage shall be immediately cleaned up by the operator and the spill area shall be disinfected.

[(8)] (9) License Suspension or Revocation:

(a) The Department may suspend, revoke, or refuse to grant, or refuse to renew, any sewage disposal service license if it finds:

(A) A material misrepresentation or false statement in connection with a license application; or

(B) Failure to comply with any provisions of ORS 454.605 through 454.785, the rules of this Division, or an order of the Commission or Department; or

(C) Failure to maintain in effect at all times the required bond or other approved equivalent security, in the full amount specified in ORS 454.705; or

(D) Nonpayment by drawee of any instrument tendered by applicant as payment of license fee.

(b) Whenever a license is suspended, revoked or expires, the [operator] licensee shall remove the license from display and remove all Department identifying labels from equipment. The licensee shall surrender the suspended or revoked license, and certify in writing to the Department within fourteen (14) days after suspension or revocation that all Department identification labels have been removed from all equipment.

NOTE: Underlined _____ material is new.
Bracketed [ ] material is deleted.

(c) A sewage disposal service may not be considered for re-licensure for a period of at least one (1) year after revocation of its license.

(d) A suspended license may be reinstated, providing:

(A) A complete application for reinstatement of license is submitted to the Department, accompanied by the appropriate fee as set forth in Subsection 340-71-140(1)(i); and

(B) The grounds for suspension have been corrected; and

(C) The original license would not have otherwise expired.

[(9)] (10) Equipment Minimum Specifications:

(a) Tanks for pumping out of sewage disposal facilities shall comply with the following:

(A) Have a liquid capacity of at least five hundred fifty (550) gallons.

EXCEPTION: Tanks for equipment used exclusively for pumping chemical toilets not exceeding fifty (50) gallons capacity, shall have a liquid capacity of at least one hundred fifty (150) gallons.

(B) Be of watertight metal construction;

(C) Be fully enclosed;

(D) Have suitable covers to prevent spillage.

(b) The vehicle shall be equipped with either a vacuum or other type pump which will not allow seepage from the diaphragm or other packing glands and which is self priming.

(c) The sewage hose on vehicles shall be drained, capped, and stored in a manner that will not create a public health hazard or nuisance.

(d) The discharge nozzle shall be:

(A) Provided with either a camlock quick coupling or threaded screw cap.

(B) Sealed by threaded cap or quick coupling when not in use.

(C) Located so that there is no flow or drip onto any portion of the vehicle.

NOTE: Underlined _____ material is new.
Bracketed [ ] material is deleted.

(D) Protected from accidental damage or breakage.

(e) No pumping equipment shall have spreader gates.

(f) Each vehicle shall at all times be supplied with a pressurized wash water tank, disinfectant, and implements for cleanup.

(g) Pumping equipment shall be used for pumping sewage disposal facilities exclusively unless otherwise authorized in writing by the Agent.

(h) Chemical toilet cleaning equipment shall not be used for any other purpose.

[(10)] (11) Equipment Operation and Maintenance:

(a) When in use, pumping equipment shall be operated in a manner so as not to create public health hazards or nuisances.

(b) Equipment shall be maintained in a reasonably clean condition at all times.

[(11)] (12) Vehicles shall be identified as follows:

(a) Display the name or assumed business name on each vehicle cab and on each side of a tank trailer:

(A) In letters at least three (3) inches in height; and

(B) In a color contrasting with the background.

(b) Tank capacity shall be printed on both sides of the tank:

(A) In letters at least three (3) inches in height; and

(B) In a color contrasting with the background.

(c) Labels issued by the Department for each current license period shall be displayed at all times at the front, rear, and on each side of the "motor vehicle" as defined by United States Department of Transportation Regulations, Title 49 U.S.C.

[(12)] (13) Disposal of Pumpings. Each licensee shall:

(a) Discharge no part of the pumpings upon the surface of the ground unless approved by the Department in writing.

(b) Dispose of pumpings only in disposal facilities approved by the Department.

NOTE: Underlined _____ material is new.
Bracketed [ ] material is deleted.

(c) Possess at all times during pumping, transport or disposal of pumpings, origin-destination records for sewage disposal services rendered.

(d) Maintain on file complete origin-destination records for sewage disposal services rendered. Origin-Destination records shall include:

(A) Source of pumpings on each occurrence, including name and address.

(B) Specific type of material pumped on each occurrence.

(C) Quantity of material pumped on each occurrence.

(D) Name and location of authorized disposal site, where pumpings were deposited on each occurrence.

(E) Quantity of material deposited on each occurrence.

(e) Transport pumpings in a manner that will not create a public health hazard or nuisance.

Amend OAR 340-73-080(1)(h) as follows:

(h) An inspection port, not less than six (6) inches across its shortest dimension shall provide access at the top of the seepage pit over the inlet. (See Division 71, Diagrams [14 and 15] 16 and 17.)

Amend OAR 340-73-080(2) as follows:

(2) Gray Water Waste Disposal Sumps. A gray water waste disposal sump shall consist of a receiving chamber, settling chamber, and either a seepage chamber or disposal trench. Gray water waste disposal sumps shall be constructed of materials approved by the Department. (See Division 71, Diagrams [13 and] 14 and 15.)

NOTE: Underlined _____ material is new.
Bracketed [ ] material is deleted.

Amend OAR 340 Division 71

by Deleting Table 9.

TABLE 9

Minimum effective seepage area required for seepage beds per one hundred fifty (150) gallons projected daily sewage flow.

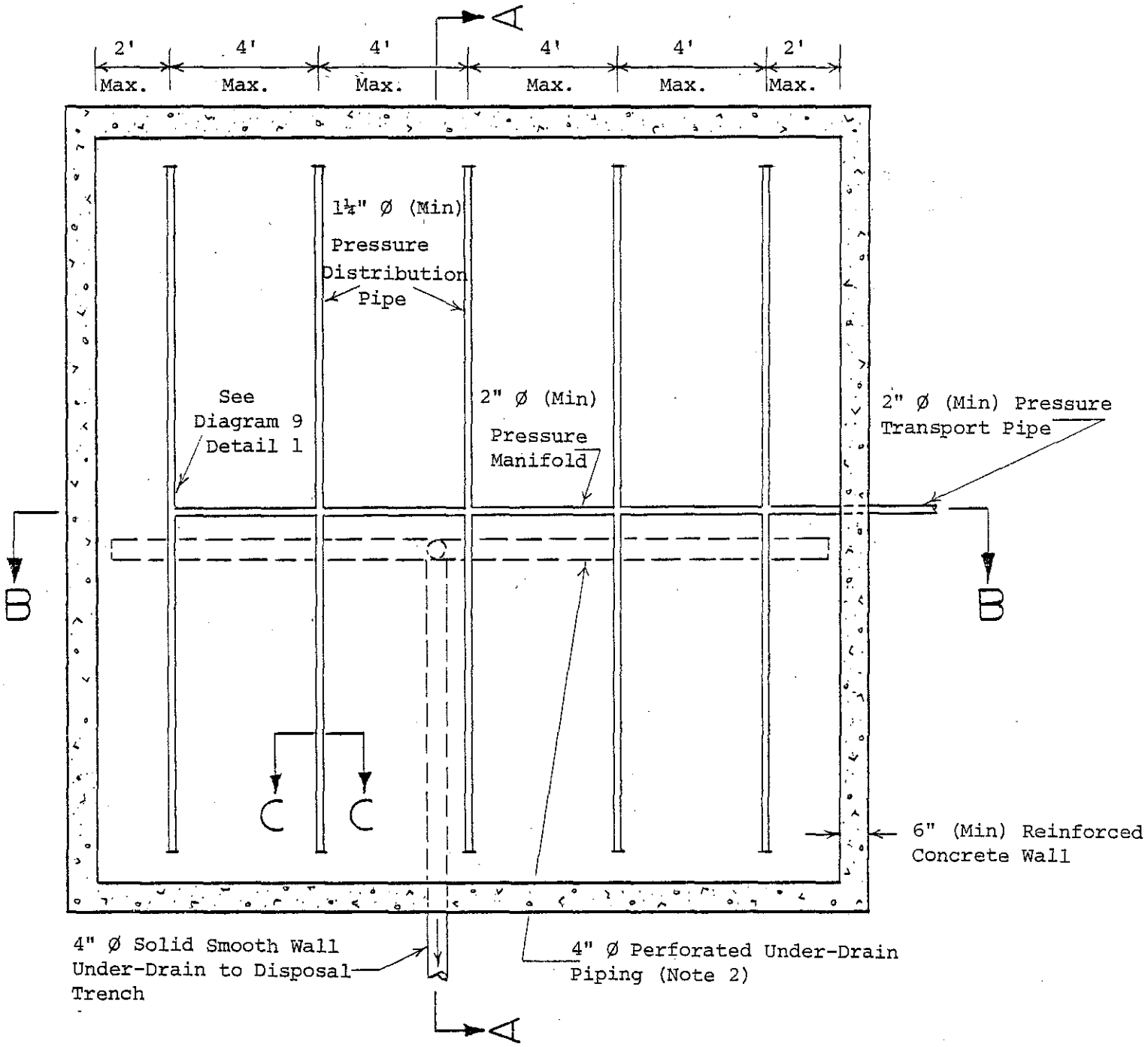
EFFECTIVE SOIL DEPTH	SEEPAGE AREA REQUIRED
30" to 54"	300 square feet
More than 54"	200 square feet

DEPTH TO TEMPORARY GROUNDWATER	SEEPAGE AREA REQUIRED
24" to 48"	300 square feet
More than 48"	200 square feet

Amend OAR 340 Division 71 by replacing the existing Diagram 8 with the revised Diagram 8.

DIAGRAM 8

REINFORCED CONCRETE SAND FILTER CONTAINER

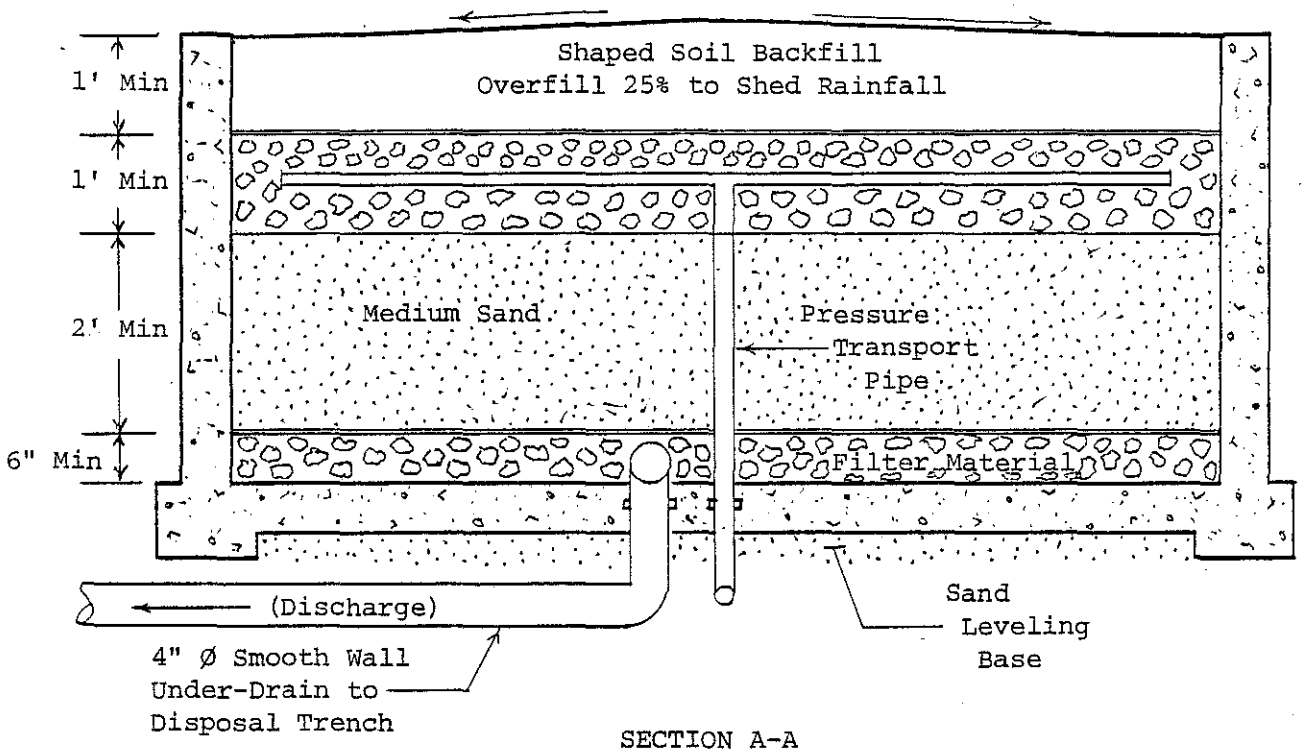


NOTE:
1. Refer to Diagram 9 for Section Details.
2. The Invert Elevation of the Perforated Under-Drain Piping Must Be at least twelve inches (12) above the Disposal Trench Filter Material.
3. A Thirty (30) Mil. (Minimum Thickness) PVC Sheet Membrane Liner or Other Material Approved by the Department May Be Used in Place of Concrete. Use of a Sand Filter Container is Required where there is Likelihood of Groundwater Infiltration.

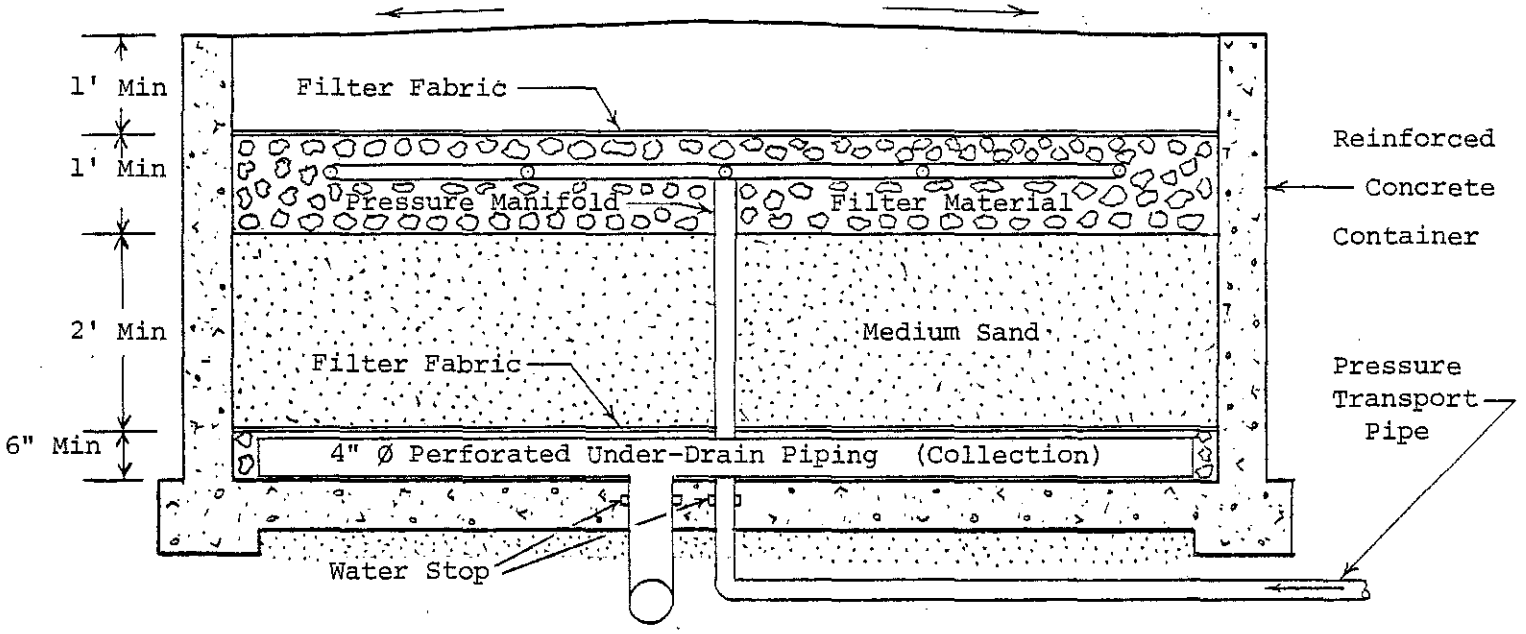
Amend OAR 340 Division 71 by replacing the existing Diagram 9 with the revised Diagram 9.

DIAGRAM 9

REINFORCED CONCRETE SAND FILTER CONTAINER

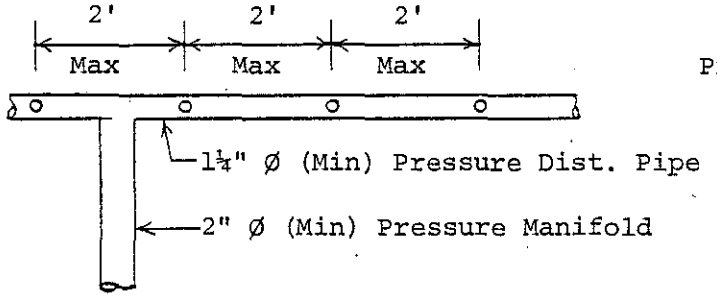


SECTION A-A

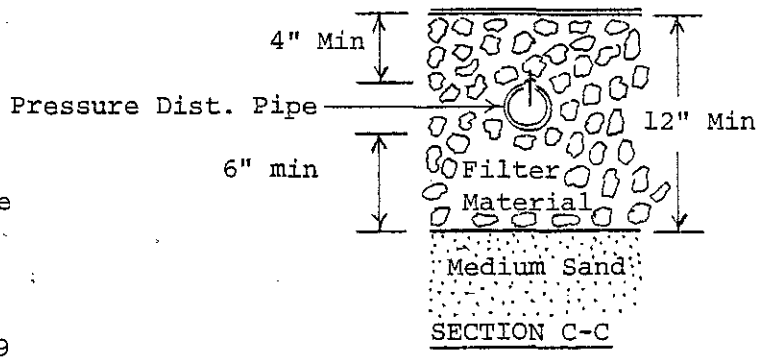


SECTION B-B

DETAIL 1



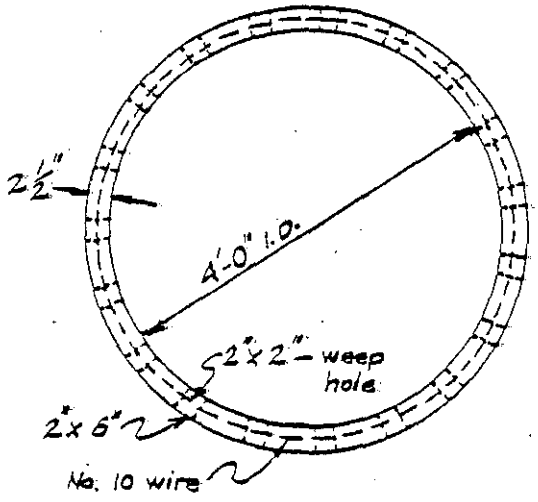
Filter Fabric



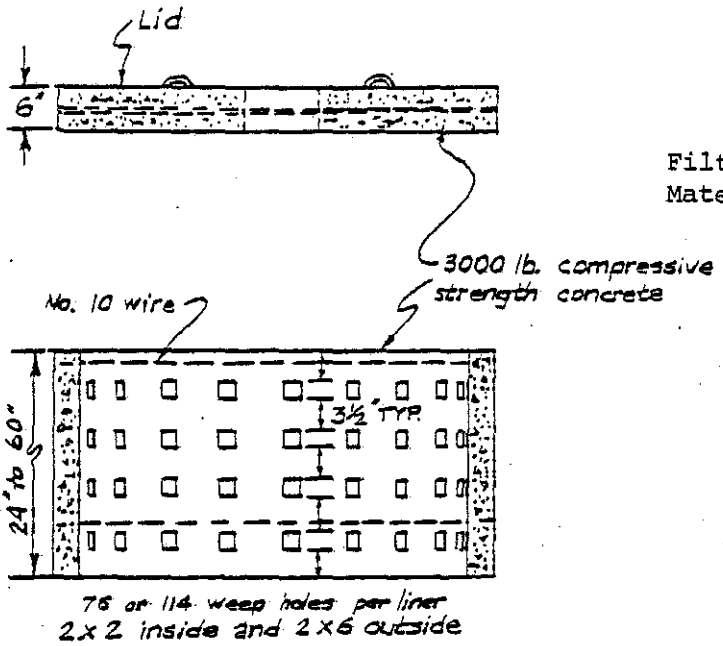
SECTION C-C

Revised 5/20/83

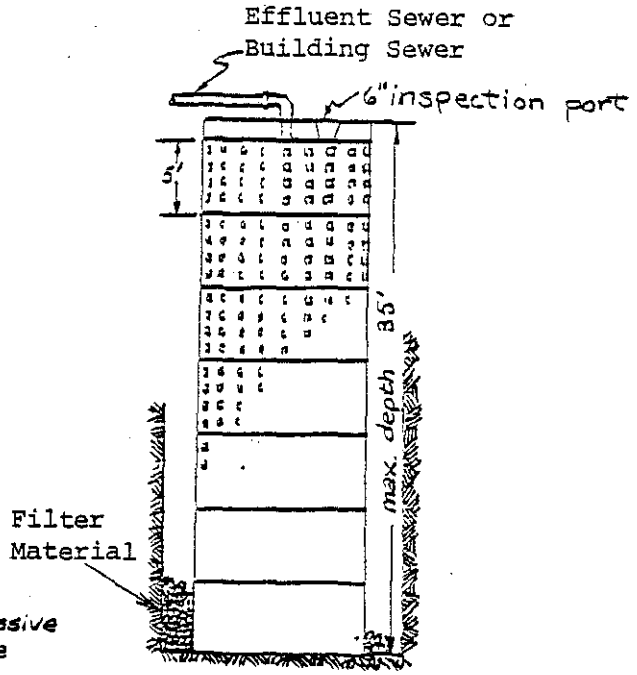
Amend OAR 340 Division 71 by replacing the existing Diagram 16 with the revised Diagram 16.



TOPVIEW



CROSS SECTION



Cespool or Seepage Pit

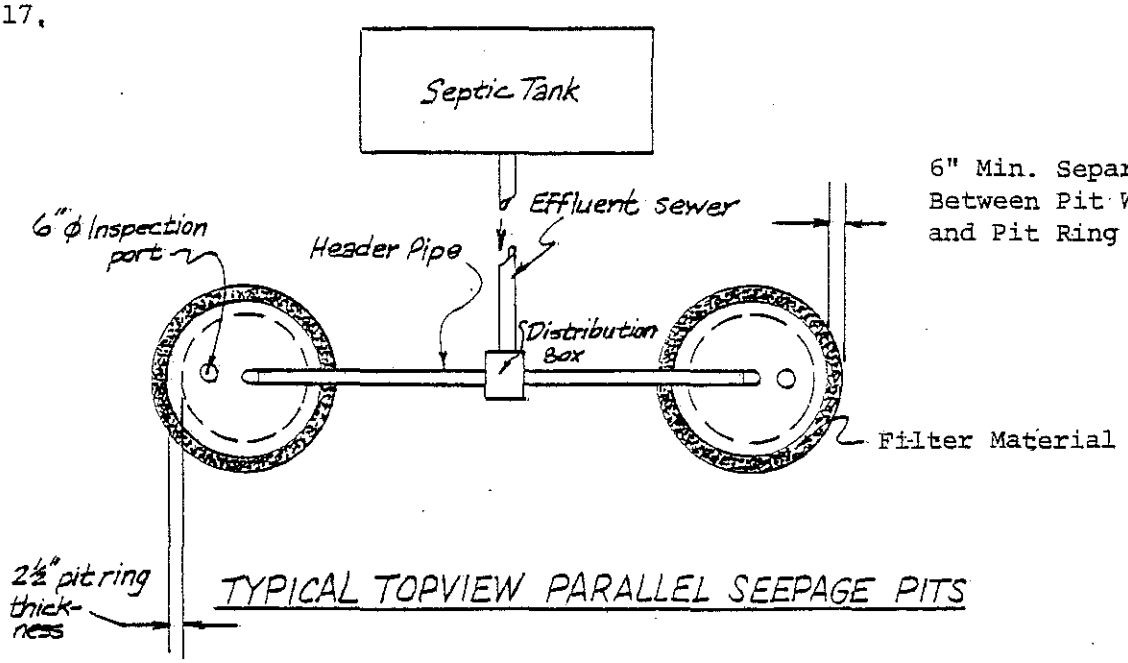
Note: Not to Scale

PRE-CAST CONCRETE LINER DETAILS

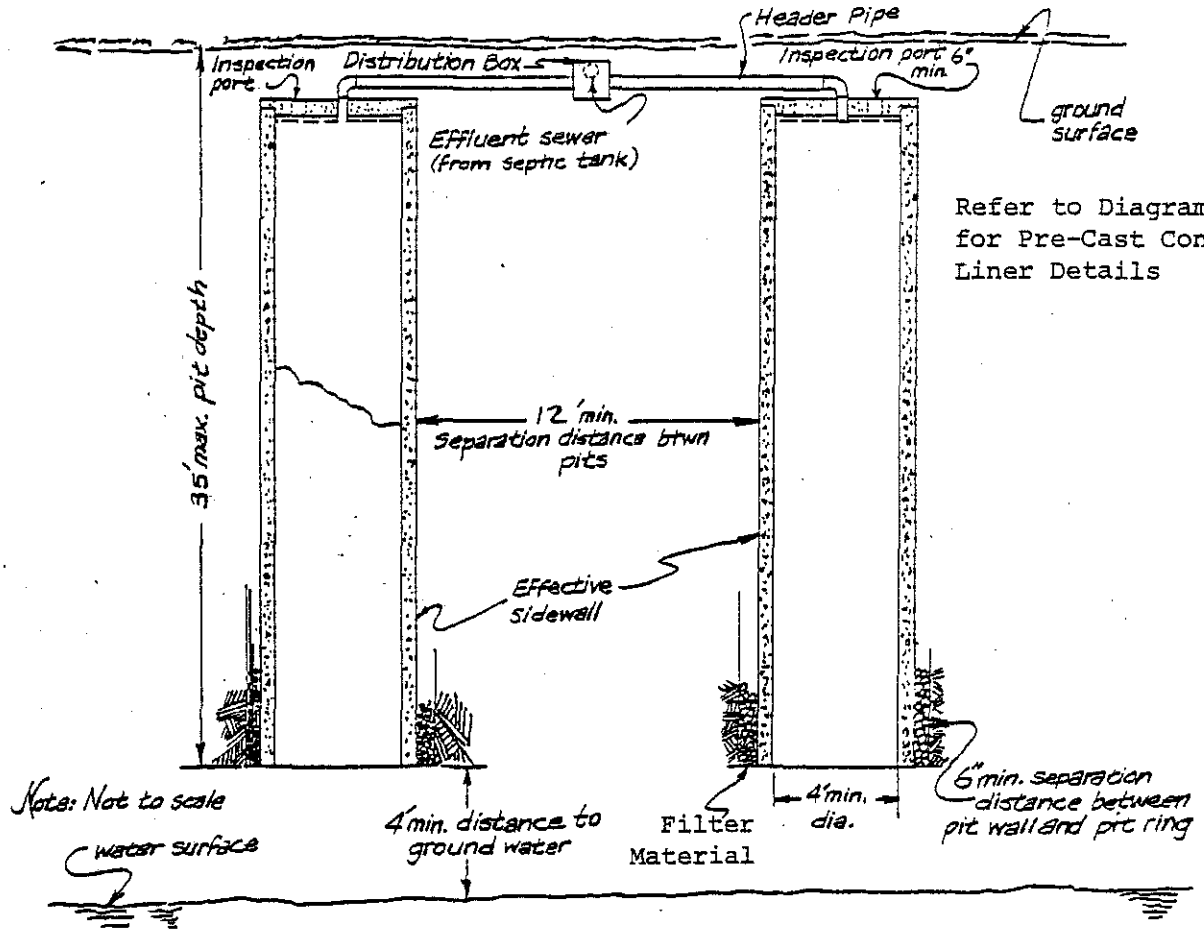
5/20/83

Amend OAR 340 Division 71 by replacing the existing Diagram 17 with the revised Diagram 17.

DIAGRAM 17



TYPICAL TOPVIEW PARALLEL SEEPAGE PITS



TYPICAL CROSS SECTION PARALLEL PITS

ATTACHMENT D

Staff Analysis of Testimony

A total of 19 people participated in the hearing process, with 16 providing comments. Nine are associated with licensed sewage disposal service businesses, 5 with different agreement counties, a person employed by the U.S. Forest Service, a soil consultant, an individual affiliated with a sanitary district, a land use planner and a DEQ employee.

On April 13, 1983, staff within the on-site section reviewed and discussed each written and verbal comment received in testimony at the rulemaking hearings. The following is a summary of the issues receiving more than one comment during the hearing process:

1. The proposed fee schedule received comments from 7 people, 6 of which were opposed to raising fees for various reasons. It was suggested by one person that the additional program funding be obtained from fines instead of increased fees. Recognizing that the program must be funded predominently by fees collected for services, the proposed fee schedule was not significantly modified after review of the testimony.

2. Five people offered testimony on the proposed amendments to the Authorization Notice rule (OAR 340-71-205), suggesting changes to cause the rule to be more stringent than before, or proposing language to allow the Agent to determine how strict or lenient portions of the rule should be applied. After considerable discussion, on-site staff modified part of the proposed amendment relating to the exception for mobile home parks and recreational vehicle facilities. It was the consensus of staff that the character of the rule should not be altered by incorporating the other suggestions received as testimony.

3. The proposed amendments to the Tile De-Watering System rule (OAR 340-71-315) received mixed comments, both in favor and in opposition, from 4 people. One person favored identifying the distribution methods, 1 person did not want them identified, while another person wanted to list an additional specific type of an equal distribution method ("loop" system). No other portion of the proposed rule amendment received more than one comment. The on-site staff elected not to make significant changes to the proposed amendments to this rule.

4. Three people were opposed to portions of the proposed amendments to the Seepage Trench System rule (OAR 340-71-280). Two suggested the proposed flow limit was too restrictive, while 1 person felt the trench depth should be greater. The on-site staff modified the proposed amendments to make the flow limit less restrictive, allowing up to a four-bedroom home or other structure with an equivalent flow. It was staff's opinion that the trench depth should not be greater than the proposed 42 inches.

5. The proposed amendment to the Permanent Groundwater Table definition (OAR 340-71-105(55)) elicited comment from 2 persons, 1 in support and 1 opposed. Staff analyzed the comments and reexamined the existing definitions of "Temporary Groundwater Table" (OAR 340-71-105(89)) and "Permanent Groundwater Table" (OAR 340-71-105(55)). The intent of the proposed amendment was to eliminate an inconsistency between the two definitions. Staff determined it would be better to resolve the inconsistency by modifying the definition of "Temporary Groundwater Table".

6. The remaining proposed rule amendments received either no comment or not more than one comment. The on-site staff discussed each comment offered in testimony and modified some of the proposed amendments. Several people suggested changes to rules that were not in the proposed rule amendment package taken to hearing. Staff will analyze these comments further and determine if they should be considered in a future rule amendment package.

SOO:l
XL2510

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. P, May 20, 1983, EQC Meeting

Informational Report - DEQ Activities for Meeting Federal Requirements to Protect Visibility in Class I Areas

Background

The Clean Air Act Amendments of 1977 set forth as a national goal, "the prevention of any future and the remedying of any existing visibility impairment in mandatory Class I Federal areas" if the impairment is caused by human-made air pollutants. The Amendments instructed the Environmental Protection Agency (EPA) to promulgate rules which would assure reasonable further progress towards attaining the national visibility goal.

On December 2, 1980, the EPA promulgated a rule (40 CFR 51 Parts 301-307) requiring the States to incorporate visibility protection into their State Implementation Plans (SIPs) by September 2, 1981. The regulation affects 11 wildernesses and one national park in Oregon designated as Class I areas by the Clean Air Act Amendments.

In accordance with EPA's rules, the Department developed a draft visibility protection plan for these 12 Class I areas in cooperation with the Oregon Department of Forestry, the National Park Service, the U. S. Forest Service, and the Bureau of Land Management. The plan was drafted between February and August of 1981 and was then sent out for informal review by industrial and environmental groups.

During the informal comment period, two events occurred which caused the Department to consider delaying the adoption of the visibility protection plan. First, EPA released a draft Federal Register in which they agreed to consider industrial petitions to change the visibility regulation. Secondly, the Clean Air Act came before the U. S. Congress for re-authorization and significant changes to the visibility provisions were being considered.

In light of the above two occurences, the Commission, at its April 16, 1982 meeting, concurred with the Department's recommendation that some effort

should be directed toward protecting and enhancing visibility in Class I areas, that the monitoring portion of the visibility program should begin in the summer of 1982, and that no action should be taken on the SIP at that time. Instead, the Commission asked that the matter be brought before them by June 1, 1983 so that they could review progress on the EPA regulation and the Clean Air Act and set a course for future action.

Problem Statement

A plan for addressing future Department activities with respect to the Federal visibility rules needs to be developed.

EVALUATION - RECENT ACTIVITIES

Not much has occurred at the national level during the last year to resolve whether the EPA visibility regulation will be changed. EPA has just released a draft of their proposed changes to the visibility regulation for peer review. Their proposed changes would give the States the option to address integral vistas and prescribed burning and would change some of the review requirements for industrial sources. The Clean Air Act has not been re-authorized as yet. However, in the Congressional debates about the Clean Air Act, no major changes to the visibility protection provisions were supported.

The Environmental Defense Fund is in the process of suing EPA to promulgate visibility SIPs for those States without the required visibility protection plan. No State as yet has an approved visibility SIP.

In the Northwest, Alaska has drafted a plan which is now under EPA review. The State of Washington has just finished public hearings on their visibility protection plan, a plan which puts restrictions on summertime weekend slash burning near Class I areas and sets a goal of 35% reduction in total slash burning in western Washington by 1990. Comments at the hearing on the Washington plan were generally supportive. The Department presented testimony (Attachment 1), which requested similar weekend protection for prominent areas along the Oregon and Washington border, including Mt. Hood Wilderness, Mt. St. Helens National Monument, and the Columbia Gorge.

In Oregon, the Department, in cooperation with the U. S. Forest Service and the National Park Service, began to measure visibility and determine how pollutants and meteorology impact visibility during the summer of 1982. The following four areas were monitored:

Site	Measurement
Mt. Hood Wilderness	Visual Range Pollutant Mass and Chemical Composition Wind Speed and Direction
Mt. Washington Wilderness	Visual Range Pollutant Mass and Chemical Composition Wind Speed and Direction
Crater Lake National Park	Visual Range
Eagle Cap Wilderness	Visual Range

The locations of the monitors are shown in Attachment II. Plans to monitor in the other wildernesses are addressed in a cooperative agreement between the U. S. Forest Service and the Department.

The 1982 summer visibility monitoring season was one of unusually cloudy weather which caused significant natural visibility restrictions, and low pollutant emission resulting from the economic recession. Future monitoring will be needed to characterize visibility during more typical meteorological patterns and normal source activities.

The four photographs shown in Attachment 3 represent a wide range of conditions encountered during the 1982 monitoring season. They include: no visibility impairment, just discernible impairment, impairment by clouds, and major impairment by a pollution plume.

The 1982 summer's monitoring data is summarized in Table 1 below.

Table 1
VISIBILITY MONITORING RESULTS
(Summer 1982)

Site	Median Visual Range (km)	Discernible Impairment (% of Observations)		
		By Low Clouds	By Other Factors (1)	Total
Mt. Hood	68	42	47	89
Mt. Washington	109	26	60	86
Crater Lake	122	21	71	92
Eagle Cap	133	11	72	83

(1) High level clouds, humidity, pollutants.

The 1982 monitoring data indicated the following:

1. Visual range is lowest at Mt. Hood and improves to the east and south, as is shown in column 1 of Table 1.

2. Low level clouds severely limit visibility from 11% to 42% of the times observations were made, depending on location (column 3 of Table 1).

3. Visibility was also reduced by other factors such as high level clouds, humidity, and pollutants. Column 4 of Table 1 shows that the combined effects of these other factors resulted in reduced visibility from 47% to 72% of the times observations were made.

4. The combined affects of low level clouds and all other factors result in visibility being less than optimum more than 83% of the time.

5. There were 35 hours of major pollution plume impacts at Mt. Hood and 40 hours of major pollution plume impacts near Mt. Washington Wilderness during daylight hours (a major impact is defined as twice the average light scattering coefficient as measured by a nephelometer).

6. Based on chemical mass balance modeling, vegetative burning is the main source of the pollutants impacting the particulate monitoring sites, with both slash and field burning identified as causes. The Department is currently working with the Oregon Department of Forestry, the U. S. Forest Service, the DEQ Field Burning Office, the Oregon Seed Council, and the Washington Department of Natural Resources to attempt to identify specific locations of the burning activity that may have caused the impacts.

7. Sources of pollutants that impact the monitoring sites to a lesser degree, as identified by chemical mass balance modeling, are: volcanic emissions, dust, kraft mills, and automotive emissions.

The Environmental Protection Agency (EPA) has agreed to fund the current visibility monitoring program for another year. The monitoring program during the summer of 1983 should correct some of the shortcomings of the 1982 monitoring program. The monitoring started late in 1982 because the high snow pack interfered with the siting of the monitors. Since the same monitoring sites will be used in 1983, the entire June-October season should be monitored.

Some additional data analysis will need to be performed on the 1983 samples. Further work needs to be done to determine whether the transportation impacts are indicative of an urban plume impact or caused by local sources and whether urban impacts are responsible for some of the non-transportation pollutants. Another problem that needs to be resolved is

that there appears to be layering of the pollutants, which makes correlation between visibility and pollutant concentrations difficult. The monitoring will have to be adjusted to better analyze this type of situation. Also, many of the assumptions used for visibility monitoring were developed in the southwestern United States and do not apply to conditions in the Northwest. New relationships need to be developed. Finally, fingerprints for some of the sources used in chemical mass balance need to be improved.

ALTERNATIVES FOR FUTURE ACTION

There are at least four alternatives which could be pursued in 1983.

1. Adopt the draft visibility protection plan that was written in 1982 to address EPA's regulation.

   The draft plan would only do three things immediately: require best available retrofit technology (BART) for certain existing industrial sources if they cause significant visibility impairment, revise the new source review rules to incorporate a visibility impact analysis for major new or modified sources, and establish a monitoring program. No sources needing BART have been identified, EPA is carrying out the new source review for visibility, and the monitoring is already being conducted. Therefore, not much would be gained by adopting the present plan. Also, this alternative could require significant Department and Commission time because industries have indicated that they would oppose a plan which contains some of the elements they have petitioned EPA to reconsider, such as integral vista and prescribed burning.

2. Continue the monitoring program and wait for EPA and Congress to resolve the conflicts over the visibility regulation before developing a visibility SIP.

   Based on the single year of visibility monitoring the Department has conducted, it would be difficult to develop effective and practicable control strategies for inclusion in a visibility SIP. More monitoring could be conducted while waiting for EPA to resolve the petitions for reconsideration and would provide better information on relative impacts of natural vs. human-made impacts.

   On the other hand, no major changes are foreseen in the EPA rules which would result in major changes in direction for an Oregon visibility SIP.

3. Conduct informational hearings on the direction the Department should take with respect to the visibility SIP.

   The Department could allow a period for informational hearings to bring the issue to the attention of the public and allow a chance for all concerned parties to comment on what the content of a visibility SIP should be.

4. Draft a new SIP based on the monitoring conducted during the summer of 1982.

   The Department could use the information generated during the 1982 summer's monitoring program to develop control strategies for inclusion in the visibility SIP. However, the 1982 summer's data is not complete nor typical. Source activities were lower than usual and meteorological impacts were possibly higher than normal. A SIP based on 1982 data would be preliminary in nature and could experience opposition because it would contain some of the elements that EPA has agreed to reconsider.

The most prudent action would appear to be combination of alternatives 2, 3, and 4, which would include monitoring in 1983, informational hearings in the winter of 1983 to formulate the content of the visibility SIP, then preparing a specific plan by the summer of 1984.

DIRECTOR'S RECOMMENDATION

This is an informational report and no formal action by the Commission is necessary. However, the Director recommends that the Commission confirm the Department's proposed course of action with respect to meeting Federal requirements to protect visibility in Class I areas, which is:

1. Continue monitoring during 1983 to better characterize visibility, determine what sources are impacting visibility, and determine if the impacts are significant.

2. Hold informational hearings after the 1983 visibility data is analyzed to acquaint all concerned parties with the results of the monitoring program and solicit input on the contents of an Oregon visibility SIP.

3. Develop a new SIP with a target date of July 1, 1984, taking into consideration the monitoring data and the status of EPA's resolution of the petitions to reconsider their regulation.

Bill

William H. Young

Attachments:

1. DEQ comments on Washington's Visibility SIP
2. DEQ visibility monitoring sites
3. Photographs of visibility conditions during 1982

Ann Batson:ahe
229-5713
April 21, 1983
AZ213

VICTOR ATIYEH
Governor

Department of Environmental Quality

522 S.W. FIFTH AVENUE, BOX 1760, PORTLAND, OREGON 97207 PHONE: (503) 229-5696

April 6, 1983

Washington Department of Ecology
Olympia, WA 98504

Re: Comments on Proposed Visibility Protection
April 12, 1983 Hearing

Gentlemen:

Few states other than Oregon and Washington are blessed with so many scenic wonders that rely heavily on clear visibility for full appreciation of their visual values. Tourism has been the third largest industry in Oregon for some time now and some future projections indicate it may become first in the not to distant future. Clearly, we must give serious consideration to meaningful visibility regulations to protect and enhance this industry. The Oregon Department of Environmental Quality therefore strongly supports the national goal of preventing and remedying of manmade visibility impairment in Class I areas.

We are most interested in what adjacent states may do with respect to visibility regulations since their actions can have a significant impact on Oregon in terms of interstate transport of emissions to our Class I areas and protection of vistas from our State toward adjacent states.

We have reviewed the proposed Washington State visibility protection plan and we commend the Washington Department of Ecology for an excellent job. Clearly, the prescribed burning emission reduction programs and meteorological scheduling programs are key elements in this plan. We do, though, have some specific recommendations regarding these elements.

First, we would recommend that the Mt. Hood Wilderness area, which has been designated a Class I area under Section 162 of the Federal Clean Air Act, be included as a sensitive area under your State's smoke management plan and also subject to the proposed weekend prescribed burning criteria for burning taking place in the State of Washington. The Mt. Hood Wilderness area has one of the highest visitations of any such area in Oregon. It is located just 20 miles from the Washington State border and a similar distance from areas in Washington that may be subject to prescribed burning. Given that prevailing winds during the summertime are generally from the northwest, we feel that a complete visibility protection plan for the Mt. Hood Wilderness must address prescribed burning activities in the State of Washington. We especially believe this to be necessary to insure that your special weekend prescribed burning program to protect Washington Class I areas will not do so at the expense of Oregon Class I area

visibility. Inclusion of Class I Mt. Hood Wilderness as a sensitive area would also seem appropriate under the spirit of Section 126 of the Federal Clean Air Act dealing with Interstate Pollution.

Second, we would request that the Mt. St. Helens National Monument be treated as a Class I sensitive area and that it also be subject to your weekend prescribed burning criteria. Oregon recognizes the scenic value of the Mt. St. Helens National Monument, both from within its boundaries and as viewed as a scenic vista from our Mt. Hood Wilderness area as well as other viewpoints in Oregon and Washington. The tourist value of Mt. St. Helens is becoming highly significant for both Washington and Oregon with estimates of future yearly visitation reaching 3 million. While we are not sure of the merits of officially designating this area Class I, we are sure that most of the benefits of doing so could be derived by treating it as a sensitive area.

Thirdly, we suggest you consider treating the Columbia Gorge as a sensitive area similar to our suggestions for the Mt. St. Helens National Monument. Renewed concern for the protection of the Gorge has been recently expressed by both governors of Washington and Oregon. We do realize that the gorge may receive adequate visibility protection as a benefit of recognizing the Mt. Hood Wilderness area in your plan.

Oregon is slightly behind Washington in its visibility monitoring effort, thus we are slightly behind your activity in developing a Visibility Protection plan. We recognize that Oregon's visibility plan must address potential adverse impacts on the State of Washington and we pledge our commitment to do our best to address this issue at the appropriate time.

We thank the Department of Ecology for allowing us to comment on your Visibility Protection plan. We believe it is a reasonable plan tailored to the problems and needs of the State of Washington and we urge its adoption with our suggested amendments.

Sincerely,

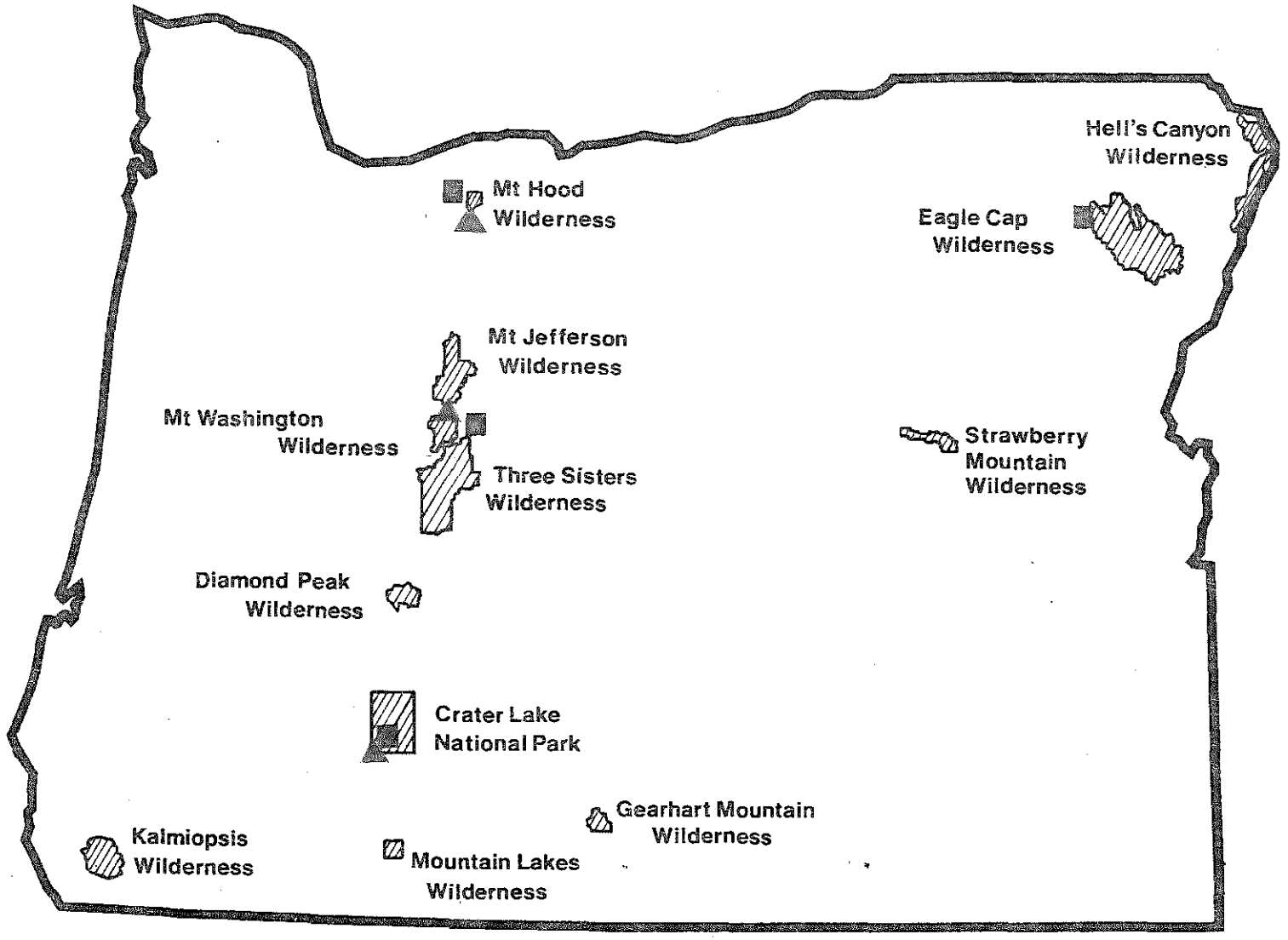
William H. Young

William H. Young
Director

JFK:a
AA3191

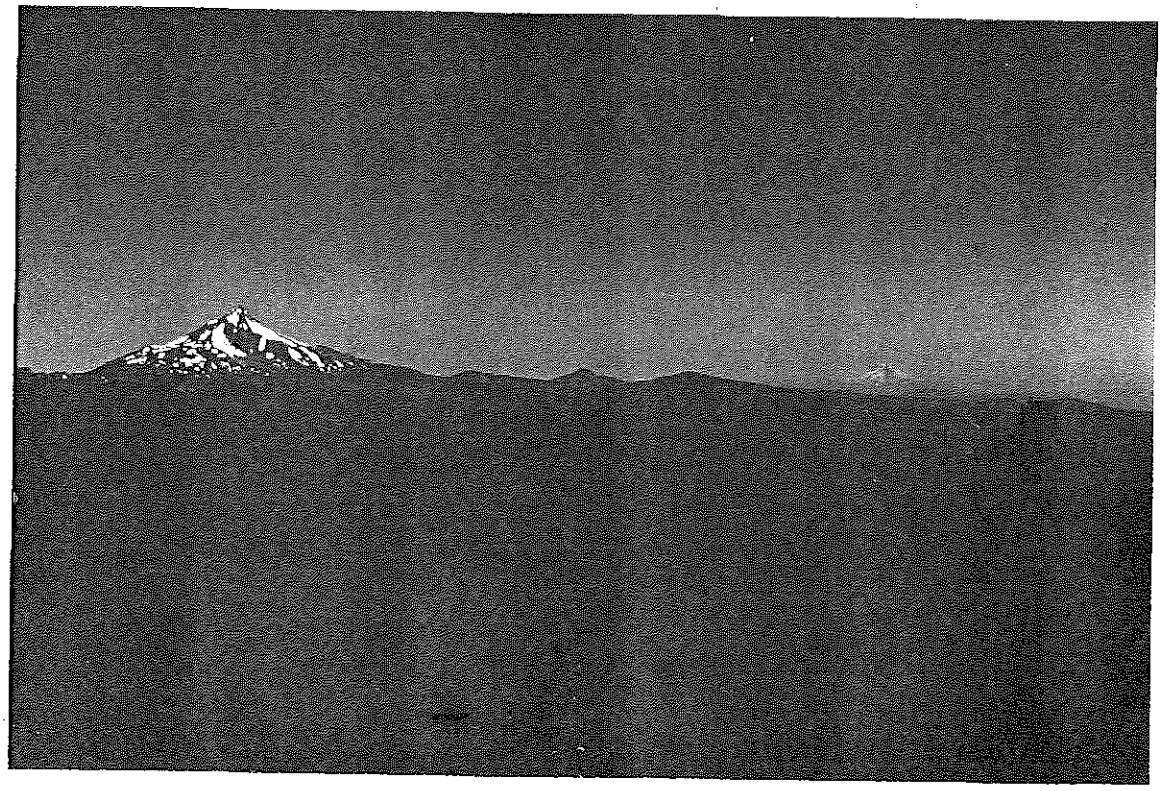
Figure 1

Oregon Visibility Monitoring Network

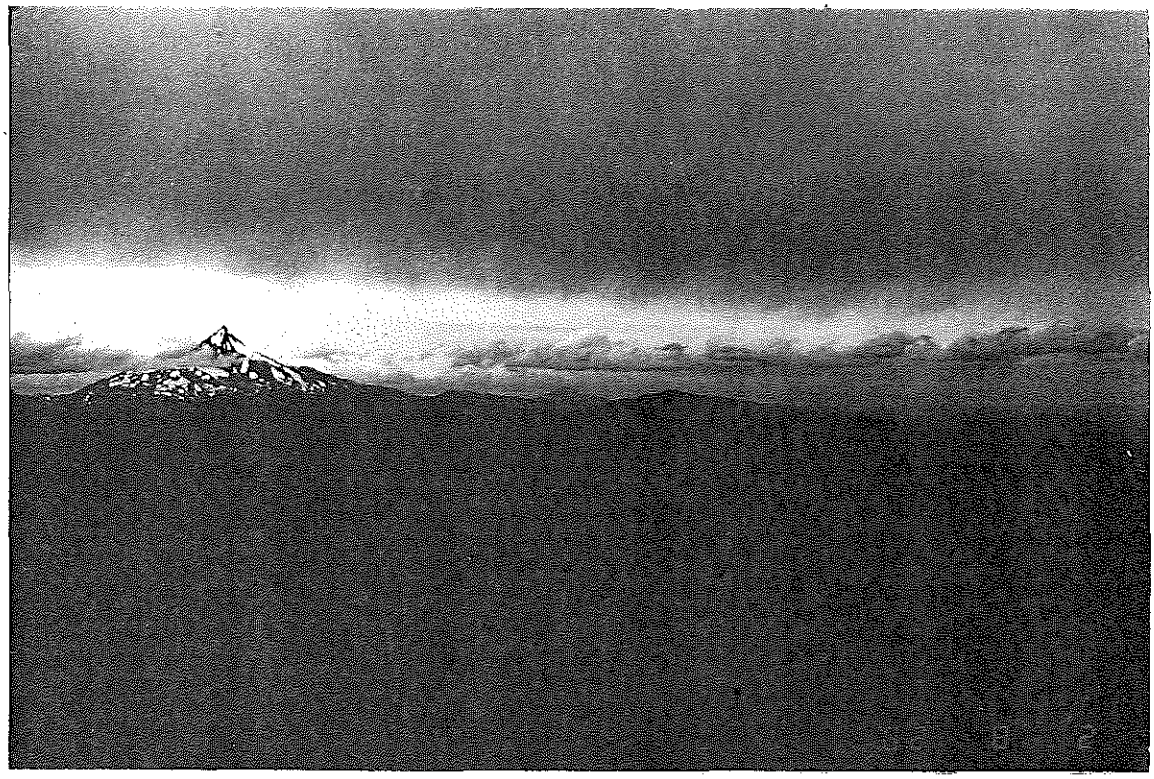


ATTACHMENT 2

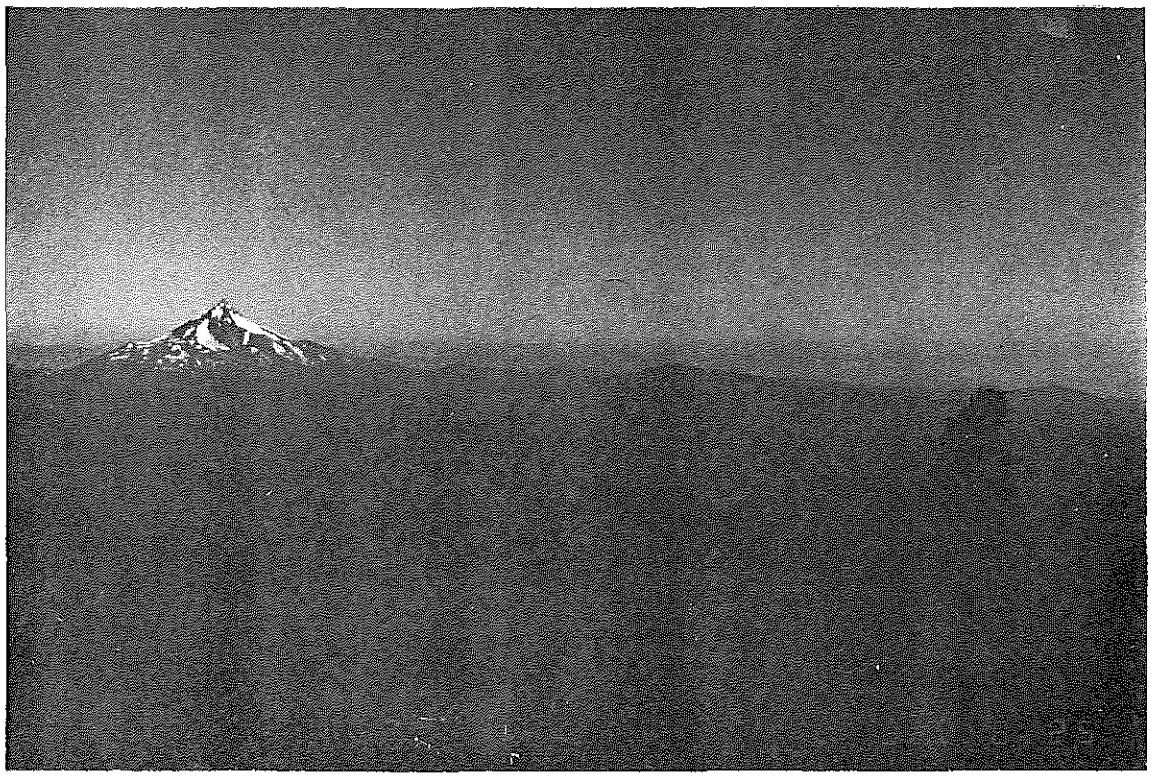
Excellent Visibility
Visual Range = 252 km



Barely Discernible Impairment
Visual Range = 213 km



Impairment by Clouds
Visual Range ≃ 108 km



Impairment by Pollutant Plume
Visual Range = 72 km

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. 9, May, 20, 1983, EQC Meeting

Informational Report - Beryllium Use and Waste Handling Survey Requested by the Commission in Response to Concerns About the Hazardous Air Emission Standards for Beryllium (OAR 340-25-470(2)(b)).

Background

In October, 1982, the Environmental Quality Commission adopted changes to the asbestos and mercury hazardous air emission standards. One piece of testimony dealt not with the proposed changes, but with an existing hazardous air contaminant rule which prohibits the burning of beryllium or beryllium-containing waste except in incinerators where beryllium emission is limited to a 10 grams per day standard.

Dr. Carl H. Lawyer, M.D., had noticed specific approval for beryllium and beryllium-containing waste to be burned in incinerators in OAR 340-25-470(2)(b). In two letters to the Department, he advocated removing this approval and challenged the Department to prove that smoke from burning beryllium is not harmful. Dr. Lawyer's letters are Attachment 1 to this staff report.

Background of Why the Oregon Rule Permits Incinerators to Burn Beryllium

In 1975, the Department adopted "Emission Standards for Hazardous Air Contaminants," OAR 340-25-450 to -480. These rules are equivalent to 40 CFR 61, "National Emission Standards for Hazardous Air Pollutants." The object is for Oregon's DEQ to receive delegation from the Federal Environmental Protection Agency (EPA) to administer these standards in Oregon, which it has. The case in point is that OAR 340-25-470(2)(b) is exactly like 40 CFR 61.32(c) which has been the same since adoption on April 6, 1973 in 38 FR 8826 ten years ago. Both of the rules permit incinerators to burn beryllium or beryllium-containing waste provided that the incinerator emissions do not exceed the amount judged by EPA to be safe for the public from single sources, which is 10 grams of beryllium per day.

This level of 10 grams per day was judged safe by EPA and is the emission standard contained in 340-25-470(2)(a), the Oregon beryllium rule.

Survey of Beryllium Use in Oregon

Because of the toxicity of beryllium, the Commission at the recommendation of the hearings officer requested a survey of Oregon beryllium users and their waste disposal practices.

No raw beryllium or compounds of beryllium were found being used in Oregon.

Likely users of beryllium alloys were contacted and the following reported no use of beryllium or alloys containing beryllium:

1. Macadam Aluminum and Bronze (Multnomah County)
2. ABC Foundry (Multnomah County)
3. Interstate Brass (Multnomah County)
4. Kenton Aluminum and Brass (Multnomah County)
5. Oregon Brass Works (Multnomah County)
6. Proto-Tool which uses chrome-plating to achieve a non-sparking feature which is also achievable by using a bronze alloy containing beryllium. (Clackamas County)
7. Intel (electronics) (Washington County)
8. Hewlett Packard (electronics) (Benton County)
9. Teledyne Wah Chang Albany (Linn County)

Two users of beryllium alloys were found. Tektronix (Washington County)was found to use small amounts of nickel and copper alloys that have between 1.7% and 1.9% beryllium. Access to the beryllium by handlers and workers is not routine. The workers wear face masks when grinding the beryllium-containing alloy. The dust is vented to a baghouse. The waste collected is carefully recycled as a hazardous material to makers of beryllium alloys. Because of its high value as scrap, it would not be handled otherwise.

Reynolds Metals Company (Multnomah County)receives ingots of a 5% beryllium alloy in "waffle" form. Reynolds makes aluminum alloys containing 0.003% to 0.070% beryllium. It produces perhaps less than 1,350 tons per year of these alloys at Troutdale. Source tests have confirmed that the emission rate from the Reynolds Aluminum plant is much less than the 10 grms per day of beryllium allowed by the state and federal rules. The alloys are used to make airplanes and outboard motors, neither of which would likely be incinerated upon being discarded but would be likely recycled to a secondary aluminum foundry or landfilled.

Discussion

Should the permission to burn beryllium and its scrap remain in the Oregon rule?

For beryllium to leave the incinerator it must vaporize, leave as a dust,

or find some other path out. The October 1982 hearing officer report cited the high melting point, 1284° C. (2343° F.), and high vaporization point of 2767° C. (5013° F.). This means that vaporization of beryllium seems impossible and melting unlikely, at least to the extent of becoming a powder or sand capable of transport out of the stack by the flue gas. Incinerator bottom ash routinely goes to a landfill. This means that chunky pieces of beryllium alloy would end up entirely in the bottom ash of incinerators.

At present, a few electronics instruments are not being barred from incinerators because of containing a few miligrams of beryllium in alloy in their parts.

Where beryllium scrap is made at Tektronix it is being recycled because of its extremely high value.

In conclusion, no health threat is seen from the present use of beryllium alloys in Oregon or from the rule prohibiting burning of beryllium. The emission standard of 10 grams of beryllium per day from incinerators will prevent any ambient problem from incineration of wastes containing trace amounts of beryllium. The exception for incinerators in the burning ban rule is provided so that incinerator operators don't have to search for wastes having trace amounts of beryllium containing materials.

Summation

1. Dr. Carl H. Lawyer, M.D., wants the Department's hazardous air contaminants rules changed to forbid incinerators from burning any beryllium or beryllium-containing waste.

2. The Department has delegation from EPA to administer EPA's berylliium rule in Oregon. EPA's rule and the Department's OAR both allow a limit of 10 grams of beryllium per day from incinerators which may burn some beryllium-containing waste. The 10 grams/day has been judged to be a safe level, still protecting the public health.

3. The Commission authorized a survey of beryllium use and waste disposal practices in Oregon in response to Dr. Carl H. Lawyer's concerns. From the survey, it is evident that there is no wide-spread use of beryllium. The two companies found using beryllium alloys do not and would not put their beryllium-containing waste into an incinerator under any conceivable set of circumstances.

   It would seem that only trace amounts of beryllium might be burned in incinerators. One reason for allowing the burning in DEQ rules is so that persons can burn unsorted trash without having to look for minute quantities of beryllium-containing waste. Thus, no rule change to OAR 340-25-470(2)(b) is recommended because the beryllium found in products is locked up in alloys in chunky metal parts which would come through an incinerator intact.

Director's Recommendation

Based on the Summation, it is recommended that the Commission take no further action at this time on regulating beryllium use in Oregon.

Bill

William H. Young

Attachments:

1. Letters from Dr. Carl H. Lawyer, M. D.

PBBosserman:ahe
229-6278
April 25, 1983
AZ219

Attachment 1

THORACIC AND CARDIOVASCULAR SURGERY
RICHARD C. ROGERS, M.D.
JAMES W. ASAPH, M.D.
LEO MARX, M.D.
DIANE S. BIETZ, M.D.
J. HOOPES, ADMINISTRATOR

THE THORACIC CLINIC P.C.
PHYSICIANS AND SURGEONS
507 NORTHEAST 47TH AVENUE
PORTLAND, OREGON 97213
(503) 238-7220

DISEASES OF HEART AND LUNGS
GORDON L. MAURICE, M.D.
RALPH B. REAUME, M.D.
RODNEY L. CRISLIP, M.D.
E. LOUISE KREMKAU, M.D.
JAMES R. PATTERSON, M.D.
CARL H. LAWYER, M.D.
JOHN F. KEPPEL, M.D.
DONAL H. PEDERSEN, M.D.

September 27, 1982

Department of Environmental Quality
Air Quality Division
Box 1760
Portland, Oregon 97207

Dear Sirs:

Regarding the proposed rule changes on DEQ's rules for asbestos and beryllium, I would have the following comments:

Regarding Part D on Page 14, in my opinion the burning of beryllium-containing wastes should be prohibited even in incinerators. This is because beryllium is toxic when exposure occurs by the inhalation route. Disposal of such materials in a landfill would probably be more appropriate. Skin and inhalation exposure are a source of disease, whereas oral exposure is not generally thought to be such, e.g., see page 438 of Casarett and Doull's Toxicology, 2nd Edition, published by McMillan, 1980.

There is concern that sarcoidosis, a common disease of which we see many cases in Oregon, and which is occasionally fatal, may in fact be related to beryllium exposure. For a summary of this, see page 406 of Clinics and Chest Medicine, September 1981, "occupational Lung Disease II,", published by W.B. Saunders. A quote from this last reference is, "Taken together, these immunologic alterations suggest that sarcoidosis and berylliosis may be similar, not only clinically and morphologically, but also pathogenically". Beryllium is not destroyed or altered by exposure to fire, and thus burning in an incinerator is very likely to lead to exposure to people by inhalation and in my opinion it would appear it should not be permitted.

Sincerely,

Carl H. Lawyer, M.D.

CHL/bc

THORACIC AND
CARDIOVASCULAR SURGERY
RICHARD C. ROGERS, M.D.
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LEO MARX, M.D.
DUANE S. BIETZ, M.D.

IN J. HOOPES,
ADMINISTRATOR

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DONAL H. PEDERSEN, M.D.

November 10, 1982

Mr. Young
Dept. of Environmental Quality
Air Quality Division
Box 1760
Portland, OR 97207

Dear Mr. Young:

I believe the enclosed article helps to illustrate the potential extremely serious effects that can be produced by inhaled beryllium.

Thus, my opinion would continue to be that beryllium containing materials should not be disposed of by burning as persons exposed to the smoke might develop berylliosis. If the scientific evidence indicated that exposure to smoke produced by burning beryllium containing wastes did not have adverse effects, then I would change my opinion.

If you have any evidence that exposure to smoke generated by the burning of beryllium containing wastes is not harmful, I would be very interested in such.

Sincerely yours,

Carl H. Lawyer, M.D.

CHL/mbm
enclosure

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
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NOV 2 1982
AIR QUALITY CONTROL

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
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OFFICE OF THE DIRECTOR

THORACIC AND
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November 10, 1982

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Sincerely yours,

Carl H. Lawyer, M.D.

CHL/mbm
enclosure

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
NOV 2 [illegible] 1982
AIR QUALITY CONTROL

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
NOV 16 1982
OFFICE OF THE DIRECTOR

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. Q, May 20, 1983, EQC Meeting

Addendum-Information Report - Beryllium Use and Waste Handling Survey Requested by the Commission in Response to Concerns About the Hazardous Air Emission Standards for Beryllium (OAR 340-25-470(2)(b)).

New Testimony

Two weeks ago the Commission received a full report of the Department's survey of beryllium use in Oregon. The analysis of that use, and of the adequacy of OAR 340-25-470 to regulate emissions of this hazardous air pollutant has led the Department to recommend that the Commission need take no further action.

Upon review of this report, Dr. Carl Lawyer sent the attached letter to the EQC.

Dr. Lawyer still believes that beryllium could escape from an incinerator by volatilization. He suggests that the Department rules might be modified to specify which incinerators are allowed to burn beryllium wastes and what type of beryllium containing wastes could safely be burned in incinerators.

The issue of whether beryllium wastes are vaporized can be debated, but the fact remains that EPA and DEQ rules specify a safe level of beryllium emissions from incinerators. See Rule 340-25-470, Attachment 2.

Rules as suggested by Dr. Lawyer, although theoretically sound, would be impractical to implement and would defeat the intent of not prohibiting trace amounts of beryllium containing wastes like tools, electronic components, etc. from being disposed of in conjunction with municipal wastes. In fact such rules could effectively preclude use of incineration for any refuse unless elaborate and time consuming sorting and inspection of wastes were made. The Department found through its survey that beryllium scrap is being recycled because of its high value. Therefore, the likelihood of any significant amount of beryllium in Oregon being incinerated is very low.

Because of Dr. Lawyer's concerns, and because EPA is currently scheduling a review of their beryllium rule, the Department will forward Dr. Lawyer's letters to EPA

for their consideration. The Department will bring the subject back to the Commission if EPA finds that more stringent regulation of beryllium is needed.

Bill

William H. Young

Attachments: 1) May 11, 1983 letter from Dr. Lawyer with pp. 26-29 of Hamilton and Hardy's Industrial Toxicology

2) Rule 340-25-470

J.Kowalczyk:h
229-6459
May 17, 1983

ATTACHMENT 1

THORACIC AND
CARDIOVASCULAR SURGERY
RICHARD C. ROGERS, M.D.
JAMES W. ASAPH, M.D.
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JOHN F. KEPPEL, M.D.
DONAL H. PEDERSEN, M.D.

May 11, 1983

P.A. 5/16

Peter Bosserman
Environmental Quality Commission
PO Box 1760
Portland, Oregon 97207

Dear Mr. Bosserman:

In response to the memorandum on beryllium use, I enclose a copy of a chapter from the fourth edition of Hamilton and Hardy's Industrial Toxicology regarding beryllium. You will note it specifically states that "heating--can produce fumes or fine dust--must be judged a hazardous job unless enclosure or proper ventilation is used. Note that it quotes a study by Griggs indicating potentially harmful amounts of beryllium are found in the fumes from mantle-type camp lanterns. Here the temperature would seem unlikely to be higher than that attained in an incinerator. Note that there appear to be an increasing number of exposed workers, and as of 1972 some 8,000 work places in the United States used beryllium.

If the rule would be accepted as stated, because of only the small number of users that are listed, then the rule should specifically state that it is limited to those particular users.

If the rule is accepted because the "products are locked up in alloys and chunky metal parts which would come through an incinerator intact," then the rule should specifically state that it is limited to incineration only of chunky metal parts.

Note that metal compounds often have melting points quite different from pure metal.

The assertion that "vaporization of beryllium seems impossible" in incineration would appear unfounded, considering the above. Note that Hunter's Textbook of Diseases of Occupations, sixth edition, 1978, mentions the occurrence of ten cases with at least one death from berylliosis occurring in persons living within 3/4 of a mile of a plant producing beryllium compounds, though these persons had never worked there. Also note that the onset can be as much as six to ten years after exposure to the beryllium ceases, and that, to quote Hunter, "some people are unduly susceptible to the effects of absorption of small amounts of beryllium." Considering Hamilton and Hardy's textbook does indicate the widespread use of beryllium in the United States today, it might seem appropriate to modify the rule to specify the conditions under which burning of beryllium-containing wastes would be acceptable--

in that it would be limited to chunky metal parts--possibly institute permit system such that to avoid company inadvertently incinerating it in some other fashion that may be more likely to lead to problems.

Sincerely,

Carl H. Lawyer, M.D.

CHL:rp

HAMILTON AND HARDY'S

INDUSTRIAL TOXICOLOGY

FOURTH EDITION

Revised by

Asher J. Finkel

John Wright • PSG Inc
Boston Bristol London
1983

5 • *Beryllium*

Industrial Uses

The element beryllium is extracted from beryl ore ($3BeO \cdot Al_2O_3 \cdot 6SiO_2$), which is mined in Brazil, Germany, Russia, India, and in the United States in Utah, South Dakota, and in the past in the New England states. Beryllium is the fourth lightest element, with an atomic weight of 9.02, and has been known to chemists since Vauquelin recognized it as a distinct element early in the 19th century. Great interest in beryllium has developed since the early 1930s when metallurgists promoted for industrial use the marvelous properties of alloys of beryllium in combination with copper, aluminum, nickel, magnesium, silver, and iron. Beryllium alloys are light and remarkably resistant to stress and strain. A wide, recent use for beryllium was as a phosphor in the manufacture of fluorescent lamps and neon signs, a practice discontinued in 1949. Beryllium was, and is, used in atomic energy development and nuclear reactor research since, when bombarded with alpha particles, beryllium releases neutrons. In addition, beryllium and its compounds are used in making radio and electronic tubes, electric heating elements, and x-ray tube windows. Because of its heat resistance, beryllium oxide is used as a refractory in work requiring high temperatures. Beryllium compounds in small amounts have been used in making Welsbach lamp mantles for years, and they have also been used in preparing ceramics and crystals for radio use.

Since the preparation of the second edition of this book in 1949, a number of different uses for beryllium and its compounds have been introduced. As a result, the amount of industrial beryllium in the United States increased from roughly 500 tons in 1950 to 8500 tons in 1969, although worldwide usage fell to 2200 metric tons in 1977–78. Beryllium in various forms is used by the military and for space exploration in the structure of vehicles, guidance systems, radar devices, nose cones, jet plane brakes, and in missiles. In 1972 there were 8000 workplaces in the United States using beryllium (Hasan and Kazemi, 1973), and it has been estimated that 30,000 persons have a potential occupational exposure to dusts or fumes of beryllium in this country (NIOSH, 1972).

Industrial Illness

European physicians incriminated beryllium compounds as the cause of pulmonary disability of occupational origin since the early 1930s. Weber and Engelhardt (1933) in Germany described cases of bronchitis and bronchiolitis in workers extracting beryllium from ore. In 1936, Gelman and his colleagues in Moscow presented a description of "Occupational Poisoning by Oxyfluoride of Beryllium" that consisted of an irritant action on the skin, mucous membranes, and conjunctivae, rarely serious in character, that was followed in some patients by a pulmonary disorder consisting of cough and moist rāles, and an x-ray picture resembling miliary tuberculosis. Subsequently, according to Gelman, bronchoalveolitis appeared. Berkovitz and Izrael (1940) described in detail the x-ray observations and physical findings in 46 patients with what they called fluorine beryllium intoxication. Meyer (1942) presented a series of cases he had observed in Germany of a unique pulmonary disease suffered by men engaged in beryllium extraction and exposed to silicates, hydroxide, sulfate, and chloride of beryllium. Fifty percent of the workers suffered dyspnea on exertion, irritating cough, and chest pain. A few of the workers died after a prodromal period of mild dyspnea and cough lasting two weeks, with x-ray and physical findings indicating severe pulmonary disease. Most of the workers gradually recovered, but a year after the acute illness, hard work produced symptoms of respiratory insufficiency that suggested chronic disease. Wurm and Rüger (1942) described the pathologic lesion in fatal cases as a large-celled carnifying alveolitis. When the lesion became extensive in a given case, Wurm called it chronic large-celled pneumonia. These European reports were summarized in a monograph by Tepper et al. in 1961.

The first report of disease in the beryllium industry in the United States came from the Cleveland Clinic in 1943 when Van Ordstrand et al. presented the case reports of three workers exposed in the manufacture of beryllium oxide from beryl ore. They had a chemical pneumonia with progressive dyspnea and dry cough, followed by x-ray changes that were bilateral and diffuse. Recovery occurred after an average illness of three months' duration. Shilen et al. (1944) concluded that fluorine compounds were responsible for the disability reported from the beryllium industry in Pennsylvania. This conclusion, which stated flatly that beryllium itself was nontoxic, proved to be a serious deterrent to understanding the risks of beryllium exposures.

Kress and Crispell (1944) published reports of four beryllium-exposed workers who suffered from a chemical pneumonitis caused by exposure to beryllium-containing fluorescent powder. Two complained of increasing dyspnea and cough followed after three to four weeks by the development of a chest x-ray picture described as a fine diffuse pulmonary fibrosis. The other two had similar x-ray findings.

In 1945, Van Ordstrand et al. published an extensive account of the acute illness seen in the beryllium industry. Here, the disability was encountered in the course of the processing of beryl ore for the production of beryllium oxide. As in the European reports, high operating temperatures and acid compounds of beryllium such as the sulfate, fluoride, and oxyfluoride were considered of etiologic importance. Thirty-eight cases with five deaths were reported. Symptoms included cough, dyspnea, substernal pain, anorexia, increasing fatigue, and weight loss. Three weeks after an insidious onset a characteristic diffuse bilateral haziness appeared in the chest radiographs. Elevation of body temperature appeared only terminally in the few fatal cases. If the patients were kept in bed, recovery took place in one to four months. Return of the worker to the same beryllium exposure produced a second bout of chemical pneumonitis. The necropsy findings were described as bilateral acute organizing atypical bronchopneumonia. It is certain that a number of cases of acute and subacute beryllium pneumonitis were not identified because of the similarity of the clinical picture to that of viral pneumonia.

Van Ordstrand also described 42 cases of dermatitis and conjunctivitis encountered in the same industry, while 90 patients were depicted as having chemical nasopharyngitis and, or separately, chemical tracheobronchitis. These findings were very much like those of Shilen of Pennsylvania from very similar beryllium operations. Since the number of irritating materials to which these workers could have been exposed is large, it seems not unlikely that there may have been more than one etiologic agent in these reported cases of "beryllium poisoning." Nevertheless, the cases of chemical pneumonitis reported by Van Ordstrand are so very like those described in the 1943 Cleveland Clinic report, the Pennsylvania report of Kress and Crispell (1944), and the European reports that one is forced to accept a common etiologic background involving beryllium in some form.

Hardy and Tabershaw (1946) described the case records of 17 workers in the Massachusetts fluorescent lamp manufacturing industry who suffered from what they termed "delayed chemical pneumonitis." The material involved was a mixture of zinc and manganese beryllium silicates. The clinical picture was characterized by delayed onset in half of the workers six months to three years after they had left the common environment, plus severe dyspnea, great weight loss, and a poor prognosis. These 17 patients shared a unique x-ray picture that involved both lungs and was characterized early by a fine granularity and later by a snowstorm appearance with hilar node enlargement in many cases and varying amounts of emphysema. Total serum proteins were elevated with relative increase in the globulin fraction. Clubbed fingers and marked cyanosis were seen in one third of the patients. Those patients who lived for more than two years with the disease developed right heart enlargement. Skin lesions (nontraumatic) in three cases were biopsied and were thought to be sarcoid or chronic inflammation. One liver biopsy done in the absence of abnormal liver function tests, according to Mallory, showed tubercle-like collections of histiocytes between strands of normal hepatic cells. All studies for tubercle bacilli were negative. These findings

helped to group the cases of delayed chemical pneumonitis together and to separate them from Boeck's sarcoid and miliary tuberculosis. At the time of that report, six of the 17 workers had died and eleven remained disabled with no case of recovery. The pathologic picture in the lungs was described as a granulomatous process replacing normal tissue. Lesions of a similar nature were found in liver, spleen, and hilar nodes.

Jackson (1950) described the illness of workers exposed in the casting shop of a metallurgy plant using alloys of copper that contained beryllium in amounts averaging under 4%. Seven men suffering for periods of from one to three years with dyspnea, cough, and some weight loss were noted to have extensive diffuse haziness on chest x-ray. Five of these men came to autopsy and a pulmonary granulomatous lesion identical with that seen in the Massachusetts cases of delayed chemical pneumonitis was found. That this casting shop first used copper beryllium alloys in 1931 and the first death occurred in 1938 further emphasized the delay in onset of the disease. Machle et al. (1948) reported that workers engaged in the manufacture of fluorescent powders, after one or more episodes of illness clinically similar to acute chemical pneumonitis, developed chronic pulmonary disability with an x-ray picture similar to that seen in the Massachusetts fluorescent lamp workers. Aub and Grier (1949) cared for research workers who were exposed to beryllium oxides and who developed dyspnea, weight loss, and x-ray changes, which cleared when the men ceased all activity. This is the picture of acute and subacute chemical pneumonitis. It is important to remember that this group was exposed to beryllium metal and beryllium oxide rather than silicates and acid compounds, as was the case in earlier reports of illness in the beryllium industry.

Since 1950 the findings of the many reports of the 1940s of illness in the beryllium industry have been confirmed. On the basis of data in the U.S. Beryllium Case Registry begun in 1962, it is known that in the absence of engineering controls, beryllium metal and all of its compounds have caused disease.

Reports of beryllium poisoning correlated with workroom air levels are of importance. A few examples help to illustrate the problem of low beryllium alloy exposures. Chamberlin et al. (1957) studied an operation involving a copper alloy containing 1% beryllium from which the final castings were machined. Drossing and casting gave levels of 3.55 to 21.20 mg/m³ and dry surface grinding produced 87 to 194 μg/m³; the two men on this job developed chronic beryllium disease. Sneddon (1958) reported two cases of chronic poisoning after exposure to 2% beryllium alloy dust.

Gelman's report (1936) of Russian experience with occupational beryllium poisoning gave air levels of 0.05 to 0.72 mg Be/m³. Eisenbud et al. (1948) measured beryllium in air in an extraction plant immediately after an accidental overexposure that led to acute beryllium poisoning. He concluded that an intake of 45 μg of beryllium inhaled in 20 minutes or less can cause acute disease. Griggs (1973) reported finding potentially harmful amounts of beryllium in the fumes from mantle-type camp lanterns. Also, the fact, for example, that clips of many modern pens contain small amounts of beryllium illustrates the need to take a careful work history in considering beryllium poisoning as the diagnosis in a case of sarcoid-like illness.

Not only the fact of beryllium use but the character of the operation needs attention in making a correct diagnosis. Heating, surface grinding, machining, or any work that can produce fumes or finely divided dust must be judged a hazardous job unless enclosure or proper ventilation is used. In foundries, machine shops, and research laboratories where beryllium or its compounds are worked only intermittently, a significant risk may arise because of careless housekeeping allowing beryllium to accumulate in workroom air. There is ignorance of the possible danger in many instances, and there is downgrading of the risk by those fearing litigation or union demands for extra hazard pay for work with beryllium. Present evidence makes it certain that beryllium can be used safely when conventional industrial hygiene controls are in place (Tepper et al., 1961). However, if large quantities of beryllium were to be released in rocket firing, it would be necessary to consider the hazards to the potentially exposed population.

Claims have been made on the basis of experiments with small animals that oxides of beryllium formed at high temperatures are not toxic. There have been no worker groups exposed solely to high fired oxides where this observation could be tested. Furthermore, because beryllium is excreted slowly and has proved to be carcinogenic in animals, risk of exposure to any beryllium compound must be controlled (Gardner and Heslington, 1946; Stokinger, 1966). Wagner et al. (1969) reported malignancies in animals after exposure to certain beryllium ores. There may be small amounts of beryllium compounds known to be toxic occurring with beryl to account for this observation, since workers handling naturally occurring beryl ores have not been ill. Men working with such ores are few and may have been exposed to other minerals and to uncertain silica levels.

Terminology

An array of terms describing the occupational disease associated with harmful beryllium exposure is to be found in the medical literature (Hardy, 1962). The preferred names are *beryllium poisoning, beryllium intoxication,* or *beryllium disease,* to be supplemented, as appropriate, with the adjectives *acute, subacute,* or *chronic,* or with terms such as *pneumonitis* or *hepatitis,* as examples, to indicate the affected organ. The term *berylliosis* was coined by Fabroni in 1935 (Tepper et al., 1961) and has been widely used. This term has unfortunately been defined as a pneumoconiosis. Because harmful beryllium exposures cause systemic damage that may involve a number of organs rather than localized pulmonary effects exclusively, the term beryllium disease is more accurate. Berylliosis has frequently been misspelled as berylosis or beryllosis, terms that suggest a pneumoconiosis due to the inhalation of beryl ore particulates. Such a disease is not known to exist. Earlier designations are of historical interest but have no use today. "Salem sarcoid" and "miliary sarcoid" implied that chronic beryllium disease was sarcoidosis. The term "delayed chemical pneumonitis" neglected the systemic nature of the disease that was demonstrated later, as did Gardner's (1946) term "generalized pulmonary granulomatosis" and the official Saranac Symposium (1947) term "pulmonary granulomatosis of beryllium workers." Granulomatosis is, in addition, a pathologic designation and does not indicate other aspects of the disease that have proved to be of functional importance.

Clinical Syndromes of Beryllium Disease

The physician may be helped by a summarizing discussion of present knowledge of the clinical patterns associated with harmful beryllium exposures. A few European reports dating from 1933–1942 and the United States literature since 1943 support the fact that, depending on duration and level of exposure, the metal and all industrially encountered beryllium compounds except the naturally occurring ore, beryl, cause illness.

Acute beryllium poisoning Acute beryllium poisoning may be defined arbitrarily to include those beryllium-induced disease patterns of less than one year's duration and to exclude those syndromes lasting more than one year. In most series of cases the acute forms of beryllium disease – if not fatal – are of several months' duration, while the chronic disease, with no known exception, has to date never resolved. The diagnosis of acute beryllium poisoning rests on the character of the patient's work history. There are no unique signs and symptoms in cases of beryllium dermatitis, conjunctivitis, bronchitis, or pneumonitis, with the possible exception of the weight loss described by Van Ordstrand et al. (1945). Abnormal chest x-ray findings vary with the severity of the clinical picture. Roentgenologic changes mimic viral pneumonia and, in fatal cases, pulmonary edema of any cause. There are reports that beryllium is present in urine during and after exposure, but the level is poorly correlated with active disease. If beryllium exposure is suspected and is difficult to document in a sick person with clinical evidence that is consistent with acute poisoning, finding beryllium in the urine can establish the diagnosis. Serious drawbacks, however, result from the fact that beryllium is excreted slowly, the assay is technically difficult, and only a few research laboratories are prepared to carry out such a test (Tepper et al., 1961).

In the middle 1940s an important series of mild but definite beryllium pneumonitides was studied and later reported by Aub and Grier (1949). Dyspnea, hacking cough, some weight loss, and mild chest x-ray changes very much like those of viral pneumonia comprised the clinical picture. After exposure to beryllium stopped, an interval of three to 12 months passed before all evidence of the disease disappeared. Of great importance is the fact that 10 of the 27 workers diagnosed as suffering from subacute beryllium poisoning subsequently, after varying periods of time, developed chronic disease without further exposure to beryllium. Experience with cases of acute beryllium poisoning and in taking histories of patients with chronic disease from beryllium exposure make plain the fact that progression from acute to chronic disease, with and without known further beryllium exposure, is a far more

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 alloy 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 from any source exceeding 10 grams of beryllium for any 24 hour period.

(b) 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) 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 maximun 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.

Stat. Auth.: ORS Ch. 468
Hist: DEQ 96, f. 9-2-75, ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82

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. R, May 20, 1983, EQC Meeting

Informational Report: Review of FY 84 State/EPA Agreement and Opportunity for Public Comment

Background

Each year the Department and the Environmental Protection Agency (EPA) negotiate an agreement whereby EPA provides basic program grant support to the air, water and solid waste programs in return for commitments from the Department to perform planned work on environmental priorities of the state and federal government.

Commission review of the annual grant application materials is intended to achieve two purposes:

1. Commission comment on the strategic and policy implications of the program descriptions contained in the draft State/EPA Agreement; and,

2. Opportunity for public comment on the draft Agreement.

Further public comment is being provided under federal A-95 clearinghouse procedures and a public notice containing a brief synopsis of the Agreement was mailed to persons who have expressed interest in Department activities.

An Executive Summary of the Agreement is attached to this report. A complete copy of the draft agreement has been forwarded to the Commission under separate cover. It may be reviewed by interested persons at the DEQ headquarters office in Portland, or at the DEQ regional offices.

Director's Recommendations

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.

Bill

William H. Young

Attachments: State/EPA Agreement Executive Summary

MH984
Michael Downs:h
229-6485
April 27, 1983

DRAFT

STATE/EPA AGREEMENT

FISCAL YEAR 1984

JULY 1, 1983 TO JUNE 30, 1984

BETWEEN

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

AND

U.S. ENVIRONMENTAL PROTECTION AGENCY

REGION 10

E X E C U T I V E D O C U M E N T

DRAFT

OREGON STATE/EPA AGREEMENT

FY 1984

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STATE/EPA AGREEMENT

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY

AND

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10

Each year the Department of Environmental Quality (DEQ) and the Environmental Protection Agency (EPA) negotiate an agreement whereby EPA provides basic grant resources in support of program commitments from DEQ to perform planned work on environmental priorities of the State and Federal Government. This document provides the direction to the development of the State/EPA Agreement (SEA) and related program grant workplans for FY 84, and may be revised as a result of public review and staff refinement.

Much of the environmental effort by DEQ is directed to operation of the ongoing programs (e.g. regulation development, permits issuance, monitoring, etc.). These programs are not specifically described in this document, but will be incorporated into the SEA Executive Document and Program Workplans which will be available in draft form for public review and comment in April 1983. As a focus for the ongoing programs, the priorities listed below are agreed to be of special importance during FY 84. These priorities are identified consistent with existing available resources to address them within the ongoing programs. Any significant changes in resources available for FY 84 will require renegotiation of priorities accordingly. DEQ and EPA will work together towards accomplishment of these priorities; they include:

Delegation

A continued program emphasis for FY 84 is that the State should be the primary and delegated authority implementing environmental programs in the State. The role of the Federal Government should be one of assistance, guidance and minimal oversight. DEQ has already assumed responsibility under federal statutes for implementing several major environmental programs. DEQ is working towards assumption of remaining programs delegable to DEQ during FY 84, as follows:

Construction Grants - DEQ has indicated interest in assuming responsibility for administering the sewage treatment construction grants program under Section 205(g) of the Clean Water Act. A budget package was submitted and will be considered by the 1983 Oregon Legislature. It is expected that an initial delegation Agreement for the program can be signed and implemented by September 1983. Once a delegation Agreement is signed, federal funds will be available to Oregon to pay expenses for managing this program. The existing 1975 Memorandum of Agreement will be used as the basis for pursuing both the initial delegation Agreement and subsequent delegations of the program.

RCRA Phase II Authorization and Final Authorization - DEQ continues to make progress toward full delegation of the hazardous waste program. It is expected that the final Phase II application will be submitted in July 1983

with EPA approval in October 1983. A draft of the Final Authorization application is targeted for April 1984, and the final application by the July 26, 1984 statutory date.

Underground Injection Control (UIC) - DEQ accepted an initial UIC grant under the Safe Drinking Water Act during FY 82 to develop an approvable UIC program. Final approval for delegation is targeted for the first quarter of FY 84 (July-September).

NSPS and NESHAPS - As in past years, DEQ will continue to update the State standards to meet any new or changing EPA promulgated standards. These revisions will be done annually in the first quarter.

Dredge and Fill - The Oregon Division of State Lands is making good progress toward assumption of this program by September 1983. Assumption activities will carry over into FY 84 and require support by DEQ. The principal interface is 401 water quality certification.

Medford Air Quality

Although considerable progress has been made, there is a continuing need to develop and implement air management strategies in the Medford-Ashland AQMA. Unfavorable meteorology accentuates the problems due to local emissions making this airshed one of the most difficult areas of the State to manage. Historically, numerous exceedances of the primary standards for carbon monoxide and total suspended particulate (TSP) have been recorded.

Studies indicate that an inspection/maintenance program for motor vehicles in the area is needed to attain ambient air standards for carbon monoxide by the 1987 statutory date. Provisions for the inspection/maintenance program are contained in the State Implementation Plan submittal of October 1982. Assuming that enabling legislation for that program is provided by the State Legislature currently in session, there will be a need for DEQ to insure that the program is carried out. If DEQ is made the lead agency, the Department will be required to implement the program. If local agencies are given the lead, DEQ will have an important support role, which will consist of providing guidance and technical support. In either case, EPA special project grant money will be needed.

Superfund

Two Oregon companies, Teledyne Wah Chang Albany (TWCA) and Gould, Inc. (in Portland) are included on the proposed Superfund National Priorities List. EPA will give high priority in FY 84 to development and implementation of remedial action strategies for these sites.

If the State decides it does not wish to enter into cooperative agreements with EPA for these sites, EPA will be the lead agency but will consult and coordinate with DEQ and other appropriate State agencies.

Since voluntary cleanup by Gould is expected, EPA and the State will monitor the remedial action and evaluate its adequacy upon completion.

For TWCA, a Remedial Action Master Plan will be initiated by EPA in early FY 84. Following feasibility studies, remedial action could be initiated by mid-FY 84.

It is EPA's preference to minimize the expenditure of Superfund monies by negotiating voluntary cleanup by the responsible party.

Implement RCRA

Effective implementation of the RCRA Hazardous Waste Program in Oregon is a high priority for the State and EPA. Since Phase I is delegated, EPA will expect the State to ensure a high level of compliance by generators, transporters and facilities. DEQ will devote approximately 50% of its hazardous waste program resources to inspect and monitor facilities, including manifest reviews and compliance with reporting requirements. The State will give priority to ensuring facility compliance with groundwater monitoring and financial assurance requirements. There also is a need for the State to continue strengthening its compliance tracking and reporting capability, both within the State and between the State and EPA. This must include achieving inspection commitments, timely documentation of inspection findings, documentation of steps taken to achieve timely compliance, and transmittal of such documentation to EPA and submittal of quarterly noncompliance reports within required timeframes.

Until the State is delegated Phase II (targeted for October 1983), DEQ and EPA will issue joint RCRA permits. Permitting in FY 84 will focus on treatment and disposal facilities. Following permit issuance, DEQ will be lead agency in monitoring compliance with permit conditions.

EPA will conduct oversight of delegated RCRA programs through audits of State inspections, report evaluations and permit reviews.

Enforcement

A basic goal of EPA Region 10 and Oregon DEQ is to administer a fair, firm, and even-handed enforcement program consistent with:

- protecting public health and the environment,
- EPA's responsibility to assure a consistently high level of compliance with federal laws and regulations in Region 10,
- mutual EPA/DEQ commitment to an effective State/Federal partnership, including allocation of resources.

EPA recognizes that the State has prime responsibility to assure compliance in federally delegated program areas, and is, therefore, committed to provide technical assistance or back-up enforcement as appropriate. DEQ acknowledges the need for EPA to be kept advised of compliance status within the programs and to be regularly informed by DEQ of State progress to resolve priority violations.

The relative roles and responsibilities of each Agency to support this goal are outlined in program specific Compliance Assurance Agreements which will be reviewed and updated annually. DEQ's role will emphasize compliance determinations by field inspection and review of self-monitoring reports, and resolution of violations through formal/informal negotiations or enforcement action. EPA will orient its oversight role toward the major regulated facilities and cooperatively pursue a selective audit and

exception response program with DEQ. Both agencies are committed toward informal resolution of routine violations provided that such resolution occurs within a limited timeframe, generally less than 60 days; otherwise formal enforcement will be initiated.

Reduce Backlog of Uncontrolled Sites

Over the past several years, EPA and the State have developed an inventory of uncontrolled hazardous waste sites (approximately 159). While many site files have been closed out, investigations for others are delayed, pending data collection/review.

In FY 84, the State will utilize about $103,000 of RCRA Section 3012 funds to work on closeout of uncontrolled sites. Additionally, EPA may utilize contractor assistance to supplement State efforts. Region 10's goal is to reduce the site backlog by 50% in FY 84.

Woodstoves

Woodstove emissions have significant impact on Oregon's air quality. Source apportionment studies have demonstrated that they are major contributors to atmospheric loadings of both TSP and respirable particulate. As such, woodstove emissions are partly responsible for the TSP nonattainment areas in Oregon and will be of concern in the emerging strategies to control fine particulate.

Effective management of air resources will require that current woodstove emissions be reduced and that emissions from new units be minimized. Only in this way can current violations of air standards be cured and growth margins for industrial expansion be provided. DEQ's management approach will consist of four major program elements. First, regarding new stoves, the Department will, if enabling legislation is provided during this Legislative Session, implement a certification process for stoves sold statewide. This will ensure that new stoves have state-of-the-art emission control characteristics. Second, to address existing stoves and with EPA grant assistance, the Department will continue to explore the potential of retrofit procedures and their effectiveness in reducing current emissions. Third, the Department will continue its current program of public education designed to promote voluntary improvements by describing the economic and environmental benefits to be gained. And fourth, DEQ will continue to study woodstove emission impacts to expand the data base for air management decisions.

Shellfish Protection

High bacterial contamination in Tillamook, Coos and Yaquina Bays on the Oregon coast has impaired commercial shellfish operations and prevented development of new shellfish growing areas. During FY 82-83, DEQ completed a cause-effect evaluation at Tillamook Bay and developed a comprehensive, cooperative local control program for municipal and industrial waste discharges, septic tanks, and agricultural runoff. A similar evaluation is underway in Coos Bay. For FY 84, the highest priority needs are to monitor

effectiveness of the Tillamook Bay implementation program and to complete evaluation of Coos Bay and development of a water quality/shellfish protection management plan. Dependent upon available resources, it is also a priority to initiate a similar evaluation and plan at Yaquina Bay.

Water Quality Standards/River Basin Plans - South Umpqua

The Federal Clean Water Act requires that States review and update, as needed, their Water Quality Standards every three years. Oregon's Water Quality Standards were last reviewed and updated in 1979. In FY 84, the DEQ will review Water Quality Standards and update basin plans on a priority basis. Because resources are limited, the highest priority for reviews and updates will be in river basins with deteriorating water quality. The DEQ's FY 82 Status Assessment Report has already identified the South Umpqua River to have serious water quality problems. Depending upon available resources, a water quality monitoring survey will be made in FY 84 in the South Umpqua River to improve the basis for reviewing Water Quality Standards and the basin plan.

Groundwater Protection

Emphasis on protection of groundwater aquifers from contamination by surface activities or underground waste disposal will continue in FY 84. Because of concern statewide, the Oregon Environmental Quality Commission (EQC) adopted a Groundwater Protection Policy in August 1981. Several aquifers in the State -- including areas near Florence, LaPine, Santa Clara/River Road near Eugene, and Clatsop Plains -- have already been adversely impacted by increased density of residential subsurface disposal systems. DEQ is concluding studies of these areas with federal grant assistance and will develop/implement aquifer protection programs in FY 84. Efforts will continue to obtain sewerage collection in east Multnomah County to provide protection of the aquifer for its use as a drinking water source for suburban Portland water districts.

Based upon continued groundwater monitoring, DEQ will also initiate establishing water quality standards for protection of groundwater. Also, the UIC program will be implemented in FY 84.

Toxics Monitoring

It is recognized that there is an important emerging awareness of toxics contamination problems in the environment -- both ambient and source-specific -- for which there is not adequate data base to assure needed cleanup and protection. Improved capability for addressing toxic materials is an acute program need in air, water quality, and hazardous waste. Although the State has implemented the EPA rules governing hazardous air pollutants, there is a need to identify, assess, and possibly control additional airborne toxics. In the area of hazardous waste, additional monitoring capabilities are needed for dealing with abandoned dump sites and spills. Of concern are toxic residues as well as toxics that have leached into surface waters or groundwater or have become suspended in the atmosphere. The need is for a rapid and effective means of identifying toxics problems as a basis for planning and implementing remedies, as well

as to assure compliance with regulations. In the water quality program, the basic need is to improve the data base for toxic materials in both surface water and groundwater. This will improve compliance assurance leading to better drinking water quality protection statewide and will allow development of standards and monitoring designed to preserve and improve ground and surface water quality statewide. DEQ presently has only limited laboratory capability to analyze for toxic contaminants.

To address the problem of toxic materials, the Department will evaluate and implement alternatives to upgrade its monitoring program by acquiring gas chromatography/mass spectrograph (GC/MS) analytical capabilities. Alternatives to be considered include joint-use of available GC/MS capability with other agencies; acquisition of in-house instrumentation; and contract laboratory services. EPA will provide technical assistance in the evaluation and technical and/or grant support toward the best alternative. With increased monitoring information, the Department will implement appropriate development and enforcement of standards for air, water, and hazardous waste.

This Agreement covers the period of time from July 1, 1983 through June 30, 1984. DEQ and EPA agree to cooperatively work towards achieving environmental results for the priorities discussed above.

FOR THE STATE OF OREGON:

William H. Young FEB 17 1983

William H. Young, Director
Department of Environmental Quality

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

John R. Spencer FEB 17 1983

John R. Spencer, Regional Administrator
Environmental Protection Agency, Region 10

FY 1984
OREGON STATE/EPA AGREEMENT

TERMS AND CONDITIONS

State/EPA Coordination

Implementing this Agreement requires extensive coordination between DEQ and EPA. The role of "Agreement Coordinator" has been put into effect. For EPA, the coordinator is the Director, Oregon Operations Office; for DEQ, the coordinator is the Administrator of Management Services. Coordinators have responsibility to plan and schedule agreement preparation and public participation, assure compliance with all grant terms, establish a format and agenda for agreed-to performance reviews, resolve administrative problems, and assure that this Agreement is amended as needed if conditions change.

The Director, Oregon Operations Office, is the primary EPA official in Oregon with the authority to issue, interpret, and coordinate EPA program directives to the DEQ. The Director of the Oregon Operations Office is the EPA official responsible to facilitate continued informal program contact between Federal and State agencies and to resolve problems which may arise in the course of implementing this agreement.

The Parties acknowledge that improved coordination of State programs with each EPA program results in major benefits for both Agencies, and that conflicts or unanticipated requirements may undermine the plans and purposes of this agreement. Program contact between respective Agency staffs will continue on a frequent and voluntary basis. The exchange of operating information among respective program staffs in air, water, noise, and waste management will be encouraged to ensure that problems which might occur can be readily resolved.

Local Government Coordination

DEQ has been assigned a strong leadership role in managing and enhancing Oregon's environment, which EPA recognizes. Both EPA and DEQ further acknowledge that interested and affected local governments play a vital role in planning, decision making, and implementing environmental management programs. For example, the Lane County Air Pollution Authority has the primary role for regulating most air pollution sources in Lane County, consistent with State and Federal regulations.

The policy of DEQ and EPA is to assure maximum effective participation of local governments in operating and implementing local environmental management programs consistent with statewide program goals and objectives. EPA will work to facilitate effective DEQ/local government relations, and to avoid direct EPA/local government decisions which contradict this policy.

Fiscal Reporting

DEQ and EPA agree that budget and fiscal reports for work planned under the provisions of this Agreement shall continue to be by program (air, water, hazardous waste) and by category (personal services, services and supplies, and capital outlays). Resource estimates for program accomplishments have been included in the Program Document to describe priorities and program emphases, to help assure that adequate resources will be available to achieve commitments, and to forecast resource needs in future fiscal years.

State Primacy

It is Federal policy that a state environmental agency should be the primary manager of environmental programs operated within the state. In Oregon, DEQ is primary manager of environmental programs. DEQ emphasizes that it will continue this responsibility to the fullest extent of its resources.

As part of its commitment to implement this Agreement, EPA will endeavor to improve Federal oversight operations to accomplish more effective State program results, improve assistance and advice to DEQ, and reduce paperwork and duplication of efforts between the two agencies. Furthermore, EPA will provide DEQ with advance notice when conducting work with local governments and industry in Oregon, and will coordinate these efforts with DEQ as appropriate.

Performance and Evaluation

Both DEQ and EPA will commit their best efforts to assure that the terms, conditions and provisions contained or incorporated in this Agreement are fully complied with. To the extent that DEQ does not fulfill provisions of this Agreement as related to the award of grants being applied for herein, it is understood that EPA will not be precluded from imposing appropriate sanctions under 40 CFR Part 30, including withholding of funds, and termination or annulment of grants.

The tasks and expected results contained in this Agreement reflect information known and objectives identified at the time of its signing. Both Agencies recognize that events outside the control of the Parties (e.g., changes in authorizing legislation or levels of resources) may affect the ability of either Party to fulfill the terms, or conditions, and provisions of the Agreement. Therefore, both Parties agree that a system for review and negotiated revision of plans is central to the Agreement to assure that priorities, needs and resources provide the basis for both Agencies' operations.

Performance evaluations will be conducted quarterly by DEQ, and will be the means to identify problems and propose revisions. Exceptions in meeting work plans will be reported to EPA. A joint DEQ/EPA evaluation will be conducted semi-annually in the offices of DEQ. The Agreement Coordinators are responsible to schedule this evaluation and prepare the agenda. The Coordinators may, at their discretion, schedule extraordinary general or special topic evaluations when performance issues or changed conditions appear to warrant such an evaluation.

A brief written progress report will be produced following the semi-annual evaluation. This report will emphasize, by exception, the policy and/or performance issues that require executive review and action. Such issues shall be resolved by respective Agency executives.

INTRODUCTION

The Oregon State/EPA Agreement (SEA) describes environmental program commitments, priority problems, and solutions which the State of Oregon (represented by the Department of Environmental Quality) and the U.S. Environmental Protection Agency, Region 10, have agreed to work on during the Fiscal Year 1984 (July 1, 1983 to June 30, 1984). The programs include:

- Air Quality
- Water Quality
- Solid Waste Disposal
- Hazardous Waste Control and Disposal
- Noise Control

The State will operate the programs discussed and EPA will support these commitments with program grants and technical assistance. The two exceptions to this are in the areas of solid waste and noise where the State operates the outlined program without any Federal resources. All program commitments, grants, and assistance are subject to approval of the State Legislature and funding by Congressional appropriations.

Environmental programs are managed through a Federal/State partnership. This Agreement for mutual Federal and State problem solving and assistance is the primary mechanism to coordinate Federal and State programs to achieve a comprehensive approach to managing Oregon's environment. The SEA has been written to accomplish two purposes:

1. Effective and efficient allocation of increasingly limited Federal and State resources.
2. Achievement and maintenance of established environmental standards.

The SEA consists of two documents, which are:

1. An Executive Document -- to provide the public and agency program managers with the formal policy direction, a clear overview of environmental issues, program priorities, major tasks for the fiscal year.
2. A Program Document -- to provide the detailed work plans to be carried out by each program during the fiscal year. This document also contains the FY 84 consolidated grant application.

This Executive Document has been written to facilitate use of the SEA by State and Federal program managers and by the public. Following this introduction, there is a discussion of Oregon's environmental goals and priorities, profiles of existing environmental conditions, and summarization of the FY 84 strategy. After each discussion, a table shows program priorities, specific problems, FY 84 tasks, and expected outcomes.

While Oregon is known for its high quality environment, some environmental problems do exist. The purpose of the environmental goals, profiles, priorities and strategies is to describe the problems which remain to be solved.

AIR

Program Goals:
- Achieve and maintain air quality standards statewide.
- Prevent significant deterioration of air quality where air is now clean.

Profile:
Oregon's air quality is generally very good. There are, however, areas of concern which require priority attention. These are shown in Figure #1.

The Portland, Salem, Eugene/Springfield, and Medford areas have been officially designated as nonattainment areas, since they are not in compliance with specific National Ambient Air Quality Standards:

Portland/Vancouver:	Carbon monoxide, Ozone (primary standards) Total suspended particulates (secondary standard only)
Salem:	Carbon monoxide, Ozone (primary standards)
Eugene/Springfield:	Carbon monoxide (primary standard) Total suspended particulates (secondary standard)
Medford/Ashland:	Carbon monoxide, Ozone (primary standards) Total suspended particulates (primary and secondary standards)

Air quality has shown improvement in certain areas and the State will propose re-designation as follows:

Salem - Carbon monoxide

Medford - Ozone

Although an official designation of nonattainment has not been made, exceedances of the lead standard have been recorded in Portland. By the end of 1983, it is expected that the lead standard will be attained.

Air quality in nonattainment areas has a potentially adverse effect on public health and welfare. Therefore, planning and implementing air quality control strategies are being given top priority in these areas. Significant emission sources are shown in Figure #2.

Recent studies have shown that air pollution caused by industrial sources has been greatly reduced, particularly in Oregon's major urban areas. Oregon industries have invested heavily in pollution control equipment. Industrial sources now contribute relatively minor amounts of air pollutants. However, these benefits could be lost unless (1) new sources are controlled with the best available technology, and (2) monitoring, surveillance, and enforcement activities are maintained at a high level.

Massive conversion to residential wood heating has been identified as one of the "new" important sources of air pollution in Oregon's urban areas. The "cozy atmosphere" of a wood fire on cold winter days is causing many new air quality problems in urban areas. Wood fires are a source of particulates, carbon monoxide, and some toxic organic pollutants. Other areawide sources, such as road dust and vehicular emissions, are also prominent.

New, socially acceptable ways of controlling these sources can be developed through research studies and demonstration projects. The conversion from gas to heavy oils or potentially to coal by industry also demands a greater effort to quantify existing and potential impacts more accurately, and to identify the most cost-effective control measures.

Several years' time is needed for nonattainment areas to meet Federal air quality standards. Managing growth until standards have been met, and after, will require implementation of new, cost-effective management tools such as emission offset and banking programs, parking and circulation plans, and processes for airshed allocation.

Field burning effects in the Eugene/Springfield area are being minimized by implementation of continued improvements to the smoke management plan. Further efforts will be made to improve the field burning smoke management program to control effects on the Lebanon and Sweet Home areas and on less populated and more pristine areas. Slash burning remains a significant source of air pollution in Oregon. Better efforts are needed here to (1) identify actual air quality impact, (2) improve smoke management practices, and (3) develop control techniques such as increased productive use of forest slash in lieu of burning. Field burning and slash burning may contribute to visibility impairment of scenic areas in Oregon but additional information is needed to assess their effects.

Strategy:
During FY 84, DEQ will continue to implement Part D State Implementation Plan (SIP) revisions. The Department will continue to monitor impacts of man's activities on visibility impairment in preparation for developing a long-range Statewide Visibility Control Plan. Monitoring for and assessment of attainment/nonattainment for a new PM_{10} (particulate matter 10 microns or less) standard will proceed.

DEQ will continue to implement its New Source Review Rule, including detailed growth management (offset and banking) provisions. DEQ will also have full responsibility for operating the Prevention of Significant Deterioration (PSD) Major New Source Review Program, and for all NSPS and NESHAPS pertinent to Oregon. The Department plans to develop and implement a formal program for better assessing and controlling toxic and hazardous emissions.

Compliance assurance activities for volatile organics and particulate sources will continue. Air monitoring and quality assurance procedures will fully meet EPA requirements for air monitoring sites. Air source compliance and enforcement activities will be carried out under current rules including the current air contaminant discharge permit fee program. The compliance assurance agreement with EPA will be reviewed and revised as is appropriate.

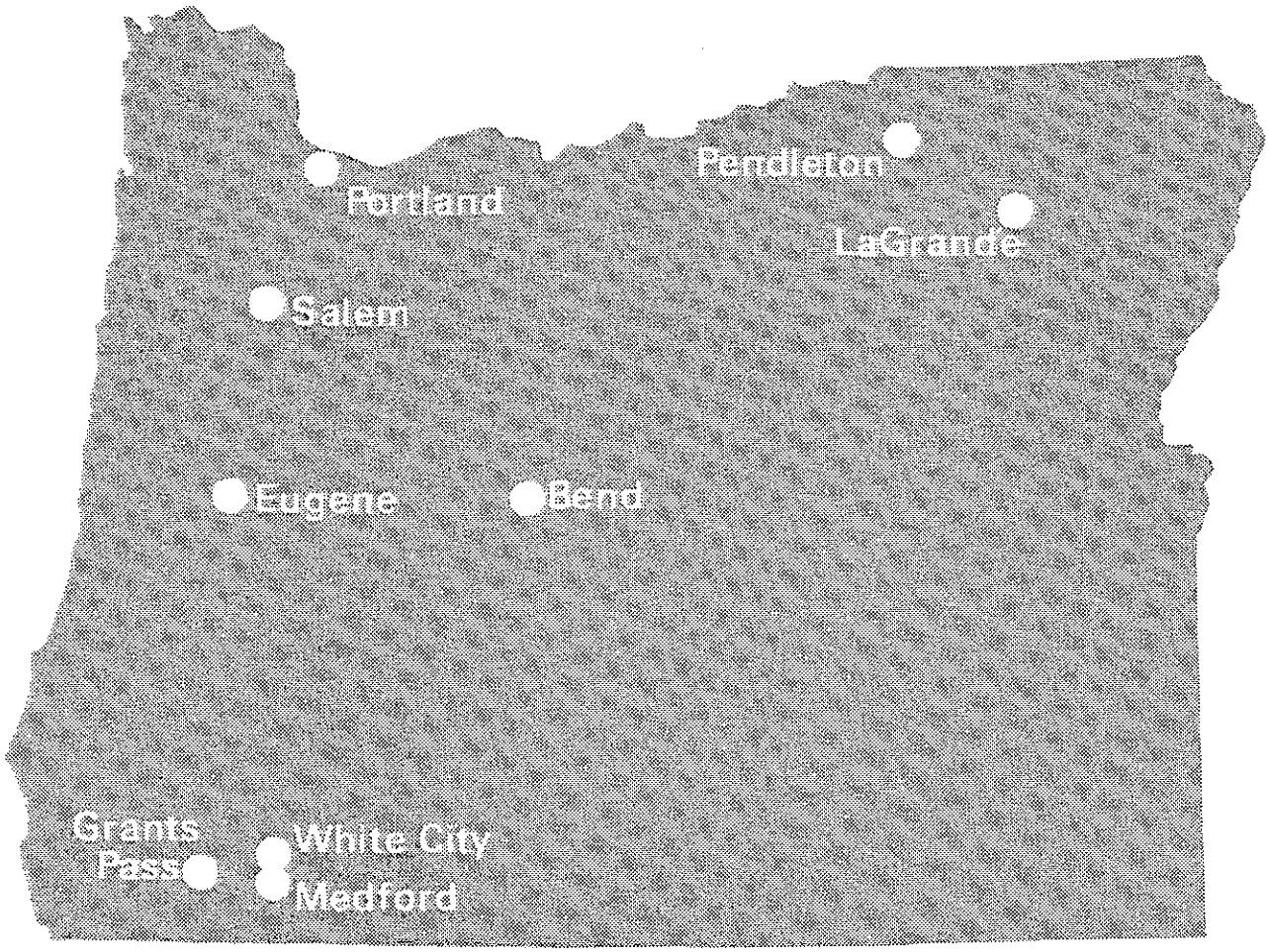
Vehicle Inspection/Maintenance (I/M) including anti-tampering inspections will continue for the Portland Metropolitan Service District area and support and assistance will be given to implementation of a Vehicle I/M program in Jackson County if approved by the Legislature.

DEQ will pursue a woodstove control program as authorized by the 1983 Legislature.

DEQ will continue to gather data on possible visibility impacts in scenic areas due to air pollution, and consider regulations to reduce impairment.

Figure 1

Oregon Cities Exceeding Air Quality Standards In 1982



Number of Days Exceeding Standards For the Pollutant Indicated

City	TSP	CO	O_3
Bend	1	•	•
Eugene	3	1	0
Grants Pass	2	38	•
La Grande	4	•	•
Medford	3	33	0
Pendleton	4	•	•
Portland	2	3	1
Salem	1	0	0
White City	3	•	•

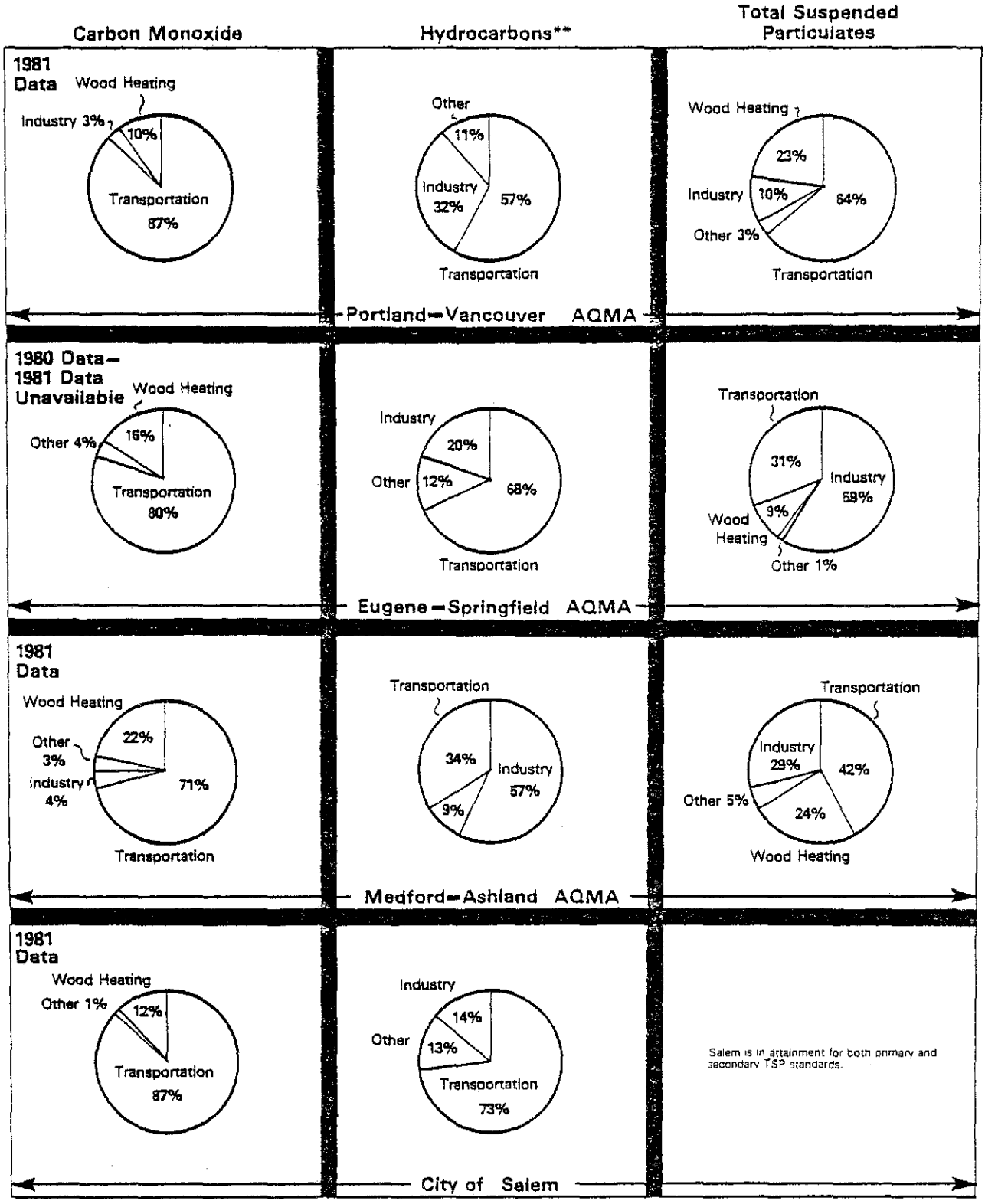
Legend

TSP—Total Suspended Particulates
CO—Carbon Monoxide
O_3—Ozone
Designated non-attainment area for the pollutant noted.

Figure 2

Sources of Emissions in Nonattainment Areas

Annual Average Impacts*



These percentages are based on 1981 emissions inventory data (except Eugene). Actual air quality impacts may be different due to differences in source locations and dispersion patterns.

*Impacts of seasonal activities such as residential wood heating and backyard burning would have higher percentage impacts on a maximum daily basis.

**Hydrocarbons are a factor in Ozone formation.

OREGON FY 84 PRIORITIES

Air Quality Management

Priority	Problem or Purpose	Task	Expected Outcome	Geographic Focus
1	State assumption of Federal program.	Request delegation of new NSPS.	Oregon will request delegation of remaining applicable and appropriate NSPS during first quarter of FY 84 (July - September).	Statewide
1		Request delegation of new NESHAPS for benzene. Accomplish necessary coordination to result in delegation of NESHAPS for airborne radionuclides to Health Division.	EPA expects to publish new NESHAPS for at least benzene and airborne radionuclides. Oregon will request delegation of applicable and appropriate NESHAPS during first quarter of FY 84.	Statewide
1		Implement PSD program.	Sources constructed or modified in attainment areas will not significantly degrade air quality.	Attainment areas
1	Ensure adequate progress toward attainment of NAAQS.	Track Reasonable Further Progress (RFP) and revise control strategies as necessary.	State and local agencies will collect, summarize, and report data (on an annual basis) that documents RPF toward attainment of NAAQS. For stationary sources, data will be in the form of emissions inventory. For mobile sources, progress in implementing TCMs and VMT reductions should be emphasized.	Nonattainment areas
2		Aoopt new VOC controls as needed.	By the end of CY 1983, EPA expects to publish its Group III CTGs. However, rigorous equivalency may not be a requirement. EPA anticipates that Oregon will adopt those VOC controls necessary to demonstrate attainment as well as those the State defines as RACT.	Ozone Nonattainment areas
1	Rapid increases in wood stove emissions are jeopardizing attainment and maintenance of TSP air quality standards in several areas.	Support legislation to require certification of new stoves. Develop and implement control strategies for wood burning stoves as well as continuing public education program.	Assuming that necessary legislation is passed, DEQ will adopt emission standards and a prescribed test method for new wood stoves.	Statewide

OREGON FY 84 PRIORITIES

Air Quality Management - page 2

Priority	Problem or Purpose	Task	Expected Outcome	Geographic Focus
1	Attain National Ambient Air Quality Standards (NAAQS) for carbon monoxide in Medford.	Support legislation proposal by local agencies for a mandatory I/M program in Medford. Assist in its implementation.	The Medford CO attainment SIP shows that I/M is needed to attain NAAQS by 1987. It is hoped that sufficient local interest will be generated to carry an I/M bill during the 1983 Legislative Session since State statutory authority is necessary for SIP approval.	Medford
1	Attain new particulate standard.	Assess existing particulate data, monitoring, and strategies for conformance with new standard and make modifications as necessary.	EPA expects to promulgate a new particulate standard. EPA will provide guidance on monitoring, data assessment, modeling, and strategy development. EPA anticipates that Oregon's data base for the new standard will be adequate and that the State will begin development of revised control strategies for nonattainment areas during FY 84 including such things as preliminary modeling analysis, monitoring network design, development of alternative strategies, develop emission inventory, and determination of needed emission reductions. Completion of SIP revisions would occur in FY 85 or 86.	Fine Particulate Nonattainment areas.
2	Visibility needs to be protected in Class I areas.	Implement a monitoring program in preparation for development of a visibility SIP.	Development of DEQ's visibility SIP is awaiting EPA's reconsideration of its current visibility regulations. Once EPAs revisions are complete, it is anticipated that DEQ will adopt consistent rules.	Class I areas
2	Toxic pollutants need to be controlled.	Develop and implement a formal program for better assessing and controlling toxic and hazardous emissions.	Toxic pollutants not currently regulated by NESHAPS will be better controlled.	Statewide

OREGON FY 84 PRIORITIES

Air Permits/Compliance

Priority	Problem or Purpose	Task	Expected Outcome	Geographic Focus
1	To implement and maintain emission control strategies, it is necessary to continue existing compliance assurance efforts.	States and locals maintain compliance program, including inspection, surveillance, complaint investigations, enforcement actions, and source testing. State and EPA update and implement the compliance assurance agreement.	Maintaining an active field presence helps ensure that sources maintain compliance. For those sources found in violation, EPA must provide assistance to States and locals and take direct action where necessary to ensure compliance.	Statewide

OREGON FY 84 PRIORITIES

Ambient Air Monitoring

Priority	Problem or Purpose	Task	Expected Outcome	Geographic Focus
1	Effective management of an air quality program requires the generation of ambient data of known and appropriate quality and adequate quantity.	Operate and maintain the existing ambient monitoring program in concert with the approved quality assurance plan, performing modifications as appropriate to achieve conformance with applicable new or revised EPA regulations and to respond to new or revised program requirements. Program curtailments resulting from intervening resource constraints will be determined on a priority basis in agreement with EPA.	All NAMS and SLAMS will be operated to produce data of appropriate quality and to meet requirements of 40 CFR 58. Air quality and precision and accuracy data will be submitted to EPA. PSI program will be maintained for Portland. The monitoring program will be revised as needed to meet EPA requirements for lead, fine particulate, etc.	Statewide

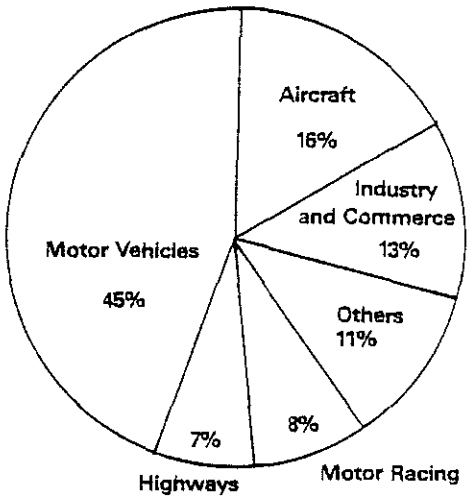
NOISE

Program Goal:
- Implement and maintain a statewide program to reduce excessive noise.
- Assist development of local noise control programs.
- Increase public and government awareness of noise problems and controls.

Profile:
Noise is unwanted, often disturbing sounds. Many noise sources are best controlled by local governments. Examples include noise of barking dogs, loud stereos and home power equipment. DEQ has very limited ability to enforce operational noise standards for motor vehicles. Thus, local police are also best for this task.

A recent survey of community problems in the Portland area showed motor vehicle noise ranked high in relation to other environmental problems. Noise is recognized as a major public problem even though the public does not fully understand the critical health effects of excessive noise. Rather, the public perceives noise as a nuisance or disturbance. Figure #3 shows the major sources of noise in Oregon.

% Contributions of Major Noise Sources in Oregon



- Motor vehicles include cars, trucks, buses, motorcycles and motorboats
- Aircraft includes helicopter, commercial, military and private aircraft
- Highways include new and expanded roads and highways

Figure 3

Statewide control rules have been written for most major noise sources in Oregon. For example, new vehicles sold in Oregon must meet state noise standards. Noise standards for motor vehicle operations have been issued, and enforcement by local governments or police departments is growing. Major stationary noise sources (e.g., industry and commerce) are regulated under the ambient noise standards. There are also specific rules for airport and aircraft noise. Noise control rules for auto racing activities became effective in 1982.

Strategy:

DEQ will continue to implement its rules for new motor vehicles and will assist local enforcement of vehicle operational standards by providing training and equipment loans. The loss of EPA funding will eliminate DEQ assistance to cities and counties developing noise control ordinances.

DEQ will only investigate and seek compliance for the most serious stationary noise sources due to the loss of all field staff and all but two program staff members. Limited implementation of the rules for airports and motor racing will also continue. DEQ efforts to make the public more aware of the noise program and to stimulate better understanding of noise problems will decrease but will be assisted by a statewide advisory committee.

FY 84 PROGRAM PRIORITIES - NOISE

Problem or Purpose	Task	Expected Outcome	Geographic Focus
Complaints of excessive noise	DEQ staff will respond to citizen complaints of excessive noise from regulated sources*	Reduction or elimination of source of excessive noise	Statewide
Lack of consistent statewide noise regulation with no assurance that the worst offenders are corrected first	DEQ will track complaints as a tool to determine major source categories	Establish a data base to develop a control strategy to shift emphasis from complaint response to monitoring all sources in each major category	Statewide
New and modified noise sources are often constructed without noise impact analysis and are subsequently found to exceed standards	Screen sources requiring air, water and solid waste plan reviews for potential noise impacts. Encourage industrial, commercial, and government sources to submit plans for voluntary review*	Reduce excessive noise from new or modified sources	Statewide
Many noise problems are caused by the development of noise sources not compatible with sensitive uses	Review and comment on local comprehensive land use plans for adequacy of noise elements and encourage noise compatible land use planning*	Enhance the opportunity for noise compatible land use planning	Statewide
Several major noise sources remain unregulated (i.e., public roads and heat pumps)	Develop a schedule for rulemaking to control unregulated sources*	Rules and standards to control major unregulated noise sources	Statewide

* This activity will be limited by available resources. Federal Noise Program assistance to states was phased out on 10/1/82. Oregon Noise Program resources were reduced by the 1981 Legislature, and the 1982 Special Session eliminated all but two noise program staff members.

FY 84 PROGRAM PRIORITIES - NOISE

Problem or Purpose	Task	Expected Outcome	Geographic Focus
The public and motor vehicle service industry needs information and assistance to comply with vehicle noise standards	Distribute public information materials to inform and encourage compliance with motor vehicle noise rules and standards Conduct workshops for muffler and other vehicle service people* Develop new procedures in conjunction with the I&M program to improve noise testing*	Motor vehicle noise emissions brought within standards	Portland and Statewide
Little enforcement is being accomplished by local jurisdictions	Continue to hold workshops to teach and encourage police enforcement of motor vehicle standards*	Increase the amount of police enforcement of motor vehicle standards Reduce motor vehicle noise emissions from worst offenders	Statewide
The public needs to be more aware of excessive noise and its health effects	Contact Oregon cities and counties to determine interest in noise control. Provide communities with direct assistance to develop their own noise control programs*	Increased public awareness, understanding and support for the noise program	Statewide

* This activity will be limited by available resources. Federal Noise Program assistance to states was phased out on 10/1/82. Oregon Noise Program resources were reduced by the 1981 Legislature, and the 1982 Special Session eliminated all but two noise program staff members.

WATER QUALITY PROGRAM

Program Goals:

- Attain and maintain water quality standards
- Protect recognized beneficial uses of water
- Develop programs to protect groundwaters
- Reduce bacterial contamination in shellfish producing estuaries

Profile:
Overall, Oregon's water is in quite good condition. Stream quality has improved in the past ten years, though many streams, estuaries and lakes still do not continuously meet water quality standards. The State operates an effective water quality management program based on ambient monitoring, detailed planning and analysis for special problems, and control of all waste sources.

Throughout the 1960's and 1970's Oregon experienced rapid population growth. Although the growth rate has slowed considerably due to the current recession, continued population growth can be expected to the year 2000. Future growth rates may be lower than those experienced during the past two decades. Growth means more waste is being discharged into public waters. Just maintaining current conditions will require a substantial investment by the public and development of innovative waste management and treatment methods.

Groundwater protection is an emerging problem. More must be learned about this problem so that groundwater resources can be managed effectively. The State is working on new and cost-effective ways to protect this resource.

Figure #4 shows the quality of Oregon's major rivers, and the results of the State's efforts to maintain clean water.

Strategy:
In FY 84, DEQ will continue to operate its historic program of preventing the creation of new water quality problems. To accomplish this, DEQ will continue to carefully regulate existing and new sources of waste, and waste generating activities. Tools used to achieve and maintain a high level of compliance will include technical assistance, municipal construction grants, permits, and tax credits.

Water Quality in Oregon's Streams
1980—1982

River Basin	River Miles Assessed	Water Quality Relative To Contact Recreation, Percent Of River Miles				Water Quality Relative To Cold Water Fisheries, Percent Of River Miles				Range of Overall Water Quality Based On Water Quality Index Values	Major Rivers of Particular Concern
		Use Attained	Use Generally Attained	Use Threatened	Use Impaired	Use Attained	Use Generally Attained	Use Threatened	Use Impaired		
N. Coast/L. Columbia	147	72	18	10	•	100	•	•	•	Fair to Excellent	Necanicum
Mid Coast	164	56	32	12	•	73	27	•	•	Very Good to Excellent	
Willamette	622	32	47	21	•	89	6	6	•	Fair to Excellent	Coast Fork and Lower Willamette
Sandy	17	•	100	•	•	100	•	•	•	Excellent	
Umpqua	334	85	•	15	•	85	•	15	•	Good to Excellent	South Umpqua River
Rogue	296	46	39	15	•	78	13	9	•	Fair to Excellent	Bear Creek
South Coast	114	43	57	•	•	68	32	•	•	Fair to Excellent	Coquille River
Hood	14	100	•	•	•	100	•	•	•	Excellent	
Klamath	193	16	48	36	•	48	•	NA*	NA*	Poor to Good	
Deschutes	322	78	•	22	•	78	22	•	•	Fair to Excellent	Crooked River
John Day	284	•	100	•	•	45	•	55	•	Very Good to Excellent	
Umatilla	54	•	100	•	•	100	•	•	•	Good to Excellent	
Walla Walla	None	•	•	•	•	•	•	•	•		
Grande Ronde	213	23	77	•	•	70	30	•	•	Very Good to Excellent	
Powder	111	•	•	100	•	•	62	38	•	Good	Powder River
Malheur	128	•	•	21	79	•	•	25	75**	Fair to Good	
Owyhee	None	•	•	•	•	•	•	•	•		
Malheur Lake	56	100	•	•	•	•	100	•	•	Very Good	
Goose to Summer Lake	None	•	•	•	•	•	•	•	•		
State Total	3059	41	38	18	3	69	13	12	3		

Notes: *Cold water fisheries is not a designated use for 52% of the river miles assessed in the Klamath River Basin.

**Cold water fisheries would not be attainable with improved water quality.

OREGON FY 84 PRIORITIES

Water Quality Management

Priority	Problem or Purpose	Task	Expected Outcome	Geographic Focus
2	Complete projects funded with 208 and Clean Lakes funds.	Complete any remaining tasks on existing 208 and Clean Lakes grants.	208 and Clean Lakes Projects will be implemented resulting in water quality improvement at a level consistent with available funding.	Project Areas
1	Review Water Quality Standards and upgrade where necessary and appropriate.	Conduct triennial review of water quality standards, with focus on water quality-limited segments, including appropriate public involvement. Reviews should satisfy Section 24 requirements regarding construction grants.	Increased effectiveness of water quality standards focused on priority water quality problems.	Statewide
1	Revise planning process to reflect changing conditions and revised regulations.	Update Continuing Planning Process description to reflect changing conditions and regulations.	Needs and activities spelled out in an updated Continuing Planning Process document submitted to EPA.	Statewide
1		Develop and adopt program for appropriate use of funds provided for planning by section 205j of the 1981 Clean Water Act amendments.	Effective use of 205j funds.	Statewide
3		Subject to available resources, evaluate priority water quality limited segments identified in the status assessment process to reassess present water quality management strategies.	Assure cost effective control strategies to achieve acceptable water quality.	Statewide
3		Initiate a cause-effect evaluation and develop a plan to protect shellfish growing areas, dependent upon available resources.	Assure protection of shellfish growing areas	Yaquina Bay

OREGON FY 84 PRIORITIES

Construction Grants

Priority	Problem or Purpose	Task	Expected Outcome	Geographic Focus
1	Achieve appropriate delegation of Construction Grants program to State.	a. Provide positive cooperative program framework to facilitate delegation to State. b. Finalize decision on 205(g) delegation, and develop proposed program and schedule consistent with legislative action during the 1983 session.	Final decision on delegation, schedule for implementation, and cooperative program transfer to State according to schedule.	Statewide
1	Provide effective EPA/State/Corps partnership in management of the Construction Grants program consistent with Federal law and regulations, and National goals.	a. Cooperatively negotiate and implement respective roles in achieving commitments in Office of Water Accountability System.	Efficient program management to achieve expected commitments.	Statewide
		b. Manage projects to meet obligation schedules; outlay projections; provide priority list data for and make use of Grants Information Control System; and manage projects to achieve timely completion, project closeout, and audit.	Specific project completion schedules met. Inflationary impacts of project delays is minimized, therefore more waste treatment and water quality improvement for the money.	Statewide
1	Assure that grant funds are allocated to projects that provide significant water quality or public health benefits pursuant to applicable laws and appropriate regulations.	a. Continue to fund projects which provide significant benefit to water quality and public health.	Most significant water quality and public health problems taken care of first.	Statewide
1		b. Manage priority list to fund highest ranked projects and assure timely use of all funds.	Efficient use of funds. Maximize waste treatment and water quality improvement with available funds.	Statewide
2		c. EPA, with input from DEQ, will identify potential EIS candidate projects and initiate appropriate actions to assure that NEPA processes (FNSI's and EIS's) are completed in a timely way so as not to delay projects.	Projects will be environmentally sound and not delayed.	Statewide

OREGON FY 84 PRIORITIES

Construction Grants - page 2

Priority	Problem or Purpose	Task	Expected Outcome	Geographic Focus
1	Assure that facility plans are completed in a timely way, and address requirements necessary to qualify for step 3 (construction) funding.	a. Assure that facility plans for projects which are scheduled for funding in the next 3 years are appropriately completed and meet applicable requirements for design and/or construction funding.	Selected alternative is fundable and implementable.	Statewide
2		b. Establish new procedures for assuring that new facility plans which are developed without Step 1/2 funding (planning/design) will evaluate appropriate options including innovative and alternative technologies and will meet all requirements for Step 3 funding.	Projects are not denied at step 3 level for reason of failure to plan or design properly.	Statewide

OREGON FY 84 PRIORITIES

Water Monitoring/Quality Assurance

Priority	Problem or Purpose	Task	Expected Outcome	Geographic Focus
1	Gather ambient water quality data to identify quality of Oregon's public waters; assure that data is of known and appropriate quality.	Maintain minimal ambient monitoring network to provide accurate, representative data on the most significant streams (including 13 BWMP stations), estuaries, lakes, and groundwater.	Data to track basic quality and trends on significant water bodies; support planning decisions.	Statewide
2		Ensure quality of data by implementing quality assurance program.	Data of known and appropriate quality for use by users.	Statewide
2	Assess potential toxics problems.	Expand baseline information by collecting samples for metals and organics at several key locations.	Identification of toxic problem areas if any. Provide basis for saying toxic pollutants are or are not a problem in Oregon waters.	Statewide
1	Assess water quality status and identify current water quality needs by analyzing, interpreting, displaying and reporting data gathered from the monitoring network.	Develop, operate and maintain a user oriented ADP based data system.	More effective use of data with less manpower required.	Statewide
1		Prepare Biennial Status Report under 305(b) by April 1, 1984. Draft to be submitted by February 1, 1984.	A report which defines water quality status, problem areas, and needs.	Statewide
2	Determine effectiveness of BMP implemented for Tillamook Bay.	Undertake a follow-up survey and develop a sampling program.	Assure that plan implemented is protecting shellfish areas.	Tillamook Bay
3	As identified in the 1982 305(b) Report, Yaquina and Crooked rivers are deteriorating in quality.	If resources become available, conduct selective intensive water monitoring to help provide basis for evaluating problems and developing protection plans.	Make progress to protect water quality.	Umpqua and Crooked Rivers

OREGON FY 84 PRIORITIES

NPDES Permits/Compliance

Priority	Problem or Purpose	Task	Expected Outcome	Geographic Focus
1	National priority is being placed on improvement of compliance levels for POTWs that have been constructed using federal grant funds provided under PL 92-500.	Continue existing state inspection and compliance assurance program for POTWs, including: a. provide technical assistance including site visits to identify and correct problems. b. O&M inspection of at least 1/3 of all POTWs (triennial coverage). c. take appropriate enforcement action to resolve cases of sustained non-compliance.	Reduce effluent violations by identifying and resolving O&M problems before they result in effluent violations.	Statewide
		Complete development of and implement cooperative compliance data tracking system for all POTWs, which provides routine 92-500 compliance status to replace present manual system.	Capability to determine level of effluent compliance and identify problem POTWs.	Statewide
1	Expiring NPDES permits need to be reissued.	Reissue expiring major permits for secondary industries and for those primary industries where guidelines are available.	All expiring major permits reissued that are possible.	Statewide
1	Maintain permit compliance.	Fully carry out the DEQ/EPA Compliance Assurance Agreement.	Acceptable levels of compliance are maintained.	Statewide
2	Implement program to assure pretreatment of certain industrial discharges to municipal sewerage systems.	DEQ will continue to assist cities to develop and implement pretreatment programs which satisfy state and federal requirements.	Individual city pretreatment programs are developed and implemented as approved by DEQ.	Statewide

OREGON FY 84 PRIORITIES

Underground Injection Control

Priority	Problem or Purpose	Task	Expected Outcome	Geographic Focus
1	Potential contamination of underground sources of drinking water from the injection of fluids through wells.	Submit primacy application on existing State UIC program to EPA during third quarter of FY 83 (April-June).	Primacy granted by first quarter of FY 84 (July-September).	Statewide
1	Implement UIC primacy.	Update inventory and assess impacts of Class V wells and develop appropriate control program.	Groundwater protected from pollution.	Statewide

SOLID WASTE

Program Goal:
- Protect public health by proper and adequate solid waste disposal and resource recovery.

Profile:
Wastes are unavoidably generated by people going about their normal everyday business and by organizations producing materials for consumption. Common examples include production of metals, fertilizers, plastics, paint, and food, and operation of institutions such as schools, hospitals, laboratories, and offices.

Oregon has a well developed solid waste management program, centralized in DEQ by the 1971 Legislature. DEQ has authority for statewide program management and assistance, while local governments throughout Oregon are responsible to implement programs and operate disposal facilities.

The solid waste program follows two principal directions. The first is to close open dumps and bring all disposal sites up to State standards. The second is to separate and recycle usable resource materials and energy in the waste stream. Both aspects of the program are being "woven" into local Solid Waste Management Plans now completed for most urban areas.

Strategy:
In FY 84, DEQ's solid waste management effort will be working on the following specific problems:

1. Improve waste disposal site operation where open dump and open burning practices continue, or where landfill and disposal sites are inadequate.

2. Locate satisfactory landfill sites for the Portland metropolitan area, coastal counties and Marion County.

3. Assist planning, development, and operation of resource recovery plants to serve Portland and Marion County.

4. Development of Waste Reduction Programs in state designated planning and implementing areas.

HAZARDOUS WASTE

Program Goal:
-Protect public health and air, water, and land from contamination by improper storage, transportation, recovery and ultimate disposal of hazardous wastes.

Profile:
The "hazardous" part of the total waste stream is a threat to public health and safety and to the environment unless adequate safeguards are part of transport, disposal, treatment, storage, and recycling practices. Figure #5 shows the sources of hazardous waste in Oregon, and the methods of disposal.

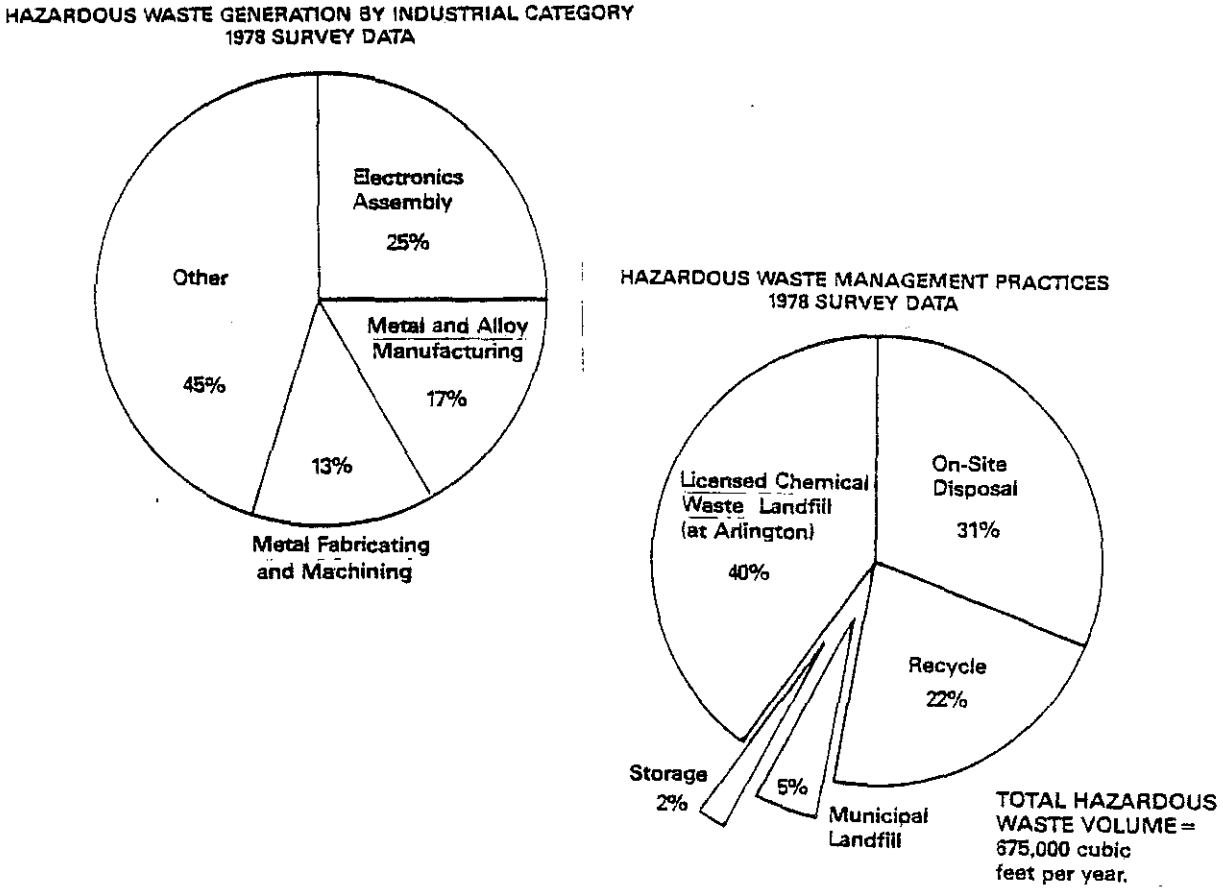


Figure 5

Oregon was among the first states (in 1971) to pay attention to the hazardous waste problem. An inventory and evaluation of hazardous waste handling and management in Oregon was completed in 1973, and updated and expanded in 1980.

Since 1971, each Legislature has reviewed and improved statutes governing hazardous waste management. Both the Environmental Quality and Public Utility Commissions have adopted regulations to control the generation, storage, transport, and ultimate disposal of hazardous wastes. The Arlington Pollution Control Center, owned by the State and operated by a private licensee, has provided the State with a basic tool - a controlled disposal site - to implement its comprehensive hazardous waste regulatory program.

The Resource Conservation and Recovery Act of 1976 (RCRA) gave the Federal Government authority to regulate management of hazardous wastes. RCRA allows "equivalent and consistent" state programs to operate in lieu of the Federal program. DEQ has been granted Interim Authorization to manage a state hazardous waste program covering generation, transport, storage, treatment, and disposal activities. Until Phase II is granted, DEQ will operate under a formal Cooperative Arrangement (i.e., a contract) and Federal/State permits will be issued to storage, treatment, and disposal facilities.

Strategy:
Early in FY 84, DEQ expects to receive Phase II Interim Authorization for permitting storage, treatment and disposal facilities. Continuing in FY 84, DEQ will carry out an extensive compliance inspection, monitoring and enforcement program; and continue to upgrade its current rules so an application for final authorization can be submitted in FY 84.

OREGON FY 84 PRIORITIES

Hazardous Waste (RCRA Subtitle C)

Priority	Problem or Purpose	Task	Expected Outcome	Geographic Focus
1	Permits incorporating minimum standards will be issued to hazardous waste management facilities.	DEQ will issue permits under authorized program (anticipate authorization early FY 84).	Facilities will be given specific standards with which to ensure environmentally safe operation.	Statewide
1	Assurance of proper hazardous waste management practices.	a. Compliance inspections of and enforcement actions at HW generators, transporters and TSD facilites will be be carried out under authorized State programs. b. Assure compliance with manifest requirements by all inspected facilities. c. State will identify "non-notifiers" and assure such facilities are managed under State HW program.	Compliance with standards will be carried out and assure that facilities out of compliance will be brought into compliance.	Statewide
1	Having developed a "substantially equivalent" program, for interim authority, the State needs to develop an equivalent program for final authorization.	Steps must be taken to ensure that necessary statutory and regulatory changes are completed in time to apply for final authorization by July 1984.	State will be qualified for final authorization.	Statewide
		DEQ will provide reports and information necessary for EPA to fulfill its oversight responsibilities.	EPA will be assured State program meets minimum objectives.	Statewide
2	Public must be aware and supportive of State hazardous waste management activities.	DEQ will ensure that public participation in program is carried out.	Public understanding and support, leading to State program which receives final authorization, will be ensured.	Statewide
2	Ensure that all State monitoring and measurement activities meet Region 10 Quality Assurance Plan requirements.	Develop and secure laboratory capability including quality assurance to implement RCRA.	Monitoring and measurement activities that satisfy Region 10 quality assurance requirements.	Statewide

OREGON FY 84 PRIORITIES

Superfund*

Priority	Problem or Purpose	Task	Expected Outcome	Geographic Focus
1	The Superfund statute requires the State to submit their high priority hazardous waste sites for remedial action on an annual basis to EPA. Based on submissions by the State, EPA will assemble a national list of at least 400 high priority sites for action under Superfund. This list will be updated periodically.	State and EPA will jointly prioritize potential Superfund sites on an annual basis or more frequently pursuant to National policy.	State will meet statutory requirement to submit potential Superfund sites to EPA.	Statewide
1	EPA enforcement procedures seek to secure Superfund site clean-up responsible parties --in lieu of fund use--whenever appropriate privately financed clean-up can be undertaken in a timely fashion.	a. State and EPA will work closely together to develop and implement site specific strategies to secure private and voluntary clean-up.	Successful site-specific strategies to generate clean-up by responsible parties will serve to conserve the Fund. When appropriate, site clean-up actions will be secured via State and/or EPA order.	Statewide
		b. EPA will assist the State to monitor responsible and third party clean up of hazardous waste sites.	State and EPA are assured that the threat to the environment, public health and/or welfare at hazardous waste sites is removed.	Statewide
1	Resolve backlog of hazardous waste sites.	EPA will provide DEQ with RCRA 3012 grant funds to assess a selected number of sites. EPA will provide field investigation support at a specific number of sites requiring more extensive field data.	Resolution of all listed waste sites by the end of FY 84.	Statewide

Priority	Problem or Purpose	Task	Expected Outcome	Geographic Focus
For sites on the National Priority List where Superfund dollars will be used:				
1	Superfund statute requires the State to share the costs of remedial response at Superfund sites--10% of the remedial response costs for privately-owned sites and 50% for publicly-owned sites.	EPA will assist the State to identify and secure resources for the State's cost-share requirements.	State will meet statutory requirement to share remedial response costs at Superfund sites.	Statewide
1	Assurance of coordination between the State and EPA in the area of enforcement including determinations of responsible parties and cost recovery actions.	EPA will keep the State informed of progress and provide opportunity for State input to case/project development. The State will assist EPA:		
		a. in identifying responsible parties and determining enforcement potential at Superfund sites.	Timely determination of responsible parties and appropriate funding procedures.	Statewide
		b. in determining an enforcement strategy for each Superfund site identified.	An effective enforcement strategy which occurs timely and cost effective clean-up of each Superfund site.	
		c. in compiling a profile of previous enforcement history at each Superfund site.	A through enforcement profile for each Superfund site.	
		d. in notifying responsible parties.	Timely and clear opportunity for responsible party to take action before Superfund dollars are spent.	
		e. where possible, in cost-recovery actions.	Timely and effective cost-recovery actions.	
1	Assurance of funding and coordination in use of Superfund money for remedial actions.	a. EPA will assist State in development of a cooperative agreement. b. Cooperative agreement will detail specific tasks, timetables, dollar amounts and working arrangements between EPA and DEQ.		

*Within the Superfund section "Superfund site" means both sites eligible for Superfund action and uncontrolled sites that may not be eligible.

SUMMARY OF PROGRAM RESOURCES

Final FY 84 federal grant resources are not yet available. Once a budget is adopted and Congress appropriates funds, program commitments may be adjusted to reflect the grant resources made available to the State.

The table below reflects FY 83 (October 1982 to September 1983) program resources. The DEQ has elected to convert to the State fiscal year (July to June) which will occur on July 1, 1983. About one quarter of the federal grant dollars and appropriate state match below will be carried into the new FY 84 State/EPA Agreement.

PROGRAM	RESOURCES			
	Federal	Non-Federal	Total	Staff-Years
Air Quality Program	$1,486,515	$1,666,613	$3,153,128	65.9
Water Quality Program	$ 968,200	$1,052,158	$2,020,358	41.1
Hazardous Waste Program (RCRA)	$ 582,968	$ 194,323	$ 777,291	16.3

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. S, May 20, 1983, EQC Meeting

The Use of Variances

Background

Under the Commission's statutes (ORS Chapter 454, 459, 467, and 468), time extensions and permit condition waivers are allowed. Both the solid waste (ORS 459.225), air quality (ORS 468.345), and noise (ORS 467.060) statutes expressly allow variances and detail under what conditions a variance may be granted. Variances from subsurface sewage rules (ORS 454.657) for individual property owners are allowed and may be appealed to the Commission. No opportunity for variances exists under the water quality or hazardous waste statutes. However, under the hazardous waste law, the Commission does have the power to declassify certain types of wastes from hazardous designation or to exempt certain types of generators. In the water quality program, if compliance cannot be achieved by deadlines set in the federal law, stipulated enforcement orders are used. These stipulated agreements must be approved by the Commission.

Air Quality and Noise

Under ORS 468.345, the Commission may grant air quality variances:

> **468.345 Variances from air contamination rules and standards; delegation to local governments; notices.** (1) The commission may grant specific variances which may be limited in time from the particular requirements of any rule or standard to such specific persons or class of persons or such specific air contamination source, upon such conditions as it may consider necessary to protect the public health and welfare. The commission shall grant such specific variance 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 granted such variance; or

(b) Special circumstances render strict compliance unreasonable, burdensome or impractical due to special physical conditions or cause; or

(c) Strict compliance would result in substantial curtailment or closing down of a business, plant or operation; or

(d) No other alternative facility or method of handling is yet available.

Under ORS 467.060, the Commission may grant noise variances under identical conditions and criteria as for air quality variances. Also under ORS 467.060(2), the Commission may by rule delegate noise variance authority to the Department. The noise rule, OAR 340-35-010, provides for Department-authorized exceptions of limited duration to the noise standards found in the rules. In each section of the noise rules (Industry and Commerce, Motor Sports Vehicles and Facilities, etc.), the Commission has outlined the specific exceptions (variances) which the Department may grant.

Since August of 1979, forty-seven (47) variances have been granted by the Commission. Of these, 29 have expired. Of the 18 remaining variances:

- Three are permanent variances: Weyerhaeuser Sawmill at Bly, Coos County garbage incinerators, and Rancho Rajneesh funeral pyre;

- Ten are in compliance with their variance schedule and making progress to meet all necessary standards: Champion International at both Lebanon and Dee; Van Bean Shell Station in Salem; FMC, Carnation Can, Boeing, and Winter Products in Portland; Diamond International, Bend; Oregon Sun Ranch in Prineville; and Medford Rogue River (noise);

- Three have met the conditions of the variance with the exception of demonstrating compliance: Boise Cascade, White City; Timber Products, North Medford; and Southwest Forest Industries, Grants Pass;

- A additional time extension was granted to Mt. Mazama Plywood Company in Sutherlin after failure to meet the original schedule;

- One is not complying with its variance schedule: Oil-Dri Corporation, a cat litter plant near Christmas Valley. It has received a civil penalty.

Also, seven variances have been granted by the Board of the Lane Regional Air Pollution Authority (LRAPA) since 1979. All LRAPA variances have been complied with.

The Air Quality Division recently reviewed and revised the procedures for evaluating variance requests to ensure that all areas of the state were being treated equitably. LRAPA Director Don Arkell has participated in the review. The revised procedures are attached for the Commission's review.

Table I
AIR AND NOISE

PERMANENT VARIANCES:

Company	Location	Variance Granted	Expires	Variance From
Weyerhaeuser Sawmill	Bly	8/31/79		Particulate (boiler no longer exists)
Coos County garbage incinerators	Beaver Hill	10/9/81		Particulate standard
Rancho Rajneesh funeral pyre	Wasco County	12/3/82		Opacity

VARIANCES IN COMPLIANCE WITH SCHEDULE:

Champion International	Lebanon	4/16/82	7/1/83	Veneer dryer standard
Champion International	Dee	10/15/82	1/1/84	Visible emissions
Van Bean Shell Station	Salem	7/17/81	7/1/85	Volatile organic compound control
FMC	Portland	10/15/82	12/31/86	Volatile organic compound controls
Carnation Can	Portland	10/15/82	12/31/85	Volatile organic compound controls
Diamond International	Bend	12/3/82	6/15/84	Fugitive emissions
Boeing	Portland	1/4/83	1/1/84	Volatile organic compound controls
Winter Products	Portland	1/14/83	1/1/87	Volatile organic compound controls
Oregon Sun Ranch	Prineville	4/8/83	5/20/83	Visible emissions
MedCo	Rogue River	8/27/82	12/31/83	Noise

VARIANCES WHERE CONTROLS HAVE BEEN INSTALLED BUT NEED SOURCE TESTING:

Boise-Cascade	White City [1]	1/18/80	4/1/80	Veneer dryer
Timber Products	White City	12/19/80	6/30/83	Particle dryers
Southwest Forest Industries	Grants Pass	1/30/81	2/15/82	Veneer dryer

ADDITIONAL VARIANCES GRANTED WITHOUT COMPLIANCE:

Mt. Mazama Plywood	Sutherlin	7/17/81 4/16/82 4/3/83	7/10/83	Veneer dryer

VARIANCES NOT COMPLYING WITH CONTROL SCHEDULE:

Oil-Dri	Christmas Valley	12/3/82	4/1/84	Fugitive controls

1) Plant shut down for extended period; source test submitted but not yet reviewed and approved.

Solid Waste

Variances for solid waste disposal facilities are specifically granted under ORS 459.225:

> **459.225 Variances or conditional permits authorized.** (1) If the commission finds that a disposal site cannot meet one or more of the requirements of ORS 459.005 to 459.105 and 459.205 to 459.285 or any rule or regulation adopted pursuant thereto, it may issue a variance from such requirement either for a limited or unlimited time or it may issue a conditional permit containing a schedule of compliance specifying the time or times permitted to bring the disposal site into compliance with such requirements, or it may do both.
>
> (2) In carrying out the provisions of subsection (1) of this section, the commission may grant specific variances from particular requirements or may grant a conditional permit to an applicant or to a class of applicants or to a specific disposal site, and specify conditions it considers necessary to protect the public health.
>
> (3) The commission shall grant a variance or conditional permit only if:
>
> (a) Conditions exist that are beyond the control of the applicant.
>
> (b) Special conditions exist that render strict compliance unreasonable, burdensome or impractical.
>
> (c) Strict compliance would result in substantial curtailment or closing of a disposal site and no alternative facility or alternative method of solid waste management is available.
>
> (4) A variance or conditional permit may be revoked or modified by the commission after a public hearing held upon not less than 10 days' notice. Such notice shall be served upon all persons who the commission knows will be subjected to greater restrictions if such variance or conditional permit is revoked or modified, or who are likely to be affected or who have filed with the commission a written request for such notification.
>
> (5) The establishment, operation, maintenance, expansion, alteration, improvement or other change of a disposal site in accordance with a variance or a conditional permit is not a violation of ORS 459.005 to 459.105 and 459.205 to 459.285 or any rule or regulation adopted pursuant thereto.

Solid waste variances have been used in two circumstances: in small, rural eastern Oregon communities where, under present conditions, phasing out open-burning dumps seems unreasonable; and along the Coast where solid waste planning has been a prolonged process. Twelve variances remain in effect. Along the Coast, two are located in Clatsop County at Cannon Beach and

Seaside, and one in Coos County at Powers. The Clatsop County dumps are expected to be replaced by sanitary landfills or modular incinerators. The future of the Powers site is unclear. The Butte Falls disposal site in Jackson County will also be replaced by a sanitary landfill or transfer station. Eight open-burning dumps are operating in eastern Oregon. Each of these sites serves fewer than 100 families. Because of the remoteness of the regions and lack of suitable alternatives, these eight sites will likely continue to open-burn unless additional environmental problems are identified or until enforcement actions prompted by a citizen's suit under the federal Resource Conservation and Recovery Act (RCRA) are pursued. Under RCRA, all open-burning dumps must be removed from service five years after initial listing. In Oregon, that is May 1986.

Table II

Solid Waste Disposal Variances

Site	County	First Granted	Expiration Date	On Schedule
Cannon Beach	Clatsop	9/26/75	11/1/83	No
Seaside	Clatsop	9/26/75	11/1/83	No
Powers	Coos	1/13/78	6/30/84	No
Butte Falls	Jackson	7/16/82	7/1/85	Yes
Mitchell	Wheeler	4/24/81	7/1/86	Yes
Adel	Lake	9/21/79	7/1/85	Yes
Christmas Valley	Lake	9/21/79	7/1/85	Yes
Fort Rock	Lake	9/21/79	7/1/85	Yes
Paisley	Lake	9/21/79	7/1/85	Yes
Plush	Lake	9/21/79	7/1/85	Yes
Silver Lake	Lake	9/21/79	7/1/85	Yes
Summer Lake	Lake	9/21/79	7/1/85	Yes

Hazardous Waste

Under ORS 459.430(3), the Commission may declassify hazardous wastes from regulation.

> After notice and public hearing pursuant to ORS 183.310 to 183.550, declassify as hazardous wastes those substances described in ORS 459.410(6) which the commission finds, after deliberate consideration, taking into account the public health, welfare or safety or the environment, have been properly created or decontaminated or contain a sufficiently low concentration of hazardous material so that such substances are no longer hazardous.

No hazardous wastes have been declassified to date.

Under ORS 459.440(4) the Commission may exempt certain classes of hazardous waste generators from all or part of the rules.

> Adopt rules and issue orders thereon relating to reporting by generators of hazardous wastes concerning type, amount and disposition of such hazardous waste. Rules may be adopted exempting certain classes of generators from such requirements.

The Commission has exempted small quantities of certain wastes from all hazardous waste rules except that they must be disposed of at a permitted solid waste disposal site. These small quantities include:

(a) 25 lbs. per month of ignitable wastes (OAR 340-63-110(2)).

(b) 200 lbs. per month of corrosive wastes (OAR 340-63-115(2)).

(c) 10 lbs. per month of pesticide or pesticide manufacturing residue (OAR 340-63-125(1)(b)).

(d) 200 lbs. per month of wastes containing halogenated hydrocarbons or phenols (OAR 340-63-125(2)(b).

(e) 10 lbs. per month of wastes containing cyanide, arsenic, cadmium, or mercury (OAR 340-63-125(3)(b)).

(f) 200 lbs. per month of wastes containing lead or hexavalent chromium (OAR 340-63-125(3)(b)).

The Commission had exempted from hazardous waste regulation explosives under local, state, or federal control; and mining wastes.

Under hazardous waste administrative rules, the Department may also grant some waivers. Under OAR 340-63-125(3)(a)(c), the Department may exempt from regulation certain inert materials containing heavy metals. To date, the Department has granted six exemptions:

	Generator	Waste	Date Granted
1.	Clabag Metals, Multnomah County	Solder dross (lead)	12-27-79
2.	Society of Wood Preservers, around state	Arsenic-treated wood (arsenic)	12-9-80
3.	Eastside Plating, Multnomah County	Sludge (chromium)	10-12-81
4.	Tektronix, Washington County	Ceramic sump sludge (lead)	2-25-82
5.	3M Company, Jackson County	Drum-dried coating waste (mercury)	7-2-82
6.	Elkem Metals, Multnomah County	Sludge (arsenic, cadmium, lead)	9-8-82

Also, the Department may authorize disposal of specific hazardous waste at an industrial solid waste disposal site. Four industrial landfills have been authorized to accept hazardous wastes. These include:

1. Georgia Pacific, Toledo (slaker lime rejects)

2. Crown Zellerbach, Wauna (lime dregs)

3. Western Kraft, Albany (lime mud and rejects)

4. International Paper, Gardiner (lime grits)

Water Quality

Since 1977, the Commission has issued 35 stipulated consent enforcement orders to municipalities and industries as time extensions for water pollution control. Thirty-three were to municipalities, and two were to industries. Twenty-six communities and the two industries have installed the necessary controls. Seven stipulated orders are outstanding. Of those, five have recently been extended by the Commission. These include Cottage Grove, Cannon Beach, Coquille, Silverton, and Bear Creek Valley Sanitary Authority. Re-drafting of expired consent orders is continuing with Seaside, Happy Valley, Astoria, and Newport. There is some question regarding the current need for consent orders in Astoria and Newport.

Subsurface Sewage Disposal

ORS 454.657 through 454.662 provides for variances from subsurface sewage disposal rules which can be granted by either the Commission or, in some cases, by variance officers appointed by the Director.

The statute provides for appeals of granted variances and makes no mention of the opportunity for appeal of denial variances. In March of 1978, the Commission decided to allow appeals of variance officer denials.

The authority of the Department's variance officers is limited to granting exceptions to the specific standards outlined in the rules. The Commission's authority to grant variances is broader and encompasses the entire subsurface rule section.

Under OAR 340-71-145(3), to grant a variance the Commission or variance officer must find that:

(a) Strict compliance with the rule or standard is inappropriate for cause; or
(b) Special physical conditions render strict compliance unreasonable, burdensome or impractical.

Since March of 1978, the Commission has granted four variances upon appeal which reversed the variance officer's recommendation. The Commission has upheld the variance officer in eleven situations. The Commission has granted five variances where it has sole jurisdiction. Four hundred and thirty-five variances have been granted by the Department's variance officers, 135 have been denied.

The statutes also provide for a hardship variance (ORS 454.657) for reasons of:

(a) Advanced age or bad health of applicants;
(b) Relative insignificance of the environmental impact of granting a variance; and
(c) The need of applicants to care for aged, incapacitated or disabled relatives.

Since 1978, the Department has granted two hardship variances.

Summation

- Oregon law specifically allows the Commission to grant variances from solid waste, air quality, noise, and subsurface rules.

- Variances are not provided for under the water quality or hazardous waste section.

- Since no variances are allowed under the water quality section, stipulated enforcement orders have been used where time extensions for pollution control were necessary.

- Under the state hazardous waste control laws, some exemptions--not variances--from the rules may be granted by the Commission.

- Under the subsurface statutes, the Commission has elected to hear appeals of variance officers' denials directly.

- Seventeen air quality variances are currently in effect. Of those, one (Oil-Dri) is not complying with the Commission's schedule for installation of the necessary pollution control equipment, and one company (Mt. Mazama Plywood) received an additional time extension without compliance. One noise variance is in effect.

- Twelve Oregon solid waste disposal sites are under a variance. Three sites, on the Oregon Coast, are not meeting their compliance schedules.

- Although no variance procedures exist within the hazardous waste law, the Commission has declassified small quantities of six wastes and has relinquished control of explosives to other jurisdictions. Mining wastes are exempt from hazardous waste regulations.

- Under the hazardous waste rules, the Department has exempted six inert materials from regulation and allowed five permitted industrial landfills to accept specified hazardous wastes.

- Seven municipalities currently have water quality stipulated enforcement orders. Four cities have stipulated orders which are being reviewed by the Department prior to action by the Commission.

- Since March of 1978, the Commission has granted five subsurface sewage disposal variances. Also, the Commission has overturned the variance officer and granted variances in four cases. The Department has issued 435 variances.

Director's Recommendation

The Commission should concur in the revised procedures for processing air quality variances. A clearer direction should be sought from the federal Environmental Protection Agency regarding the section of the Resource Conservation and Recovery Act requiring the closure of open-burning dumps. If the federal law requires that all open-burning dumps be closed in the

future regardless of environmental impact, discussions and additional planning should commence with those eastern Oregon communities which currently rely on open burning dumps for waste disposal.

Due to the Commission's direct action in variance requests, the Commission should receive a variance status report annually. In addition, those variances which do not comply with scheduled deadlines should be highlighted in the Commission's monthly activity reports.

Bill

William H. Young

Attachments: Air Quality Procedures for Variances

FH983
Janet A. Gillaspie:h
229-6271
April 27, 1983

Proposed

Guidance to DEQ and LRAPA Staff Pertaining to Variances and Preparation of Variance Request Staff Reports to the EQC and LRAPA Board

General Philosphy

Ideally, a variance ought to be a mechanism to avoid unreasonable burden of following a specified presecription for complying with a rule. Examples of such prescriptions are time of compliance, control technology, procedures, etc. A variance should not be a means to avoid final compliance and should include enforceable conditions to ensure ultimate compliance.

Assuming that rules are adopted in the public interest and after public hearing:

1. Variance requests should be considered in light of concerns in the following order of priority -

   First, effects of issuing or denying a variance on general public health and welfare (including effects of plant closure);

   Second, effects of issuing or denying a variance on persons or property (including economic disadvantage from competitors in the same market);

   Last, effects of issuing or denying a variance on the applicant.

2. The burden of satisfying the informational requirements established by the variance-granting authority and of making the case in favor of a variance should rest with the applicant.

3. Although a variance proceeding need not be adversarial in nature, there should be sufficient challenge to the application to assure adequate consideration to the first and second concerns above, and to provide a basis for judgment and findings of fact to support the decision of the variance-issuing authority.

4. It is important that the recipient of a variance abide closely with its conditions and restrictions, in return for being granted temporary permission to operate outside a particular rule or standard.

Oregon Revised Statute 468.345 addresses these factors, though it is most explicit in the conditions which apply to an application [468.345(1)] and, to a lesser degree, the conditions which apply to the general public and other persons [468.345(4)]. It requires the permit-issuing authority to consider the equities involved, but does not place a weighted value to either side of the equation, as suggested above.

It is the EQC's or LRAPA Board's task to grant or deny a variance. It is the Staff's function to present the facts which will allow them to make their decision. It is the Director's function to make a recommendation based on facts. It is in most cases the applicant's function to supply those facts about the operation upon which the application is made.

In addition to supplying the EQC or Board with that information, another purpose of the hearing is for public relations; i.e., to keep the public informed of the basis and reasons behind the EQC or Board action. In the case of a variance, the administrative record may be important for appeal purposes, and it is just as important for purposes of avoiding an appeal. If the public is fully aware of the reasons behind issuance of a variance, an appeal of the action is less likely. The most relevant public is likely to be residents adjacent to the place of business of the applicant for a variance, and environmental organizations.

Requirements of Law

In granting a variance, the EQC or LRAPA Board must make certain that one or more of the conditions or findings exist, ORS 468.345(1), and must weight other factors. ORS 468.345(4).

First, the staff report and applicant's presentation should provide all the necessary background facts and factors for the EQC to base a finding upon and to weigh. Nothing should be left to assumption, speculation or surmise. In particular, in preparing a staff report and presentation in each case it should be determined precisely which facts do or do not support one or more of the following ORS 468.345(1) grounds for issuing a variance:

The Commission may grant a variance only if it finds:

(a) Strict compliance is inappropriate because of conditions beyond the control of the person granted the variance; or

(b) Strict compliance is inappropriate because of special circumstances which would render strict compliance unreasonable, burdensome, or impracticable due to special physical conditions or cause; or

(c) Strict compliance is inappropriate because it would result in substantial curtailment or closing down of a business, plant or operation; or

(d) Strict compliance is inappropriate because no alternative facility or method of handling is yet available.

From the staff report and presentation it should be clear which ground or grounds were satisfied by which facts, and in the case of a denial, why each ground was not satisfied.

Second, the staff report should analyze the equities involved and the advantages and disadvantages to residents and to the person conducting the activity for which the variance was sought. [ORS 468.345(4)]

Questions to be Answered Relative to Variances

If at all practicable, the following questions should be considered in

preparing the variance staff report on the application:

1. Does it meet at least one of the conditions of ORS 468.345(1)?

2. What will be the equities, advantages, disadvantages and the environmental/health/welfare/nuisance impacts of granting or denying the variance, ORS 468.345(4)?

3. Did the applicant demonstrate a good-faith effort to comply prior to applying for the variance?

4. Is the situation of the applicant unusual in comparison with similar sources in the same general area?

5. Were alternative or interim measures considered along with the variance?

6. Is the variance properly conditioned to protect air quality to the fullest extent, including requirements for intermediate compliance steps, and submittal of plans, specifications and progress reports?

7. Is the variance period the shortest practicable and will compliance be achieved at the end of it?

Variance Report Format

MEMORANDUM

To: Environmental Quality Commission (or LRAPA Board)

From: Director

Subject: Agend Item __, (Meeting Date), 19__, EQC Meeting

Request for a Variance fro (cite rule) for (cite source)

Background and Problem Statement

/First identify the source to whom the variance compliance would apply; then describe the rule from which the variance is sought./

/Describe the steps which have ben taken toward compliance with the rule. Keep brief, summarize major events only./

/Describe the authority whic forms the legal basis for the Commission to grant a variance./

Alternatives and Evaluation

/Describe the alternatives available to the source and likely consequences of each. Do no assume the variance is the only option./

/The statutes provide for the granting of variances only under certain conditions. Cite those that are met (a summary is attached to this format for reference) and provide adequate factual information to assure the Commission thta the criteria are met. Use data rather than opinion./

/Describe proposed variance conditions and time period. Give adequate justification for the recommendation./

Summation

/You must include required "findings" in the Summation. Also summarize in logical, concise, enumerated paragraphs, the information from the background and evaluation which provide the fact and conclusion as the basis for the Director's Recommendation./

Director's Recommendation

/You must introduce the Recommendation with the following phrase:/

Based upon the findings in the Summation, it is recommended that ....

/The Recommendation should identify the source, rule, conditions, and period of time for the recommended variance.

WILLIAM H. YOUNG

Attachments: - List in order attached

Responsible manager's name: typist initials

Phone number of above

Date actually typed

DEQ Procedure for Handling Variances

1. Variances should be filed in writing to either the appropriate Regional Office or DEQ Headquarters.

2. Information identified in Variance Guidance to Applicants should be supplied and documented in writing by the applicant.

3. Regional staff will draft variance request report and submit to Program Operations Manager for concurrence and final typing.[1)]

4. Region will furnish copy of staff report to the applicant and will attend and arrange for the applicant to attend the EQC meeting to answer any questions posed by the Commission.[1)]

---

1) Program Operations staff may do by special arrangement.

5. Region will notify the applicant of action taken by the EQC and draft modifications to the applicant's permit and arrange for the modified permit to be issued and conditions added to be entered into CDS.[1)]

6. Regions shall track the variance conditions (routinely) and ensure compliance therewith. If it should appear that any condition of a variance will not be met, Regions will notify the Program Operations Manager and appropriate enforcement action will be initiated promptly. (Enforcement or other compliance action will be discretionary if the Regional Manager and the Program Operations Manager agree that compliance deadlines will not be exceeded by more than 45 days).

7. Regions and Program Operations should maintain a summary record of variance actions which will enable and facilitate periodic analysis of agency performance relative to variances.

Special Considerations in Determining Equity, Advantages and Disadvantages

1. Air Pollution Effects on the General Public Health and Welfare

There may be a number of health and welfare impacts caused or perceived by emissions from the source in question. These can generally be reduced to three primary considerations: impact on ambient concentration of criteria air pollutants; impact on concentration of hazardous or toxic air contaminants; nuisance.

---

1) Program Operations staff may do by special arrangement.

In the case of emissions of criteria air pollutants, the federal and state ambient standards are perhaps the best yardstick against which to judge relative health effects. There is strong legal basis in the SIP for protecting air quality. An evaluation should be made whether the source causes or contributes to violations of an ambient standard, Reasonable Further Progress (RFP) towards attainment of standards or a PSD increment.

In the case of hazardous or toxic air contaminants, there may not be an ambient standard. If potential population exposure to toxic or hazardous air contaminants becomes an issue, modeling or monitoring may be needed to establish property line concentrations. Adequate health effects on ambient hazardous and toxic substances is difficult to obtain. If health effects data is necessary, consultation with other state agencies or federal agencies is indicated. Program Operations will assist in this effort.

The nuisance effects of an air contaminant emission more frequently arouse concern than do health effects, as judged by ambient air quality. Nuisances include visibility, odor, soiling, etc. Where known, nuisances should be identified and if possible, quantified as opacity, odor threshold, fallout or cost of clean-up, or other claimed damages as appropriate.

2. Effects of Plant Closure

The adverse economic or welfare impact on a community can be

translated into lost jobs or payroll which cannot be picked up locally or increased burden on state unemployment system. There may be other secondary effects associated with plant closure that are difficult to assess, and it may not be necessary to quantify these.

3. Competitive Advantage

Occasionally, where there are similar plants producing the same product and competing in the same market, a competitive advantage might be perceived by those plants that have spent their money and complied as compared to a plant that seeks a variance to remain operational and competitive without complying.

If and when this happens, such claims of competitive advantage and any supporting documentation that may be available should be included in the staff report. Also, any mitigating variance conditions that the staff might believe to be reasonably applicable, such as limiting production or thruput (and thereby reducing emissions) should be listed as possible or recommended alternatives. If these are not recommended, reasons should be given.

4. Financial Hardship

Claims of financial hardship are sometimes hard to judge. To assist in such evaluation, the applicant should be requested to submit:

1. Complete copy of most recent financial statement.

At a minimum, this should include a balance sheet and income statement, but any related schedules also should be obtained. (e.g., Statement of changes in financial position, supplemental schedule of administrative expenses, etc.)

2. Complete copies of financial statements for the prior two or three years.

3. Copies of tax returns for the prior two or three years.

4. Detail of ownership. (i.e., Is company owned by a single individual; a family; a wide variety of individuals; another company?)

5. Do the owners of the company in question own any other related companies/ If so, obtain financial statements and tax returns for all such entities.

6. Name and phone number of company's accountant or chief financial officer.

7. Name and phone number of company's outside accountants.

8. A clear, written evaluation and statement by the applicant of the financial consequences of failure to obtain the requested variance.

5. Timely Submission/Compliance

Ideally, need for variance requests should be anticipated and submitted 60 days before they are legally required. Also, the integrity of interim and final variance schedules should be maintained. A Regional Manager or Program Operations Manager should not allow any slippage on variance schedules unless they have good reason to believe that final compliance will be achieved by no more than 45 days after the final compliance deadline.

Proposed

DEQ/LRAPA Guidance to Applicants for
Air Quality Control Variances

State statutes authorize the EQC and LRAPA Board of Directors to deny, grant, modify or revoke specific variances to air contamination rules and standards, subject to the conditions and limitations of ORS 468.345.

The following requirements and criteria are applicable to all air program variance requests:

First, any variance must meet the conditions of ORS 468.345. If the Commission or Board approves a variance request, it must make a finding, based on the evidence presented, that strict compliance is inappropriate due to any of the conditions below:

a) Conditions exist that are beyond the control of the persons granted such variance: or

b) Special circumstances render strict compliance unreasonable, burdensome or impractical due to special physical conditions or cause; or

c) Strict compliance would result in substantial curtailment or closing down of a business, plant or operation; or

d) No other alternative facility or method of handling is yet available.

The information, data, reports and documentations supporting at least one of these specific assertions must be submitted by the applicant.

If economic hardship is the basis for requesting a variance, to the extent practicable, the following information should be submitted:

1. Complete copy of most recent financial statement.

   At a <u>minimum,</u> this should include a balance sheet and income statement, but any related schedules also should be obtained. (e.g., Statement of changes in financial position, supplemental schedule of administrative expenses, etc.)

2. Complete copies of financial statements for the prior two or three years.

3. Copies of tax returns for the prior two or three years.

4. Detail of ownership. (i.e., Is company owned by a single individual; a family; a wide variety of individuals; another company?)

5. Do the owners of the company in question own any other related companies/ If so, obtain financial statements and tax returns for all such entities.

6. Name and phone number of company's accountant or chief financial officer.

7. Name and phone number of company's outside accountants.

8. A clear, written evaluation and statement by the applicant of the financial consequences of failure to obtain the requested variance.

Secondly, in considering the merits of the request, the Commission or Board must evaluate the equities involved, the advantages and disadvantages to residents affected by the emissions, and to the person conducting the activity for which the variance is sought. The following criteria are typically used to make that evaluation:

a) Demonstration of good-faith effort to comply prior to applying for the variance;

b) How the situation of the applicant presents an unusual hardship in comparison with similar sources in the same general area;

c) What alternate or interim control measures are to be implemented throughout the variance period;

d) Whether the variance is properly conditioned to protect air quality to the fullest extent, including requirements for inter-

mediate compliance steps, and submittal of plans, specifications and progress reports;

e) If the requested variance period is the shortest time practicable and compliance will be achieved at the end of it.

The information, data, reports and documentation pertaining to the operation for which the variance is sought must be submitted by the applicant.

The DEQ, or LRAPA staff report will also address these criteria and air quality impact, public health and welfare impacts, equities, advantages and disadvantages.

Under LRAPA rules, variances cannot be for a period of time longer than twelve months from the date of issuance.

Requests for variance must be filed, in writing, with the appropriate DEQ Regional Office, DEQ Headquarters or LRAPA Offices. The information contained in the written request should address the appropriate requirements and criteria listed above as fully as practicable. The request should include supporting documents, data, reports, or correspondence sufficient in scope to allow the Commisison/Board to make a specific finding as required by ORS 468.345 and to rule on the request.

The DEQ or LRAPA Director will review the request and, based on the information and supporting material contained therein, will present recommendations including, but not limited to, approval, conditional approval, or denial of the request. The requestor should be prepared to appear at a regularly scheduled EQC or LRAPA Board meeting to support his request to the Commission or Board.

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: Additional Information on Agenda Items L, M, & O, May 20, 1983, EQC Meeting

PERMIT FEE INCREASES

Background

Three fee increases are before the Commission for approval: air quality industrial permit fees, water quality industrial and municipal permit fees, and subsurface sewage disposal permit fees.

Air Quality and Water Quality Permit Fees

The 1975 Legislative Session authorized the Commission to levy fees for permits in the Air and Water Quality Programs. The Commission subsequently adopted fee schedules on April 30, 1976 for water quality permits, and November 19, 1976, for air quality permits. The 1977 Ways & Means Committee included a budget note in the agency's budget stating that the 1976 fee schedule should be maintained but that adjustments should be made to accommodate any salary increases. The Ways & Means Subcommittee also instructed the Department to prepare its 1979-81 budget with revised fees to reflect an increase equal to the rate of inflation experienced by General Fund-supported programs.

Fees were increased an average of 14% to cover costs for the 1981-1983 biennium.

Fee increases in the water quality and air quality permit fees were included in the agency's budget recently approved by the 1983 Legislature. A fee schedule increase of 11% in both programs was projected for the 1983-1985 biennium. However, the programs believe a lesser increase in overall permit fee income of approximately 8% for the Water Quality Program and approximately 6.5% for the Air Quality Program will be sufficient to cover program costs at this time.

Permit fees cover about one-third of the permit related activity in Air Quality and about one-quarter in Water Quality.

Subsurface Permit Fees

Fees for subsurface permits were set in the statutes beginning in 1973 and were last amended in 1979. In the 1979 amendments, the Legislature instructed the Commission to:

> ... increase maximum fees effective July 1, 1980, above the maximum levels established in subsection (1) of this section. Fee increase permitted by the Commission shall be based upon actual costs of efficiently conducted minimum services... (ORS 454.745).

The 1981-1983 biennium budget reflected this legislative direction and decreased the program's reliance on the General Fund by adding a surcharge of about 10% to on-site evaluations and permits issued both by DEQ and contract counties.

The proposed fee increases now before the Commission reflect that continued direction toward replacing General Fund dollars with permit fee dollars. The proposed fee increases were also reviewed and approved by the Executive Department, Ways & Means Subcommittee, and the Legislature in reviewing and approving the Department's budget.

Other Fees

Fees are charged in several other programs. Field burning fees are set in statute and have not altered since the 1977 Session. Also, the Commission has the authority to set both the vehicle emission certification fee and the tax credit fee. The vehicle emission certificate fee was originally set by the 1973 Legislature at five dollars. However, that maximum limit was raised to ten dollars during the 1981 Session. The present fee is set at seven dollars.

Tax credit application filing fees were authorized by the 1981 Legislative session. The only legislative direction is that the fees must be "reasonable" (ORS 468.165(5)).

William H. Young

FK1933
JAGillaspie:k
229-6271
May 19, 1983

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: William H. Young, Director *WHY*

SUBJECT: Hayworth Farms Appeal
Contested Case No. 33-AQ-WVR-80-187

This appeal was heard by the Commission at its April 8, 1983 meeting.

Following arguments of counsel, the Commission voted two to one to reverse the hearings officer's decision. One member abstained.

The Commission then considered whether consensus by a majority of the Commission or a majority of those present was essential to effective action. The issue was not resolved.

The parties have provided briefs in support of their respective interpretations of the controlling law. I have advised counsel to be prepared to address both the procedural issue and the merits of the appeal at the May 20, 1983 meeting.

Attached are a transcript of your discussion during the April meeting, the materials prepared for that meeting, and the parties' briefs on the procedural issue.

Attachments
LKZ:k
HK1914
229-5383
May 12, 1983

Note: the attachment to Respondent's brief was omitted. Respondent will provide it later.

Jan Shaw

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY, OF THE STATE OF OREGON, Department, vs. HAYWORTH FARMS, INC., an Oregon Corporation, and JOHN W. HAYWORTH, Respondents.	)	No. 33-AQ-WVR-80-187
	)	SUPPLEMENTAL MEMORANDUM OF LAW

STATEMENT OF THE PROBLEM

Pursuant to an appeal of the Hearing Officer's Findings, Conclusions & Order dated November 11, 1982, respondent appeared before the Environmental Quality Commission's meeting on April 8, 1983 for the purpose of submitting oral arguments. One member of the Commission was absent from this meeting. Following arguments of counsel, the remaining four members of the Commission voted 2-1 to reverse the Hearing Officer's Order, with one member abstaining.

There is no doubt as to the existence of a quorum. A dispute arose as to whether or not a 2-1 vote with one abstention constituted a legally binding action. The vote comprised a majority of the voting quorum, yet did not embrace a majority of the entire five member Commission. Initially, respondent agreed to submit the matter for decision to the absent member, but that consent was withdrawn later that day and the Commission granted the consent withdrawal.

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There are no internal agency rules or procedures as to voting requirements on appeals made within the administrative body. There are no administrative rules in general that provide guidance in this matter.

QUESTION PRESENTED

Is a majority of the entire commission required to agree for affirmative action on any measure presented to it?

ARGUMENT

I.

PROPER STATUTORY CONSTRUCTION MANDATES A DETERMINATION THAT ORS 174.130 HAS NO APPLICABILITY TO ADMINISTRATIVE ADJUDICATIONS.

Statutory construction entails a fundamental legal precept; that is to ascertain the legislative intent for its creation. Swift & Co. and Armour & Co. v. Peterson, 192 Or 97, 108, 233 P2d 216 (1951). Proper construction requires an examination of the statute in its entirety, including consideration of its title and history. 192 Or supra at 109; see also, Fox v. Galloway, 174 Or 339, 148 P2d 922 (1944).

ORS 174.130 has no application to this proceeding. ORS 174.130 reads as follows:

> "Any authority conferred by law upon three or more persons may be exercised by a majority of them unless expressly otherwise provided by law."

The Attorney General in several opinions has taken the position that a body cannot act except by the affirmative vote of a majority of its membership. Examination of the statute

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and its history does not support that conclusion. ORS 174.130 had its origin in Chapter 6, Section 509 of the Civil Code in the General Laws of Oregon (1843-1872). A copy of Chapter 6 is attached to this memorandum to demonstrate the original context of the statute.

Inquiry into the history behind the act is illuminating and reveals that ORS 174.130 was not intended to apply to agency adjudications.

ORS 174.130 was originally codified in 1862 within Chapter 6, Section 509 of the Civil Code in the General Laws of Oregon (1843-1872). A copy of Chapter 6, Sections 502-510 is attached to this memorandum.

Examination of Exhibit "A" demonstrates several indicia of legislative intent as to the intended scope of what is now ORS 174.130. First, the statute originally appeared within the general provisions dealing with "actions and suits." Secondly, the primary title of Chapter 6 was, "Of Appeals, Costs and Miscellaneous Matters in Actions and Suits." (emphasis added). A third can be seen in the sub-title of the chapter stating; "Of general provisions concerning actions and suits." (emphasis added). A fourth is seen next to Section 502 wherein a margin notation states; "This chapter to apply to both actions and suits." If these indicia are not clear, Section 502 itself expressly provides; "The provisions of this chapter shall apply to the proceedings in both actions and suits, except as herein otherwise or specially provided."

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Given the foregoing, the statute in question was not intended to apply to governmental decisions, agency adjudications or any other determination not involving an "action" or "suit". As defined in Giant Powder Co. v. Oregon Western Ry. Co., 54 Or 325, 327, 103 P 501 (1909), an "action" referred to a proceeding at law to enforce a private right or to redress a private wrong, but in equity the compulsion for that purpose was known as a "suit". A suit or action, according to its legal definition, was the lawful demand of one's right in a court of justice.

An example of the limitation of meaning can be seen in at least one court decision which held that an election contest is not an "action" within the civil code, but rather a "special proceeding". Perry County by Crossen v. Tracy, 19 Ohio Dec. 302, 7 Ohio N.P., N. S. 619.

Two Oregon court decisions construed the early statute and both clearly involved "actions and suits". See, Beekman v. Jackson County, 18 Or 283, 22 P 1074 (1889)(involving viewers appointed by the court to view the proposed route of a road across appellant's property to assess the damages in an eminent domain proceeding wherein only two of the three viewers actually met); and Morrill v. Morrill & Killen, 20 Or 96, 23 Am St. Rep. 95, 11 L.R.A. 155, 25 P 362 (1890)(involving a partition made by one referee as opposed to the three prescribed by the statute).

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An amendment was made to the statute by Chapter 303 (1951) Session Laws. That amendment read as follows:

> "Relating to the exercise of authority conferred upon three or more persons, including referees; creating new provisions; and amending section 5-609, O.C.L.A.
>
> BE IT ENACTED BY THE PEOPLE OF THE STATE OF OREGON:
>
> Section 1. Whenever any authority is conferred by law upon three or more persons, it may be exercised by a majority of them, unless expressly otherwise provided by law.
>
> Section 2. Section 5-609, O.C.L.A., is amended to read as follows:
>
> Sec. 5-609. Whenever there is more than one referee, all must meet, but a majority of them may do any act which might be done by all.

Upon the revision of O.C.L.A. and creation of ORS the revisors, for whatever reason, chose to divide the statute, and subsection (1) of the 1951 act was placed in Chapter 174 and became ORS 174.130, and Subsection (2) became a part of Chapter 17. There is no legislative history relating to the 1951 amendment. The primary amendment was to remove the language "upon the meeting of all". Subsection (1), now ORS 174.130 was placed in a section relating to statutory construction.

Thus, from its humble origins as a rule relating to procedure in actions and suits the Attorney General's Opinion has raised it to a position in which it requires the affirmative action of a majority of an entire body to take action.

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An examination of the statutes does not require the result reached by the Attorney General's opinions. First, the statute is by its terms permissive. It simply says that action may be taken by a majority of the body. The obvious inference from this language is when coupled with the removal of the words "upon the meeting of all" that a majority of the entire board may take action without meeting, and is sufficient. The statute does not preclude the normal and usual procedures which the court found to be applicable in State , ex rel Roberts v. Gruber, 231 Or 494, 373 P2d 657 (1964). In that case the court was dealing with a specific statutory requirement which required a majority of the entire membership of a City Council. If the legislature had intended the result contended by the State such language would have been explicit and clearly set forth in the statute and is, in fact, commonplace in city charters and similar documents. The apparent intent of ORS 174.130 is to eliminate technical problems when, in fact, a majority of a body has taken affirmative action. The cases previously cited, which were decided under the statute, largely related to the requirement that all of the body meet in order to take action. The Attorney General's opinions are erroneous in two respects. One, in construing the statute in such a way as to require that majority action is necessary for a decision. The other is that the act was never intended to apply other than actions and suits.

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The original legislative intent of ORS 174.130 has since been ignored by several Attorney General opinions which have proceeded to construe the statute to apply to governmental actions and agency decisions, an extension of application never intended by its original creators.

For instance, in 36 Op Atty Gen 960, 985 (1974), the Attorney General's Office extended ORS 174.130 to apply to city and county governments, far beyond the original limitation of "actions and suits". Likewise, in 40 Op Atty Gen 79, 84 (1979), the statute was applied to the Energy Conservation Board, thereby extending the scope of ORS 174.130 to include administrative agencies that do not have their own provisions concerning voting minimums. See also, 38 Op Atty Gen 1935, 1937 (1978); 38 Op Atty Gen 1995, 1999 (1978); 34 Op Atty Gen 617, 635 (1968-69); 33 Op Atty Gen 29, 30 (1966-68).

By referring back to its original codification, one can see it was clearly intended to have a limited application to "actions and suits" unless "otherwise or specially provided." The Attorney General opinions, have consistently misconstrued the statutory scope of ORS 174.130 as applying to administrative adjudications.

II.

ABSENT A STATUTORY RESTRICTION, THE GENERAL COMMON LAW RULE IS THAT A MAJORITY OF A QUORUM CAN ACT.

The Oregon Supreme Court in State ex rel Roberts v. Gruber, 213 Or 494, 373 P2d 657 (1964), extensively discussed the

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common law rules regarding voting sufficient to constitute a binding act. There it was observed that at common law, where a decision-making body consisting of a definite number, had a vote by the majority of the quorum, the vote was sufficient to be deemed a valid action by the body. See, 43 ALR2d, Anno. Municipal Council--Majority Vote 698, 702.

The Gruber decision noted the common law rule seems to have stemmed from the decision of Lord Mansfield in the "frequently cited" case of Rex v. Foxcroft, 2 Burr. 1017, 97 Eng. Rep. 683 (K.B. 1760). That rule was more recently stated in Willcock on Municipal Corporations, §546 as follows:

> "After an election has been properly proposed, whoever has a majority of those who vote, the assembly being sufficient, is elected although a majority of the entire assembly altogether abstain from voting; because their presence suffices to constitute the elective body, and if they neglect to vote, it is their own fault, and shall not invalidate the act of the others,...." (emphasis added)

As noted in 62 CJS 765, Municipal Corporations §404, this is the rule applied in numerous jurisdictions, and should likewise be applied here.

It appears clear from the Gruber case that in the absence of a special statutory restriction which requires that a majority of the entire membership of a body, abstaining members are deemed to have acquiesced in the majority vote. For that

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reason the action by the Commission was, in fact, a valid action and an order should be entered based upon the commission's vote.

Respectfully submitted,

RINGO, WALTON & EVES, P.C.
Attorneys for Respondent

By _____
J. W. Walton
OSB No. 53108

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CERTIFICATE OF MAILING

I certify that I served the foregoing Supplemental Memorandum of Law on Department by depositing a true, full, and exact copy thereof in the United States Post Office at Corvallis, Oregon, on May 6, 1983, enclosed in a sealed envelope, with postage paid, addressed to:

Larry Shurr, Enforcement Section, DEQ, 522 SW Fifth Avenue, Portland, OR 97204 ; Michael B. Huston, Asst. Atty. Gen., Justice Bldg., Salem OR 97310
Attorney of record for the Department.

J. W. Walton
One of Attorneys for Respondents

* * * * * * * * * * * * * * *

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BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY, STATE OF OREGON, Department, v. HAYWORTH FARMS, INC., an Oregon Corporation, and JOHN W. HAYWORTH, Respondents.	No. 33-AQ-WVR-80-187 DEPARTMENT'S SUPPLEMENTAL MEMORANDUM OF LAW

This memorandum is offered by the department in response to respondents' Supplemental Memorandum of Law.

Statement of the Problem

The department concurs in respondents' statement of the problem.

Question Presented

Is a majority of the entire commission required to agree for affirmative action on any question presented to it?

Argument

I. ORS 174.130 applies to this administrative proceeding and has been properly construed to require that a majority of the entire commission concur in a decision.

There have been no judicial interpretations of ORS 174.130. In the absence of contrary judicial opinions, state officials are entitled to rely upon opinions of the Attorney General. State ex rel Moltzner v. Mott, 163 Or 631, 640, 97 P2d 950 (1940). When a question of law is before a court, a previous opinion of the Attorney General is "generally regarded as highly persuasive." 7 Am Jur 2d Attorney General § 11 (1980).

Four previous Oregon Attorneys General have considered ORS 174.130 and related voting issues and have cumulatively concluded: (a) that ORS 174.130 applies to all bodies of three or more members acting under state authority, unless a law expressly provides otherwise, (b) that the statute requires affirmative votes from a majority of members in order to make a decision, and (c) that an abstention does not constitute an affirmative vote. See 40 Op Atty Gen 79 (1979); 38 Op Atty Gen 1935 (1978); 36 Op Atty Gen 960 (1974); 33 Op Atty Gen 29 (1966). These three conclusions are separately analyzed below.

A. ORS 174.130 Applies to This Proceeding

In 1966, Attorney General Thornton first considered ORS 174.130 and noted its applicability to county courts. 33 Op Atty Gen 29, 30 (1966). County courts were also governed specifically by ORS 203.110, which provided that ". . . the county court is held by the county judge and two commissioners designated by law, or a majority of such persons." Based upon the express language of these statutes and a prior decision of the Supreme Court of Oregon, the opinion concluded that an actual affirmative vote by two members of the three-member county court was necessary. 33 Op Atty Gen 29, 31, citing Russell v. Crook County Court, 75 Or 168, 145 P 806 (1915).

The effect and application of ORS 174.130 alone was first considered in 36 Op Atty Gen 960 (1974) in an opinion issued to help local governmental units meet the procedural requirements of

Fasano v. Washington County Commissioners, 264 Or 574, 507 P2d 23 (1973). This opinion concluded that in the absence of local ordinances dealing with voting requirements, ORS 174.130 governs. 36 Op Atty Gen at 985.

As respondents point out, the broad application of ORS 174.130 does go beyond the original legislative purpose of the statute. Nonetheless, the current express language of the statute supports its application to all bodies or proceedings not governed by specific law, since it refers to "[a]ny authority conferred by law." Therefore, although the historical context of ORS 174.130 was "action and suits," the language itself is not limited to this context. In addition, the distinction between judicial and administrative proceedings has been blurred, since contested case administrative proceedings, such as the EQC proceeding at hand, have many judicial characteristics. See ORS 183.413-.460; see also Fasano v. Washington County Commissioners, supra.

B. ORS 174.130 Requires a Majority Vote of All Members in Order to Make a Decision

The 1974 opinion of the Attorney General specifically analyzed the effect of ORS 174.130 as follows:

> "A question may arise as to whether the phrase . . . 'majority of them' [referring to ORS 174.130] means majority of those present, majority of a quorum or a majority of all existing members. However, in State ex rel Roberts v. Gruber, 231 Or 494, 373 P2d 657 (1962), the Oregon Supreme Court made it clear that such a provision 'means what it says'; thus approval must be by a majority of members of the body." 36 Op Atty Gen 960, 985 (1974).

The language interpreted in Gruber was more explicit than that of ORS 174.130. Gruber, supra at 499. However, as the court in Gruber points out, it had previously construed "language much less definite" in determining voting requirements. State ex rel Roberts v. Gruber, 231 Or at 499, citing Simmons v. Holm, 229 Or 373, 380-84, 367 P2d 368 (1961).

In Simmons, a city charter provided that a majority of the quorum was sufficient to take action unless otherwise provided. Other language in the charter provided that one particular action required a "vote of three-fourths of the council." Simmons, supra at 381. The court said that "[i]f the statute meant three-fourths of a quorum, it would have said so." Id. at 382. Thus the Attorney General's opinion that the "them" in ORS 174.130 refers to the "three or more persons," and that when the statute says "majority of them" it means what it says, is consistent with the Oregon precedent on the question.

This interpretation of ORS 174.130 obviously has significant implications for the day-to-day operation of state agencies, boards and commissions. Such implications, however, are policy matters appropriately left to the legislature. It should be noted that Attorney General Frohnmayer, who has affirmed the previous interpretations of ORS 174.130, has also suggested that the legislature re-examine the statute. (Letter to Rep. Glenn Otto, January 19, 1983).

C. An Abstention Does Not Count as an Affirmative Vote

The issue of how an abstention is to be counted has been directly addressed by the Supreme Court of Oregon. In Gruber, the court rejected the contention that the common law rule requires that abstaining members be counted as voting with the majority. Gruber, supra at 500. As interpreted by the court, the common law rule only works to prevent abstaining members from defeating the existence of a quorum. It does not work to satisfy a requirement of law that a decision be supported by a certain number of votes. Id. at 496-97. ORS 174.130 is such a requirement, and therefore, the common law rule is of no significance in this case.

The effect of an abstention has also been examined in opinions of the Attorney General. One opinion specifically concluded that in light of ORS 174.130 an abstention is in effect a negative vote. 38 Op Atty Gen 1995, 1999 (1978); see also 33 Op Atty Gen 29 (1966).

CONCLUSION

The action of the commission having been approved by less than a majority of all commissioners, the action was not legally binding and no order should be entered upon it.

Respectfully submitted

/s/Michael B. Huston

Michael B. Huston
Assistant Attorney General
Of Attorneys for the Department
of Environmental Quality

CERTIFICATE OF SERVICE

I hereby certify that on May 13, 1983, I served the foregoing Department's Supplemental Memorandum of Law upon J. W. Walton, attorney, by depositing in the United States Post Office at Salem, Oregon, a full, true and correct copy thereof, addressed to the said attorney at P. O. Box 1067, Corvallis, Oregon 97339, with postage prepaid.

/s/Michael B. Huston

Michael B. Huston
Assistant Attorney General

(DEQ-15-mlm)

TRANSCRIPT OF AGENDA ITEM "M" OF APRIL EQC MEETING

RICHARDS The next item is Agenda Item M, the Hayworth Farms appeal of the hearing officer's decision affirming the civil penalty. What we've done, ordinarily, (and I can advise you, Mr. Walton, to please come forward), is that we've heard from the appellant in these cases. We assign, ordinarily, ten minutes to the moving party and ten minutes to staff. If you wish to save some of that time for any rebuttal, you're entitled to that.

WALTON I'd like to have about three minutes for rebuttal.

RICHARDS Fine.

COMMISSIONERS (discussion about how to denote end of ten-minute period)

WALTON This appeal comes before the Commission in response to an unusual situation. The factual background, (and I do not know whether the Commission has read the record or not), ... all right. What happened was that an informal practice has arisen in field burning because of the exigencies of time and conditions. These people operate on split-second schedules. They have people up in airplanes, radio systems, telephone systems, and there has been a great deal of problem in evolving a workable system. And there has grown up a set of informal practices to expedite maximum field burning within the general outline of the regulations.

This case boils down to a very simple situation. Mr. Hayworth is a large farmer who works around Coburg, Junction City, a whole series of districts. He got a fire burning permit in Junction City one morning. He also had a quota in Harrisburg one day. Now, the focus of the hearings officer's findings (which I suggest to the Commission are grossly inconsistent--she makes findings of fact one place, and then sets up ultimate facts to the contrary in the next); but, Mr. Hayworth's testimony on page 13 of the transcript is what the state has essentially keyed its case to, because he used the word "possibly." And, if you read the entire text of what the man said, the whole thing becomes sensible.

First of all, he got 160 acres to burn in Junction. Now, it is not feasible in that area, because of the river, to go chasing back and forth from place to place. So he said, I'm going to transfer my quota from Harrisburg to Junction City, and I'm not going to burn in Harrisburg today. His testimony is clear that he made the telephone call. The hearings officer has found that he has not made a clear directive. Now, people on radios and telephones on the run don't make clear directives. And the reason he used the word "possible" was, as he explained, "I might get there and not be able to burn at all." And this was his problem. But, it was clear that

if he were going to burn that day, he would burn in the Junction City area, and it was quite common to transfer these allotments from fire district to fire district. And you must understand that this system is basically operated by a series of clerks on the telephone, hired by local fire districts, and run almost entirely outside the DEQ. There is a general, overall supervision saying you can burn so many acres here and so forth.

Now, what happened that day was that the South Valley got a second quota. So that he had the 160 with a validation number. And the real complaint there is that he went ahead and burned the transferred quota from Harrisburg without obtaining a validation number. Now, he's burning in the morning to try to take care of the 160-acre field, which, by the way, the record shows was somewhat less than that; he then got the second quota by radio. And, in accordance with the practice that the record shows that people did this all the time, he then burned the additional 233 acres. Now, Harrisburg and Junction City, (in case somebody in the Commission doesn't know where they are) are 'side by each,' so to speak. So, for a man who was trying to violate the regulations, he immediately after he concludes the burning of that area, reports to Junction City what he has done. And the testimony is in the record that it was not uncommon at this time of year, towards the end of the season when there was a double burn of this kind, to then call in and the clerk would insert the validation number, because these people are operating on a very, very close schedule. There isn't any question about it. This record has in it testimony from other growers and farmers who recognize the way the system had worked. And, it's probably to the credit of the system that there has been, as even the hearings officer recognized, a consensual relationship which has allowed the job to get done within the broad guidelines that have been laid down. So that, all in the world Mr. Hayworth is accused of doing is failing to phone Junction City and get a validation number, when, in fact, the foulup started when the Harrisburg clerk did not note his request to transfer to Junction City. And it was a very logical, routine sort of thing that he did. And, with the way the system works there isn't anyway way that you can sit down and do all of the paperwork.

Now, we have pleaded a number of technical things here. I would point out to you that the case proceeded at the hearings level on the theory that Mr. Hayworth was negligent or burned these fields intentionally. Now, I think that neither of those things occurred. He burned them in accordance with the practice, albeit an informal practice, which prevailed. And I suggest to this Commission that by reading his transcript, there is no way in the world that the practices that are carried on by these fire districts, and heaven only knows what their status is; in other words, the DEQ essentially hands this over to the fire districts to operate, and has no control over them, to speak of, what the clerks and the people do is

always discovered as a matter after the fact. So that there is no claim that he burned more than he should have in that general area, and particularly in the South Valley; but it is a purely technical claim that he did not have a validation number. And, we suggest that the Department is estopped to deny the practice and having allowed the practice to go on, and the clerks testified, "yes, we had done that." Now, if you're going to enforce the practice, you've got to tell the people exactly what the minimal rules are. And I do not suggest to this Commission that the informal practice is a bad thing. It may be the only practical solution to keeping this system going so that there is a reasonable satisfaction for all the parties involved--the growers, the cities, and all the people who are affected--but it is, again, subject to the whims of nature. As Mr. Hayworth explained, "I might have gotten to Junction City, and by the time I got there, the radio would have said, 'we've got a change of conditions, we're not burning today.'" And we're talking about large areas where he has to transport trucks, water trucks, personnel, run fire guards, and do a whole series of things in order to be able to burn at a given time. And so, it is essentially a highly technical charge. The record simply does not support the findings of fact. The hearings officer (I hate to say this, but) has essentially rationalized a conclusion which she apparently reached without regard to the records. I think my time is up.

RICHARDS Thank you. Are there questions of Mr. Walton?

RICHARDS How many quotas were transferred?

WALTON He transferred his Harrisburg allocation. We get a great language tangle here about allocations and quotas and so on; but, basically, he could have burned that acreage in Harrisburg, but his position is that he called Harrisburg (and this was all he had to do) and say, "Hey, I'm going to Junction today." And so what he did was burn in Junction what he could have burned in Harrisburg.

RICHARDS And what could he have burned in Harrisburg, in terms of acres?

WALTON About 250, as I understand.

RICHARDS And what is your recollection of what the transcript says about the practice of people calling in, and the clerks writing down the validation number and the amount of acreage?

WALTON There are a number of those. I would suggest that the Commission could look at TR-58, TR-79, TR-92, TR-118, and the testimony of the witnesses Hunton, Crogness, and Schutz. ... Now;

RICHARDS My question, though, ... is ...

WALTON I understand. There are a series of answers to your question.

The record is replete with references to what the system was.

RICHARDS Yes, well, but is there agreement, at least, that the system was that you would request a transfer, and then there would be a record made, and then that district would call the other district to advise?

WALTON That is correct.

RICHARDS ... or call the DEQ, and the DEQ would advise. It looks like there's testimony both ways.

WALTON That is correct. And, what happened here was that no record was made by the clerk. And the clerk ... two things could have happened. One, the clerk could have said, "well, I'll wait and see if he burns," and he never got back to her, which I doubt that he would have done; he assumed that he had called the clerk and said, "I'm going to Junction."

RICHARDS Does he feel that he was inaccurate in his own testimony, saying that he would like to "possibly burn," instead of transfer?

WALTON No. Because if you read "possibly" as "if possible;"

RICHARDS Well, but doesn't it take a request for transfer? I mean, he could have also done this, he could have said "possibly" then gone right back and burned in Harrisburg that day. Was there anything to prevent him from burning in the Harrisburg district that day on that quota?

WALTON Well, I think he could have come back and done it, but then I think he would have been in trouble, having said, "I'm going to Junction." But, the point is on these facts, that couldn't have happened, because he couldn't have burned in Junction and gotten back to Harrisburg. That's the...

RICHARDS No, but he could have chosen to burn in Harrisburg instead, the way he left it.

WALTON Conceivably, but he said, "I'm <u>going</u> to Junction."

RICHARDS Or, I'm <u>possibly</u> going to burn in Junction. They didn't know whether he was going to burn or not, did they?

WALTON But, I think he says, "I'm on my way to Junction" in another place. And he immediately left for Junction City. And this is what I'm saying, farmers are not going to put these things in nice, neat, legal phrases that lawyers, such as the Chairman and myself, will deal with in very easy terms. What his intent was was perfectly clear, since he had the Junction City permit. And this was what brought about his decision to transfer.

RICHARDS On page 44 ...

WALTON Right.

RICHARDS ... he says (if you'll look at 44 in the middle of the page) he's saying, "I don't know whether you've got to have permission, or not, but I called to tell them I was not going to burn in Harrisburg." What I'm having trouble with there is the question about the transfer.

WALTON I understand. And I think there may have been a miscommunication. That always can occur between people. But, it's rather obvious from the circumstances that what he was doing when he said, "I'm possibly going to burn," as he explained in another place there, "I'm going to burn unless I get shot down over at Junction City." But he explained in another spot; I read it, but I can't give you the page, precisely, or part, but he did explain also that this was not an uncommon practice.

RICHARDS Thank you.

RICHARDS Are there other questions of Mr. Walton? Mr. Petersen?

PETERSEN Yes, sir. Um, Mr. Walton, how would you explain the finding of fact that the clerk had no recollection or record of the phone call?

WALTON Well, it's not uncommon. She explained in the record that she was handling 71 growers, and that one of the problems that they had, to illustrate why there's a problem: the telephone was in constant use. That's why they put in radios in the system, because people couldn't get through on the telephone. And these people; there was also another clerk there in the office, besides the one they called. There happens to be two clerks in that office, but one of them was never called. So they seesawed back and forth, and it was a frantic situation, and it's not uncommon under that kind of pressure for errors to be made. It's just a frantic time because, you remember, this had turned out to be a two-quota day, which is a little bit unusual.

RICHARDS Thank you.

RICHARDS For the staff? Any desire to...

KOLLIAS Mike Huston just called a few minutes ago. He thought that this was scheduled ... (several words lost). He said he was on his way over and (rest of sentence lost).

RICHARDS Um, what's the wish of the Commission? Would you like to just go on to another matter for a moment, until he arrives?

PETERSEN I think so. I think we ought to allow him the courtesy of ...

PETERSEN Oh, definitely.

RICHARDS Alright.

WALTON I'd like to request, your honor, that the Commission wait for him.

PETERSEN Oh yea, that's fine.

RICHARDS We'll do that. We'll go back to the regular order of the agenda, and if someone will notify us when he's available.

* * * * * * *

(Continued after the arrival of Mr. Huston)

RICHARDS Now. Counsel for the Commission is present back on the Hayworth matter. I think we should try to conclude that.

...

RICHARDS Mr. Huston, the floor is yours. We had assigned ten minutes to each side. Mr. Walton has reserved three minutes.

HUSTON Thank you, Mr. Chairman, Members of the Commission. I am Michael Huston. I'm from the Department of Justice, today representing the Department of Environmental Quality in the Hayworth case. My extreme apologies for not being here, earlier; ... I

RICHARDS We changed the signals, so it's alright.

HUSTON I understand that. I've never known a State Commission to move more promptly than their agenda;

PETERSEN We haven't.

RICHARDS We make up in haste what we lack in quality.

HUSTON I think, Mr. Chairman, that I will take very little of your time. This case is not, after all, particularly complicated. We have a situation where, I think essentially, even by Respondent's own admission, that he did not comply with the formal requirements of the field burning regulations. As his primary defense, Respondent offers you a proposal that his conduct was nonetheless justified by the fact that he had relied upon a series of informal practices that were apparently in place in the local fire districts in which he had been burning for a number of years.

If that were true, and if the record supported that contention, the Commission might be faced with some fairly tricky legal questions about whether reliance upon unlawful conduct that's common can excuse that unlawful conduct. I think fortunately, though, the Department's position is that you don't even need to reach that issue because, as the hearings officer firmly concluded, and as the Department concurs, the Respondent's conduct in this instance even exceeded the much-relaxed established practices that were in place. And I'd like to speak to those, just quickly.

We have a situation where Respondent clearly violated at least two formal requirements of the law--one dealing with transfer of his allocated acreage from one district to another, and the second dealing with his failure to obtain a validation for his particular burning in advance of doing that burning. So, for those two issues, I would like to briefly examine the established practice that the record shows was in place and how Respondent's conduct compares to that.

RICHARD Let me ask you a question first.

HUSTON Yes.

RICHARD I saw what the hearings officer picked out of the record about transfers, and that was picked out at page 13, though not identified in the Opinion. But, back at page 11, he very clearly said that he called and said, "I was going to Junction City and wanted to use my permit over there"--"my quota." Didn't that sound like a request for transfer?

HUSTON To begin with, Mr. Chairman, the evidence is contradictory on that factual issue. You have the Respondent's contention that he did make a call and that he indicated that he might possibly use his allocation in the other district. Taking even his own testimony at its best credible value, it is in our judgment that that sort of language or request did not constitute a formal request, even in keeping with the lower established practice in the district. The remainder of the record shows very clearly that although the agents were used to accepting telephone requests, they did so very cautiously. When they got one, they carefully recorded the grower's number, his registration number, and the number of acres in question. There was no recording in this case.

RICHARDS Okay. Let's go to the second issue.

HUSTON Yes.

RICHARDS You say there are actually two--the transfer, even if he had met that requirement, there was no request for a validation for the particular burning. Now, is not the record unclear about that? Or is there something he would have had to have done, more than he did?

HUSTON The record is (I believe I can fairly say, Mr. Chairman) not at all unclear, at least on one fact, and that is that the Respondent did not get a validation until after he had already burned the 233 acres in question.

RICHARDS Then he would have had to call sometime between burning the first quota and the second, is that your contention?

HUSTON Yes.

RICHARDS Or, at least, in advance of both quotas, and that, in fact, he made no call?

HUSTON Yes. Exactly, Mr. Chairman.

RICHARDS But, he says the informal practice was that it was always okay to call afterwards?

HUSTON Yes. But, again, we find there that the established practice was not nearly as loose as Respondent suggests. It was a case

that only under very rare circumstances (that your hearings officer has set out well) was such after-the-fact validation allowed. I believe the record shows there had been no cases of that in the particular 1980 burning season in the Junction City fire district, and that otherwise, the only limited circumstances in which after-the-fact validation had been allowed is when there was a prior arrangement between the fire district agent and the grower, that with the release of an additional quota for the district that that validation would automatically issue. And that simply was not the case here. There was no prior arrangement, and there certainly was no prior validation number obtained.

I think, Mr. Chairman, you've just led me through the bulk of my arguments on those two points. Those are the two allegedly established practices which Respondent seeks to fall within. I think, as your hearings officer concluded, to quote her in two points from her Opinion, "Respondent has previously stretched even the informal rules to their limits. What is also apparent from the record is that whatever flexibility has been established, Respondent exceeded it." Therefore, in our judgment, Mr. Chairman, members of the Commission, this case may have raised some serious policy questions for the Department, I'm sure, about whether they can continue to acquiesce in informal practices that are not in keeping with the written requirements of the field burning program, and it could have raised some difficult legal questions as to whether established conduct can excuse unlawful conduct. However, I don't think either of those tricky policy questions or that legal question is germane to this case, given our contention and the hearings officer's conclusion that Respondent clearly exceeded even the established practices that were in place in the area. Thank you, Mr. Chairman.

RICHARDS Questions of Mr. Huston?

RICHARDS Thank you very much. Mr. Walton, do you wish to make any concluding remarks?

WALTON Very briefly, Mr. Chairman. I would like to point out to the Commission that the great 'sin' that Mr. Hayworth is alleged to have committed was not burning too many acres. There has not been any such contention made. Everybody agrees he had the right to burn that many acres. They say he didn't have a validation permit. Now, that record (I'm sorry to disagree with Mr. Huston--you'll have to read it, I suppose, for yourself), but that record is absolutely full of statements by these witnesses that, in fact, this was done because of these time problems and, particularly at this time of year, towards the end of the season. This is when the pressure went on, when the season was available, when the fields were available, and everybody could sign up to do them.

Now, I suggest to the Commission that if it's going to have series of practices outside its written rules and regulations,

which, in fact, occurred, then, if they're going to prosecute people for violation of informal procedures, these are serious charges that are brought, and they have considerable consequence to this farmer here. And I don't see any way on this record you can say that he acted in anything but the utmost good faith to meet the requirements that are, in essence, survival for him. So that, it does present an interesting policy question for this Commission. And I think this case squarely raises these, because the hearings officer's findings of fact against a reading of this transcript (and I did not try this case--I took it cold), they are absolutely incomprehensible in light of the testimony that appears in the record.

RICHARDS Thank you very much.

(End side 2, tape 1, EQC Meeting of 4/8/84)

* * * * *

(Beginning side 1, tape 2, EQC Meeting of 4/8/84)

RICHARDS What is the desire of the Commission?

BURGESS I'm still curious, you know. Is the fire district really operating that loosely, shuffling things around?

RICHARDS It depends on which part of the transcript you read.

BURGESS Yea, I get awfully mixed things.

PETERSEN I have a technical question, Mr. Chairman.

RICHARDS Mr. Petersen?

PETERSEN There have been seven exceptions raised, and, Mr. Haskins, maybe you could comment on this. What happens, procedurally, if we agree with several and disagree with others? What's the process?

HASKINS Well, I think you need to address each issue in the Final Order that you adopt.

PETERSEN Each exception?

HASKINS Well, yeah. You have to address the issues that are raised by each exception.

PETERSEN Um Hm. We do?

HASKINS Unless you find that an exception does not, in fact, raise an issue.

PETERSEN Well, I'd like to get the ball rolling here, Mr. Chairman. I'd like to...

RICHARDS You may.

PETERSEN I guess what concerns me here, and I've read the record, and I'm convinced that there, in fact, have been a series of informal practices that have obtained, and I would guess that since they've been allowed to go on, that there's probably good reason for it--that, probably, our rules may need to either be modified, or that we need to re-examine the whole area. I think everybody is in agreement that, informally, we have allowed people to not go by the strict letter of the rules and regulations, and, probably, in this particular case, I'm convinced that perhaps Mr. Hayworth maybe was as informal as anyone has been, and that maybe we're trying to make an example. That concerns me, I guess, I'm tempted to be sympathetic with the fact that if we are going to allow deviation from our regulations, for whatever reason--probably a very good reason--that we need to put people on notice how far they can go. And I think that would be a very difficult thing to do. In other words, you say, "well, we've got these rules. You can deviate from some of them but not all of them." Or, "you can deviate to this extent with some of them, but you can't go any further than that." And that bothers me. I think the citizens out there are entitled to have a very clear understanding of when the enforcement process is going to take place and where that line is going to be drawn. And, clearly, I'm satisfied that the line is not defined by the regulations. The line is something other than the regulations. And, if we're going to allow that, as an agency, then I think we need to say, "okay, here's where the real line is, and if you step over that real line, you're going to get your wrists slapped; you're going to be in trouble." I don't think that was done in this case. And I think that, for that reason, I'm not inclined to go along with the fine. Exception by exception (there are seven listed), in my view, I would agree with exceptions two and three. I would disagree with all the other exceptions as made by the Respondent in his brief. If agreeing with exceptions two and three then causes a vacation of the Order or a remand or whatever (and I'm not sure, procedurally, how we do this), then I would recommend that that's what we do.

BURGESS I guess that I come from almost the same direction that you do, Commissioner Petersen, I think we've got a problem that's much like the case of spraying Sevin on Tillamook Bay. I don't like to lay the inconsistencies that we have in this practice on an individual case. I think we need to solve them separately. But, not having a legal mind, I don't know how you phrase that. So...

RICHARDS Well, do you agree with Mr. Huston and the hearing officer that there are two issues--one is the transfer, and the second is the validation for the burn in the second district? After all, he says, each time he said (sometimes he says 'transfer' and sometimes he says 'I wasn't sure whether I would, or not'); but each time there's nothing in there that suggests that he

advised the Junction City district that he was going to burn. And, isn't the district entitled, under the most informal, to note that he's going to burn, so they'll know that that 160 acres or 233 acres is going to burn and not the neighbor. You may be burning two 233 acres side by side and go over your quota by 233, or the total allotment within the district. Now, I'm persuaded too that I didn't see the witnesses testify, and therefore I can't judge credibility. I have to leave that to the hearings officer. But there's certainly something in the record that says he transferred. I don't think he's met the second burden to show that there was a validation.

PETERSEN A prior validation.

RICHARDS A prior validation. But, even an after-the-fact validation, no matter how loose that system was, there had to be some kind of prior notice for knowledge that you might be exercising the after-the-fact validation. I didn't find any evidence that any other person, other than this individual himself, had used that after-validation practice. Maybe I missed that in the record.

PETERSEN I was under the impression that the after-validation process was part of the informal practice that had, in fact, gone on in the past. This was not the first time that somebody has called up afterward and had them insert a validation number. And, my prior statement is based on that understanding of the record. And I believe Mr. Walton made that point in his argument.

RICHARDS Other comments?

PETERSEN Another thing; I'd like to make one other. It seems to me that, also, I think the point was made, and everybody agrees, that he did not exceed his quota. In other words, he ... we're talking about a very technical situation here. We're talking about an application of rules and regulations in a very technical thing. He didn't do anything wrong, other than follow this informal practice. Now, he stayed within his quotas, he was entitled, ultimately, to burn that acreage. If he had exceeded those bounds, I would certainly have a different feeling about it. But under these circumstances, I'm not prepared to make an example in this case on those facts. Because I think the agency, in the past practices, have contributed to the situation.

RICHARDS Now, explain that to me a little bit. How did the agency contribute? You mean it had a knowledge, or something in the record here that shows that it had a knowledge that there was after-the-fact validation in a district which never had any prior notice on the day of the burn? You see, now, Harrisburg might have had some prior notice. But there's no prior notice in Junction City, no pre-arrangement, and, does the record tell you, and are you satisfied that it was the practice after the burn is all over to call and say, "By the

way, I burned my allocation, and you need to include that as part of your quota."?

PETERSEN But didn't the Respondent assume that the Harrisburg people would call Junction City people? Wasn't that the practice?

RICHARDS How could he?

PETERSEN Didn't he assume when he made his phone call to Harrisburg and said, "this is what I'm going to do" (or used the word 'possibly'), didn't he assume then that that call would be made from Harrisburg to Junction City? Isn't that his testimony?

RICHARDS Well...

PETERSEN In other words, that that notice would be given to Junction City?

RICHARDS But, I thought the practice was, if you were going to transfer, you transferred. In other words, I'm not going to burn there, today, so don't include me in your quota; I'm going to burn in Junction City.

PETERSEN Um Hm.

RICHARDS He didn't say that. "Possibly, I may. I may not." As far as I know, he could have come back and burned in Harrisburg.

PETERSEN Well, that's your interpretation of what he said.

RICHARDS Yeah.

PETERSEN I just interpret the record differently.

RICHARDS Okay. Any other discussion? I think if we adopt your motion to...

PETERSEN I haven't made one.

RICHARDS If you make one, on these two exceptions (I mean, you're concerned about these two exceptions), I think that would decide the case.

PETERSEN Okay.

RICHARDS If those two were decided in favor of ... (I'm just trying to see if you and I come to some agreement about the effect of any motion right now), that would, in effect, allow the appeal. Don't you think that would be so?

PETERSEN I would think so ...

RICHARDS Alright.

PETERSEN ... But I was looking to our lawyer over here to help with that process.

RICHARDS I need it too.

HASKINS I'm going to read the exceptions to that. ... I'm going to ask Michael Huston to assist me on that point.

HUSTON Mr. Walton may want a chance at that, as well. Michael Huston. Yes, if I understood the proposal that's under consideration, I think if the Commission were to accept the Respondent's first two exceptions, that that effectively negates the proposed penalty.

PETERSEN Two and three.

HUSTON Yes.

PETERSEN Number two and three, those two. I would think so too, but I just... Then, I would move, Mr. Chairman, that the Commission accept Respondent's exceptions two and three and deny all other exceptions.

RICHARDS And you're saying that with the expectation that if so, that basically allows the appeal?

PETERSEN That is correct.

RICHARDS Alright. Is there a second to the motion?

BURGESS I'll second it to get it on the table.

RICHARDS It's been moved and seconded. Is there discussion?

BURGESS I guess not really...

RICHARDS Mr. Burgess?

BURGESS ...discussion of the motion, but I guess we have to discuss something following our action here. That something isn't working. (one sentence lost). So with that .....

PETERSEN Yes. I hope to get to that, Mr. Burgess, after we get the appeal.

RICHARDS If there's no more discussion, call the roll.

YOUNG Commissioners Petersen?

PETERSEN Yes.

YOUNG Brill?

BRILL I abstain

YOUNG Burgess?

BURGESS Yes.

YOUNG Chairman Richards?

RICHARDS No. Motion is adopted. Just a moment, I guess I better ask, it takes a majority of the Commission ...

HASKINS It takes three affirmative votes to pass.

RICHARDS ...three affirmative votes. The motion fails. And the appeal is denied. Is that the correct ruling in light of that vote?

HASKINS I think you're back where you started from.

RICHARDS Ah, the motion's failed and there has been no action of the Commission.

HASKINS Right.

RICHARDS I believe you're right.

YOUNG Mr. Chairman, for the purposes of being able to advise Mr. Walton and others, does the Commission wish to reschedule this matter when you have a full Commission to further hear the matter? Is there some...

BRILL I'd like to make a motion that we reschedule this hearing.

RICHARDS If we adopt that motion, I believe that if the other Commission member is going to participate, I believe the other Commission member will need to receive the benefit of the arguments of counsel and have the opportunity to review the record.

YOUNG And we could make that tape available.

RICHARDS That's also another way to deal with that. Is there a second to the motion?

BURGESS I'd second that. I think that...

RICHARDS It's been moved and seconded. Is there discussion on that motion?

PETERSEN I'm going to vote against that motion. I think that we've scheduled this matter today. I think that we have a majority of the Commission present, the Respondent has been here; he's had his lawyer here, gone to some expense. I think it's too bad we can't come to some kind of a conclusion. We've had the record before us, we've had a chance to review it, and I just don't think it's fair to the Respondent to put him through that--another step.

BRILL Mr. Chairman, it appears to me that (me being a layman) this is a highly technical deal for your legalists. And I think that we ought to reschedule this thing and get it down in layman's language as to what's happening.

RICHARDS Let me ask you one more time, Mr. Haskins. What's the effect of a split vote. Let's say that today we'd had all five Commission members and there had been two abstentions, and it was 2 to 1 in favor of allowing the appeal. Wouldn't that have the effect of denying the appeal? Unless somebody asked to reconsider the vote?

HASKINS No. I think you have before you an appeal of the hearings officer's decision. And I think you're required to take some action as a Commission, one way or the other. And until that action has been taken, it just has not been acted upon.

BURGESS Thanks!

RICHARDS No, there was a second; Mr. Burgess, did you second the motion about ...? Okay. We have a motion before the Commission. Further discussion on that motion? Those in favor, say "Aye"? ... Woops; call the roll.

YOUNG Commissioners Petersen?

PETERSEN No!

YOUNG Brill?

BRILL Yes.

YOUNG Burgess?

BURGESS Yes.

YOUNG Chairman Richards?

RICHARDS No. ... We have one other device, and that is at the end of our agenda we always used to have a work session. It's no longer scheduled. I would imagine that we could consider that again today, or chose not to consider it, and await advice of legal counsel on where we are on it procedurally. Mr. Walton, I wouldn't necessarily suggest you stay because it's hard to tell when we would do that, but I would contemplate that there would be no further action that we would take at this time today; but we might take action before the day has concluded.

WALTON If the Commission wishes to consult with me by telephone, I will make myself available so that we can do it by conference call, perhaps.

RICHARDS I think what we can do; you know the worry that you have a Commission who's not read the record or heard arguments, and

I think (as Mr. Young says) we can make the tape available or a transcript of your arguments and those of Mr. Huston available, and I think at that point--would you then have any objection to the full Commission making a decision, once the other Commission member had read the record, which she probably already has--she's had the benefit of this material.

WALTON I would have no objection to that.

RICHARDS Alright. Then we have concluded that agenda item. Thank you all very much.

(TRANSCRIPT OF WORK SESSION TO FOLLOW ON DOK183.8A)

TRANSCRIPT OF WORK SESSION AT CONCLUSION OF 4/8/83 EQC MEETING

* * * * *

BURGESS That concludes all of the regularly scheduled agenda items. If there's no further business before the Commission, I'll entertain a motion to adjourn, and I understand you want to have a work session following an adjournment?

YOUNG My impression is that there was an interest in getting into some of this discussion that flowed from the case that the Commission had before them on field burning, talking about what our usual and regular practices are, and so on. To that end, Sean O'Connell, who is responsible for the field burning program, is here, and I think a discussion of that sort might be very useful. We believe so, at least.

BURGESS Okay, what's your pleasure, gentlemen? ... --What's your schedule?

PETERSEN Well, I'm due at a meeting I'm supposed to be at in Eugene that started at 1:00 p.m. But that's alright. I feel that it's important that we spend a few minutes, anyway, on that subject.

BURGESS Okay, well, why don't we adjourn the meeting, then, and proceed into a kind of question and answer session, here.

BRILL I move that we adjourn.

PETERSEN Second.

BURGESS Okay. So ordered. Then, let's proceed; maybe we can questi n Sean a little bit about some of these problems that kind of arose here this morning as we contemplated the case of Mr. Hayworth. Jim, you had...?

PETERSEN Well, I understand from Jack Weathersbee that things aren't that way anymore, that things have been already changed and maybe we have these problems solved; but ... let me reiterate my concern, and that is that I feel that it's the agency's responsibility to clearly notify the citizens where the line is. And if we have a line that's drawn in writing but we enforce a different line, then, first of all, that's not good practice; but, I can appreciate the fact that, under these circumstances, that may be the only way we can operate and I can accept that. But to every extent possible we need to let the folks know where that line is. And if there's any doubt, we resolve it, I think, against the agency and not against the citizen. That's my point. Now, with respect to if it's in writing, then that's a whole different story. You're either on this side of the line or the other side. Do you get my point?

O'CONNELL Yeah.

PETERSEN Okay.

O'CONNELL Sean O'Connell; I'm coordinator of the Field Burning Program. It's difficult for me to say, during the time of this case (which was in 1980) about what actually occurred and what was supposed to occur. I wasn't coordinator of the program at that time, and I wasn't really involved in (one or two words lost due to coughing). It's been my impression that departures from the correct procedures (as far as it relates to the actual control of the burning): the prior issuance of a permit for burning in an area, requirement that farmers register their fields--the basic things that are really our only mechanism for controlling and meeting state and federal law--those are by and large followed all the time. There are exceptions, but, for the most part, from talking to permit agents, and I think it was discussed as part of the hearing that was held, the agents have said they are very, very limited. Usually, in relation to a prior agreement that if such and such happens, then he would issue a permit.

Since 1980 (I became coordinator in 1981), and I would agree with the attorney that it is a fast and furious program, at certain times. I don't think that it's a loose program. It's fast and furious in an effort to get the burning done when the conditions warrant. We try to give every opportunity that we can for the farmer to get the burning done, but, I think attendant with that is the responsibility on the farmer that it's doubly important that you abide by those restrictions to see to it that we can continue to do it that way. For example, if we add an extra half-hour to the burning that is done, we're coming up against the limit where it <u>better</u> be out by the end of that half hour, because we have extended it to that point. Those are the kinds of things that I think are understood out there.

In terms of us running a loose program, I think you could survey the farmers, and most of them would say, "no," we are not loose with field burning--we are very, very restrictive and tight with field burning. Since 1981, I know of no cases where a farmer has burned a field without a permit and gotten away with it. There have been a handful of cases I can recall where I have found out that a farmer has burned a field without a permit, and we have referred all of those for enforcement action. In many cases the agents will turn in the farmer, so they understand the implications of burning without a permit. Also, I'd like to just give a little, brief background on where we were in 1980.

In 1979 and 1980 we funded an independent research group to assess the kind of illegal burning that might be going on in the Valley--overburning; burning more than what is really being reported to us. Both of those years they came back with an estimate that 30% more acreage is being burned than what we know about. Thirty percent is a big figure, and it concerned

us significantly. What we did at that point was this. (In fact, our last rule revision occurred two years ago, our very last field burning rule revision, two years ago, was in this. very building) and what we did was institute a schedule of penalties for field burning infractions. It was, essentially, putting the growers on notice that if you burn late, you will be assessed $1,000 penalty; if you burn without a permit, it is $1,500; if you do it again, in successive years, it will be doubled. This was essential to the situation we were in then that illegal burning was perceived to be a real, big problem. In addition to the penalties that we included in the rules, we made a number of rule revisions that affected how we burn that had a secondary effect on stepping up enforcement. We required that fields be mapped. Prior to that there was no mapping of the fields that the farmers burned. By mapping the field, we can investigate the violation very easily. The way we burn changed, also. Prior to 1981 we burned, generally, under what we call a general quota release. It's a flat amount that we say: "Here, it's 1:00 p.m.; you have one quota to burn," and they burned it all rig t at that very moment. We don't burn under general quota releases anymore. We are more restrictive. We burn, more or less, field by field. We set quota limits, but then we say, "you can only do that two fields at a time." The rate of burning is governed. We also control burning by zone, which is a smaller area than a district. What effect that had was, the quota transfer, at this point, is almost non-existent. Farmers can't transfer a quota from one district to another now, simply because we're burning differently in that area where they would prefer to burn. Also, fire districts have a priority list of farmers in their own district, which is their way of saying, when burning is allowed they give the first permit to this farmer's field, and the second permit to this farmer's field, and that list is established before the summer season even begins. If a farmer wanted to transfer on the day of a burn burning permission from one district to another, were he allowed to do that in the other district, it would not be fair to the other farmers on that burning list. So, if more acreage was allowed to be burned in Junct City on that day, we'd go to the grower who was first on the list, not to the farmer that was first on the list in another district.

Operationally, since 1980, we have added more field inspectors. We have inspectors flying in the air, sometimes, when burning is occurring who report on illegal burning, take evidence, photographs, send somebody there by way of the radio, etc. But, in terms of the organization of the program, we do a number of things that we didn't do a lot before. We meet with the farmers every year before the summer starts. We had four meetings, in fact, a month ago, where we probably met with about 300 farmers out of the Valley. And that's an opportunity for us to tell them about any changes in the program, an opportunity for them to complain to us about problems they have, and there's some exchange there. In

addition to meetings with the farmers, we do have direct contact with every grower via a letter that is sent out to every farmer before the summer starts. What that letter says is: "Enclosed is a copy of the permit, the field burning permit that every farmer has to abide by. You are expected to abide by every item in this permit every time you get to burn." Farmers prior to that didn't get the physical permit in their hand. It went to the fire district who issued permits and because it's by phone, the farmers never saw the forms. So, we send out to every farmer what the permit conditions are for every time that they burn, and, also, in that letter we indicate any changes in the program that would affect their burning, or whatnot. It's just a way to bypass the permit agents to get directly to the growers.

In terms of our permit agents, there are about 50 permit agents out there. They are part-time people obviously. The Department reimburses them according to the schedule established by statute. They are local people. They are fire district personnel, or somebody out there who knows the area that's willing to do that. We have meetings before the summer starts with those permit agents--training sessions where we explain "how to," from record keeping to other matters dealing with permits. We also have a permit agent manual that describes the administrative procedures that they are required to follow in making any kind of record-keeping or transaction or anything like that. These are updated every year. We send out new inserts for the manuals, and we explain the changes.

Aside from that, I don't know how we get more direct control over local people. I think the only way that you are assured that you have direct control over the permitting and everything that's said and done in terms of permitting is to remove local involvement. And I don't think that would be beneficial to the program.

PETERSEN Oh, not at all. What you're telling me is that this kind of a thing probably wouldn't happen again. Is what the Hayworth case probably would not.

O'CONNELL I don't believe quota transfer would happen again, and, in fact, that's really only a secondary issue in this case. The primary issue is burning in an area without a permit from that area, because that's the only way we have of controlling burning.

BRILL How many farmers do you have to deal with? Do you have a definite number every year, or does it...

O'CONNELL Usually there are about 900 farmers that register for field burning. Some have several thousands of acres that they burn and some just have one field.

BRILL It's all in the Willamette Valley there?

O'CONNELL All the way from Eugene up to Portland, basically.

BURGESS I guess, in response to your observation, Jim, it might happen again, but it seems to me that if it happens under these circumstances, very clearly the person understands that he is violating the rules.

O'CONNELL Right.

BURGESS I'm not so sure that the line was that definitive in 1980.

O'CONNELL Right.

YOUNG Well, one other thing, Fred, though that still remains there, and I don't know how we overcome it, or, in fact, we ever do, and that is, as Sean has indicated, when the statute says you will work through those fire districts ....

BURGESS Um Hm.

YOUNG ...we are not directly supervisory of those fire districts.

BURGESS No. That's true.

YOUNG I don't know that we're ever going to be in a position where the Commission or the hearings officer may not hear the plea made that, "well, wait a minute, this has been allowed here." You know, the argument of, "Gosh, this has been a common practice." And, how we can do, as Sean has indicated, those things that occur to us to try to overcome that and make a case that, clearly, that individual grower should have had knowledge of what he was required to do, and we've instituted some of those contacts. Whether or not that, in fact, will be viewed by the Commission or by the hearings officer or by a Court, if it got to that point, that we've overcome that agency relationship, and, whatever representations that may be made there is, I guess, something we just won't know until that case comes along and you have a chance to take a look at it.

PETERSEN Well, I'm satisfied, certainly, that, you know, we've got a whole different program now than we had three years ago, in terms of defining where the line is, and I feel very comfortable with that.

O'CONNELL Yeah. I would only add that whatever your ruling on this case at some future point is, it will eventually be a message to the farmers. And it would be helpful to have a clear statement that where the Commission perceives that line to be, in that prior actions or whatever may not necessarily imply to the farmers that they can burn without a permit, for example--that kind of thing.

BURGESS That's true.

YOUNG Yeah. I would suspect that what we may want to do, without regards to whether or not that decision is yet to be made or was already made or was already made ....

PETERSEN Right!

YOUNG ... we may very well want to come back to the Commission at your next meeting with some kind of a statement for your consideration that might indicate, "all right, we made that conclusion there, but this is what we're saying to people;" because it's a difficult program to operate. It's made more difficult by both the number of people we regulate and by the number of local units that we are involved in that regulation, and we'd be most anxious not to do violence to that program by getting a message out, you know, that misled people in terms of what the Commission's intent was.

BURGESS Yeah, I certainly agree.

PETERSEN I agree.

BURGESS Any other questions on this issue? Now, the disposition of this is what?

YOUNG Well, Mr. Walton, I think, believes the matter has been disposed and is evidently going to submit information to the Department and Commission ...

PETERSEN Right.

YOUNG ... by way of briefing, to argue that you did make the decision, and that, presumably then it would fall into the category of any other decision: it could be reversed only if someone on the prevailing side chose to reconsider the matter at, I guess, the next regular meeting, is the normal practice. So, I would guess we'll all see a little more information about that between now and the time ...

BURGESS Sounds like we'll resolve this issue of how many votes it takes and whether we need to affirm, reaffirm.

PETERSEN Yea, that's a point.

BURGESS Yea. Okay. Well, then, we're finished.

YOUNG Now, you may adjourn, but only if all three of you agree!

* * *

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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MEMORANDUM

To: Environmental Quality Commission

From: Linda K. Zucker, Hearings Officer

Subject: DEQ v. Hayworth,
Appeal of the Hearings Officer's Findings of Fact, Conclusions of Law and Order
No. 33-AQ-WVR-80-187

Respondent has appealed the hearings officer's decision affirming a $4,660 civil penalty for unauthorized open field burning.

Included in the record for review are: 1) The hearings officer's decision; 2) Respondent's brief; and 3) Department's answering brief. Because Respondent has challenged certain factual findings, I have provided each commissioner with a copy of the transcript of the hearing.

LKZ:k
229-5383
March 21, 1983
Attachments

HK1777

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY OF THE STATE OF OREGON, Department, v. HAYWORTH FARMS, INC., an Oregon corporation, and JOHN W. HAYWORTH, Respondents.	HEARING OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER No. 33-AQ-WVR-80-187

BACKGROUND

This matter was initiated by Department's notice of assessment of civil penalty which alleged that on or about August 30, 1980, Respondents, without obtaining a valid permit, negligently or intentionally caused or allowed the open field burning of 233 acres of perennial grass seed fields located within the Willamette Valley. Department levied a penalty of $4,660 or $20 per acre, the minimum penalty then required by law for the violation asserted.

Respondents first answered the notice informally, and then filed a formal answer through counsel. In addition to various admissions and denials the answer raised two "affirmative matters." The first challenged Department's notice for failure to set forth the factors of aggravation and mitigation which had been applied in establishing the amount of the penalty assessed. The second challenged Department's right to exact the penalty in light of asserted misleading and improper field burning program practices. Specifically, Respondent alleged that Department, having delegated authority to local fire districts to issue permits, is precluded

from enforcing the terms of its administrative rules because fire districts have, with apparent authority, endorsed permit practices contrary to the rules. Respondent argued at hearing that Respondent was not negligent in burning the acreage under the circumstances which obtained.

At hearing Respondent stipulated that the notice herein was received, that Respondents were in control of the described Willamette Valley, Oregon property, and that the fields, which were planted to grass seed, were burned.

The issue to be decided is whether there existed an official pattern of practice outside the administrative rules from which a reasonable farmer would conclude that he was authorized to act as Respondent did in this case.

FINDINGS OF FACT

For the past several years John W. Hayworth (Respondent) has been a member of the Smoke Management Committee of the Oregon Seed Council. The committee reviews proposed administrative rules on field burning and recommends changes in an effort to improve the field burning program by helping the grass seed industry assure that fields are burned while smoke problems are minimized. During his tenure on the committee Respondent has reviewed the Department's administrative rules regarding the permitting process and regarding transfers of acreage allocations. Respondent is a past president of the Oregon Seed League.

In 1980 Respondent registered for burning eligibility a number of fields located in different fire districts at some distance from one another. On the basis of this registration he could reasonably expect to obtain as his "grower's allocation" authority to burn a substantial

percentage of the number of acres registered. Within this allocation he would select which of his registered fields he wished to burn in each district. He could then burn a particular field after complying with all other constraints set by the regulatory authorities, the most significant being obtaining a validation number which is the actual permit or burning authorization.

On August 30, 1980, at midday, the Junction City Fire District received authorization to permit field burning of acreage within its district equivalent to one "quota." Respondent had previously informed the Junction City Fire District clerk that he had fields ready to burn. The district clerk called Respondent and authorized him to burn 160 acres in the Junction City Fire District.

Now authorized to burn a field in Junction City and pressured to work quickly, Respondent considered how he could use his various allocations most efficiently. He called the Harrisburg Fire District where he also had acreage registered.

Respondent called the Harrisburg Fire District clerk[1] and informed her that he would not use his expected share of the acreage allocation in Harrisburg as he would "possibly" burn it in Junction City. He then proceeded to burn the 160 acre field for which he had received burning validation from Junction City.

Weather conditions remained favorable, and a second "quota" was released. On learning that an additional quota had been released, Respondent burned two additional nearby fields of approximately 230 acres

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[1] The clerk had no recollection or record of the call.

which he considered to be his share of the additional quota. When he completed this burning he promptly called the Junction City Fire District to report what he had done. The Junction City Fire District clerk made a recordkeeping entry to acknowledge receipt of this information from Respondent. It is from her records that enforcement officials "detected" that more acres had been burned in Junction City than the Junction City official quota called for, and concluded that an illegal burn had occurred.

ULTIMATE FACTS

Respondent intentionally burned a 233-acre grass seed field without a valid permit.

Respondent did not direct field burning program personnel to transfer his acreage allocation from Harrisburg to Junction City.

Respondent did not prove an established precedent for his actions. Respondent's actions were not reasonable.

CONCLUSIONS OF LAW

The Commission has personal and subject jurisdiction.

Respondent negligently or intentionally caused or allowed open field burning of 233 acres of perennial grass seed fields in Lane County, Oregon, without first obtaining a permit, in violation of ORS 468.475(1).

Respondent is liable for a civil penalty of $4,660.00, the minimum penalty established by law for the violation proved. ORS 468.140(5).

The violation was not caused by an act of God, war, strife, riot, or other condition as to which any negligence or wilful misconduct on the part of Respondent was not the proximate cause. Therefore, Respondent has not established a defense under ORS 468.300.

///

OPINION

The record of this hearing established that the statutes and administrative rules governing field burning were supplemented and even sometimes contravened by an ill-defined body of informal practices that became the conventional wisdom and mode of operation of field burning program staff and participants. The Department, largely working through the local fire districts, acquiesced in some of these practices and may have been ignorant of others. The difficulties in running a program so dependent on consensual compliance, rapid action, and the whims of nature, may have made such flexibility desirable, but the cost was problems in attempting to enforce compliance with the formal rules.

What is also apparent from the record is that whatever flexibility had been established, Respondent exceeded it. Respondent's case rests on the proposition that in burning his expected share of the second quota he was doing only what others did and what he had done in the past; having been allowed to do it previously without correction, he had been lulled into believing it was acceptable. Specifically, his defense was that transfers of acreage from one district to another could be accomplished simply by giving notification of intent to transfer to either district. The defense was predicated on his actually informing either district of the transfer and relying on the district clerk to do the paperwork. Whatever the merit of the defense as a legal proposition, it fails factually because Respondent failed to establish the necessary notification. The following statement by Respondent was made in the context of a discussion of the farmer's need for flexibility in performing field burning:

"No; and if I may add for this reason, that I told them that I was not going to burn in Harrisburg, and that I would like to possibly burn in Junction. We did. I did not know at the time whether we would have the allotted time; we didn't know when the cutoff was going to be, whether we could move on and use the Harrisburg-Coburg quota in Junction City. We didn't know, we don't know how soon we're going to get shut off, and I knew or supposed we had time to burn in Junction. We had been on the way to burn a field with the validation number and on the monitor have been told to stop, to not burn. We really don't know how much we're going to burn when we go out there."

Respondent did not notify the Harrisburg clerk to make a transfer. He notified her that he would not be burning in Harrisburg. He would possibly burn in Junction City. On the basis of that information the Harrisburg clerk did not effect a transfer. He had not told her to. This fact transforms the issue. What might have been a question of whether Respondent had the right to rely on the district clerk's passive acquiescence in a request, becomes a question of whether a grower may, without any prior authorization or approval, proceed to burn his fields according to his convenience and speculation on how authorization might be given.

Even assuming the existence of various unofficial practices relied on by Respondent to justify his action, this is what we get:

1. Farmers assume that field burning personnel are DEQ agents acting with DEQ approval and authority.
2. Acreage quotas transferred from one district to another "belong" to the transfering farmer and can only be burned by him if burned at all. When he transfers, Respondent always notifies the district that he is transferring from. In that way the district is alerted not to allow someone else to burn to an extent that the district quota would be exceeded.
3. Transfers of acreage between districts could be made by telephone.

4. Transfers could be effected by calling either the district the farmer was transferring to or from.
5. Respondent has never in the past been required to complete the necessary paperwork, including transfer application, before transferring acreage from one district to another.
6. Respondent has some times obtained a permit to burn a particular field, found it unburnable, burned a different field, and then reported the fact to the field burning agent with the result that the agent adjusted the records to reflect the changed location without comment or reprimand.
7. Growers sometimes burn additional unpermitted acres within their individual allocations when an additional quota is released.
8. Timing is crucial. When an additional quota is released it would be difficult to have all growers calling in to the field burning office to obtain authorization to burn, and still complete the burning within the time frame required.

None of these "facts" would authorize Respondent to burn fields for which he did not have a permit. If acreage transfer practices allow a degree of informality, they nontheless require, at a minimum, a clear request to transfer from district to district. If growers do anticipate authorization to burn additional acreage on release of addition quota, there is no evidence to suggest that growers do so without having sufficient eligible acreage registered in the district. Respondent exceeded the limits of the official burning regulations and the limits of any proved or purported rule of practice.

The penalty imposed, while substantial, is the minimum required by statute. ORS 468.140(5). The case record established that Respondent had previously stretched even the informal rules to their limits. The Harrisburg District Clerk testified that while there may have been instances of other farmers seeking after-the-fact validation for burning, it was usually Respondent. Others did it, if at all, under limited circumstances: Either there existed a prior arrangement between the grower and the field district to issue a valid number "automatically" in the event

of release of additional quota, or the grower already had a validation number to burn a particular field, but some farming circumstance made it more appropriate to burn a different field within the district, and the change would not result in the burning of acres in excess of the number originally authorized.

The agency will need to decide whether it can continue to allow any deviation from its written burning regulations. Respondent will need to exercise more restraint in taking advantage of what flexibility is authorized.

ORDER

Therefore, IT IS ORDERED THAT Respondent is liable for a civil penalty of $4,660 and that the State of Oregon have judgment therefore.

Dated this 11 day of November, 1982.

Respectfully submitted,

Rhea Kessler
Hearings Officer

NOTICE: Review of this order is by appeal to the Environmental Quality Commission pursuant to OAR 340-11-132. Judicial review may be obtained thereafter pursuant to ORS 183.482.

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY of the STATE OF OREGON, Department.	Case No. 33-AQ-WVR-80-187
vs.	
HAYWORTH FARMS, INC., an Oregon corporation, and JOHN W. HAYWORTH, Respondents.	APPEALS BRIEF

STATEMENT OF THE FACTS

Respondent has been a grass seed grower for the past 31 years, of which the last 20-25, he has been regularly engaged in the practice of field burning. In 1980, as in previous years, respondent registered for burning eligibility a number of fields located in different fire districts. He duly paid his required fees and received an allocation for the season.

Upon receiving DEQ authorization to burn one "quota" on August 30, 1980, the Junction City Fire District called respondent and gave him permission to burn 160 acres in the Junction City Fire District. With acreage allocations also in the Harrisburg district, respondent called the Harrisburg clerk and told her he would not use his expected share of acreage allocation in Harrisburg, that he wanted to use his permit in Junction City. Believing he had made a valid transfer of his acreage allocation to the Junction City district, respondent proceeded to burn the 160 acres of field for which he had received a validation.

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Unbeknownst to respondent, the Harrisburg clerk never recorded the transfer request, nor did she recall at the administrative hearing having received such a request. The testimony shows that the clerk was new on the job as of that summer burning season, that she was trying to coordinate 71 different growers, and that she was responsible for recording the numerous messages she received from them from any one of three different phones.

While burning the first 160 acre allocation, the DEQ released a second "quota" to be burned. On hearing of the second release over his radio, respondent proceeded to burn an additional 160 acres on two other nearby fields, an amount respondent believed to be his share of the additional quota. Upon completion of the burning, respondent promptly called the Junction City Fire District to report his burning activity for the day.

Respondent later received a violation notice citing him for burning without a valid permit and levying a civil penalty of $4,660.00 or $20.00 per acre. A hearing was held on April 28, 1981 from which the Hearing Officer issued an Order dated November 11, 1982 affirming the civil penalty. This appeal seeks a reversal of that Order.

FIRST EXCEPTION

Respondent excepts to the Hearing Officer's failure to address the adequacy of the Notice of Assessment.

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ARGUMENT

By way of Answer, respondent raised the issue that the Department's Notice of Assessment of Civil Penalty was defective in that it failed to comply with the requirements of OAR 340-12-045(1)(a-j). As such, respondent sought, and continues to seek, a dismissal of these proceedings.

Under the Department's own administrative rules, cited above, the Director is given a two-fold procedural responsibility in imposing a civil penalty: (1) to consider the factors outlined in OAR 340-12-045(1)(a-j), and (2) to "cite those he finds applicable . . . ." (emphasis added) A clear reading of the regulation indicates that it is of no consequence that a "minimum" fine is levied; the factors must nonetheless be cited to prevent a defect. When the Department is attempting to hold respondent to the strictest interpretation of the regulations, it is not too much to expect the Department to adhere to its own procedural rules.

As such, the Department's failure to cite the factors relied on in reaching the civil penalty in this case should be deemed a defect justifying dismissal of these proceedings.

SECOND EXCEPTION

Respondent excepts to the Hearing Officer's finding of fact that respondent did not direct DEQ personnel to transfer his acreage into another district.

ARGUMENT

In concluding that respondent never made a proper transfer

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request, the Hearing Officer relied heavily on the testimony that respondent told the clerk he would "possibly" burn in Junction City. (Hearing Officer's Opinion, p. 5-6) The testimony is taken out of context, and is relied on in error.

First, respondent never testified that he actually used the term "possibly" when he spoke to the district clerk. Indeed, other testimony indicates the request to transfer was much more emphatic. Attention is directed to Mr. Hayworth's testimony in response to the following inquiry by DEQ's counsel:

> "(SCHURR) O.K. Thank you. Subsequent to getting the, after you got the validation number, what did you do?
>
> "(HAYWORTH) I notified the Harrisburg Department which is Harrisburg-Coberg District that I was not going to burn any acres in there, that I was going to Junction City and wanted to use my permit over there, my quota." (Tr. 11)

Such a directive by respondent demonstrates a proper transfer request.

Secondly, the reference to the phrase, "possibly burn" is taken completely out of context by the Hearing Officer. The phrase did not mean that respondent "possibly" wanted his acreage transferred; it meant that he definitely wanted a transfer to the other district, though he was unsure as to his ability to burn in the other district given the inherent problems that could arise. Subsequent testimony by Mr. Hayworth clarifies the situation.

"(CONLEY) Why?

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> "(HAYWORTH) Why? Because we did not know where we were wanting to burn, uh, the conditions, or adjacent fields of neighbors; that uh, sometimes you go to one field and think you're going to have, you know, ask for a validation number, and go to this field, and maybe you see, right down wind, somebody's harvesting in there, and it, its a dangerous situation, and you may go up the road a mile or two, or to another field that has less hazards around it; we have to use uh, thought about, you know, thought about our fire hazard." (Tr. 29)

As the DEQ's Junction City field burning clerk testified, due to such hazards or problems that can arise after you initially inform a district clerk you will burn a certain field, it was common practice to change the records after a burn to reflect what actually occurred. (Tr. 97-98) Hence, every request for a transfer is inherently contingent upon the grower getting to the field and ascertaining the safety and/or feasibility of burning there. That fact however, does not mean the transfer request was invalid. Absent a guaranteed ability to burn the other field, such notification as used by Mr. Hayworth is not only the best method of requesting a transfer, its recognized as the standard method for doing so. Had the district clerk, Sheri Falk been more experienced, she would have understood the request as being definite in nature.

A third problem with this particular factual finding is that it implies an underlying assumption that because the Harrisburg district clerk, Sheri Falk, did not make any written notification of a transfer request from respondent, then evidently no such request was made. This assumption is in sharp contrast to evidence reflecting on witness credibility.

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Testimony of Ms. Falk indicates she was new on the job; the summer of 1980 being her first as a permit agent for the Harrisburg-Coberg districts. (Tr. 73, 77) At the time, she had only handled a total of three transfers. (Tr. 83) Not only was her experience minimal, she testified that she served 71 different growers, each calling on three different phones with different pieces of information. Given the hectic atmosphere of the office in which she worked on August 30, 1980, it is easy to see that she could not, as she admitted, be certain that Mr. Hayworth failed to make a transfer request. Her testimony instead was that she did not recall a request, nor did she write one down. (Tr. 74, 77) Whether such failure was due to her negligence, a memory lapse or whether it was because she never received a transfer request from Mr. Hayworth is left unanswered by her testimony.

In contrast, Mr. Hayworth's credibility is not only strong, but it is never refuted by DEQ counsel. The record indicates that he has been a grass seed grower approximately 31 years (Tr. 7, 19) of which he has been field burning for at least 20-25 years. (Tr. 7, 16) He has been working closely with the Smoke Management Counsel and with DEQ officials in trying to get the Smoke Management program properly handled and working. (Tr. 7-9, 18-19, 25) He has transferred acres on prior field burning seasons with no problems (Tr. 25), and Mr. Hayworth has had no prior violations for either improper burning or handling of his burning operations. Based on the

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foregoing, it is amply demonstrated that Mr. Hayworth either (1) expressly requested a transfer or, (2) by the context of his request in light of the inherent contingencies involved in any transfer request, it was apparent that he sought a transfer. The Hearing Officer's finding of fact that a proper transfer request was never made is in error and contrary to the great weight of the testimony. A proper factual finding is that respondent adequately directed DEQ personnel to make a transfer but that they failed to do so.

THIRD EXCEPTION

Respondent excepts to the finding that he failed to demonstrate an established practice for his actions.

ARGUMENT

A. Established Practice regarding Transfers.

The great weight of the evidence points to the following established practice in making a transfer request. A grower need only call up either the district clerk of the district he wishes to transfer out of, or the district he wishes to transfer into, with no further requirement being necessary. Such was the testimony of (1) Tom Hunton, a grass seed farmer in Junction City (Tr. 139); (2) Rod Kragness, grass seed farmer in Eugene (147); (3) former district clerk Pam Strutz (Tr. 151) as well as (4) Mr. Hayworth's own testimony. (Tr. 26) Further, the procedure outlined by district clerk Marvie Tish indicates all the work is done by the clerk with the exception of the initial notice of transfer by the grower. (Tr. 93) And the explicit

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testimony of Pam Strutz, a former DEQ agent and district clerk was that she understood Mr. Hayworth's actions to be permissible under DEQ regulations. (Tr. 151)

The testimony of Marvie Tish also indicates that the DEQ has no uniform guidelines between the various rural fire districts on how to handle transfers, (Tr. 95) and that as a result, a great deal of discretion is involved. (Tr. 30-31, 140-141). Given the great weight of the testimony, Mr. Hayworth fulfilled his responsibility by calling the Harrisburg clerk and requesting a transfer. No other duty remained for him to do. It was, therefore, clearly erroneous for the Hearing Officer to find that no established practice of transferring acres had been established by respondent.

B. Established "After-the-Fact" Validation Practice.

The testimony of the DEQ permit clerks is revealing in demonstrating that after-the-fact validation was common and expected. Consider first the testimony of Marvie Tish, the clerk of Junction City.

> "(CONLEY) So, if they got out on a field, and the wind was going to blow it into the airport, or blow it onto a main highway, and they said, 'O.K., I'm going to move down and burn the same numbers of acres, or maybe a little less,' and they called you up after they burned and said, 'I didn't burn that (sic) other acres, in fact, I burned this field,' you'd what? Cross out that other (validation) number, or put that on another line? Correct?
>
> "(TISH) Um Hm. . . Um Hm. . . Right." (Tr. 96-97)
>
> "(CONLEY) In other words, you're trying to be kind of flexible to those guys out on the field.
>
> "(TISH) Right." (Tr. 96-97)

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Pam Strutz's testimony indicates only one concern that DEQ brought to her attention, and that was the burning in excess of the quotas. She was never told by DEQ officials there was any problem with after-the-fact validations so long as they stayed within their quotas which the respondent did. (Tr. 156) Her practice as a clerk was to fill out a second validation number for the grower when they called in to report burning if there was a need to. (Tr. 156-157) While she felt this was a technical violation, she understood that DEQ would ignore such technical violations. (Tr. 161)

Not only were the DEQ field permit clerks a part of the practice, the growers themselves understood such actions were permissible. Don Bowers, a grass seed farmer for 25 years, stated it was his practice to begin burning under the first validation number, then when word was received over the radio that DEQ was releasing a second quota, he would commence burning the second quota immediately. A second validation number was requested only <u>after</u> burning the second quota. (Tr. 130) It was his understanding that a farmer could go ahead and burn a second quota without a prior validation number when they heard over the radio that a second quota was released. (Tr. 131) Hunton further testified that he was never told not to make such after-the-fact validations. (Tr. 140) When asked whether he felt he was risking a violation when he proceeded to burn prior to receiving the second validation number, he stated:

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"(HUNTON) I guess if you want to take a strict interpretation of the rules. There's a matter of workability and flexibility. I've spent a lot of years working with the DEQ to implement these kind (sic) of programs, and we all developed a system that worked between us, that we all realized there's times that we may be on one side or the other of the legal line. But, uh, Sean, and uh, his staff, and Scott before him, realized sometimes the impracticality of, of shutting these things down to make; to move to the point where everybody is entirely legal in starting back up again." (Tr. 139-140) (emphasis added)

Clearly the testimony of both DEQ agents and the farmers was that there existed an established practice to allow after-the-fact validations, and that this practice constituted an official pattern of practice in applying the administrative rule. Hunton testified to the DEQ agents acquiescence in the practice. The Hearing Officer was thus in error in not finding an established practice in both the transferring of acres and the after-the-fact validation process.

FOURTH EXCEPTION

Respondent excepts to the finding of fact that he burned without a valid permit.

ARGUMENT

If the foregoing arguments are accepted as true, then clearly this finding of fact cannot stand since it is based upon the conclusions that (1) no transfer was made; and (2) no after-the-fact validation process was allowed. If, on the other hand, the foregoing arguments are not accepted as true, then respondent asserts that the DEQ is estopped from making such a finding.

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As held in Webb v. Highway Division, 56 Or App 323, 327, 641 P2d 1158 review pending 293 Or 146 (1982), the traditional theory of equitable estoppel requires the pleading of a false representation and reasonable reliance thereon. See also, Brown v. Portland School District # 1, 291 Or 77, 84, 628 P2d 1183 (1981). From a pleading standpoint, clearly the requirements have been met by paragraph IV of respondent's answer. From an evidentiary standpoint, the record indicates two things about the respondents' activity: (1) that he acted entirely in good faith; and (2) that he was misled by DEQ's failure to clearly set forth the standards that would or would not be accepted as violations.

There are a myriad of estoppel cases against governmental agencies in which no clear pattern seems to emerge from the holdings. However, as Thrift v. Adult & Family Services Div., 58 Or App 13, 16, 646 P2d 1358 (1982), points out, "(a) review of cases in which equitable estoppel has been successfully invoked against the government reveals that the individual's asserting estoppel would otherwise have received the particular benefits at issue but for the agency's misleading or ambiguous assertions." See also, Demco Dev. Corp. v. Dept. of Rev., 280 Or 117, 122, 570 P2d 64 (1977).

Petitioner asserted at the hearing that it has been widely held that the State cannot be estopped from enforcing laws designed to protect the public health, yet none of the reported cases they cite in their Post Hearing Response Brief

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delt with matters of public health. The DEQ's authorities are distinguishable. The case of District Court v. Multnomah County, 21 Or App 161, 534 P2d 207 (1975) fits within the Thrift analysis in that the defendant was trying to acquire by agency error, a benefit to which he was not entitled to.

In Bankus v. City of Brookings, 252 Or 257, 449 P2d 646 (1969), the court held a city official could not waive the provisions of a mandatory ordinance or otherwise exceed his authority; but there the ordinance in question left no room for doubt or misrepresentation. The ordinance required a $250 deposit for excavation work applications plus a $2.00 per foot fee for trenches between two and two and one-half feet in width. The City Recorder failed to charge the $2.00 per foot fee, and it was that action that could not be waived. In this case, unlike Bankus, the DEQ officials were acting within the agency's grant of authority and there were no regulations that provided for transfer procedure, nor dealt with issuance of a second quota during the first burn.

Finally, the DEQ cites Clackamas County v. Emmert, 14 Or App 493, 513 P2d 532 (1973), but it too is different from the case before us. In Clackamas, the county planning department took steps to inform defendants by letter that what they were doing was in violation of the ordinance and to stop the acitivity. Defendants ignored the warning, went ahead and completed their project, and then tried to assert that the department was estopped from enforcing its regulations! No such attempt to

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inform the farmers that their transfer process or after-the-fact validation procedure was in violation of the regulations was made here. Instead, the DEQ inpliedly ratified the procedures through their conduct and their failure to alert the farmers.

Here Mr. Hayworth became ineligible to burn acres that he otherwise would have been entitled to, had a prior authorization been received. Unfortunately, he was not told by DEQ that a prior authorization was necessary. Indeed, Mr. Hayworth stated he relied on past experience that the district officer would handle the necessary paperwork, and that he only needed to let one office know he wanted a transfer. (Tr. 38-39) He had never had to confirm in the past that a transfer was actually made -- that was their job. (Tr. 39-40) Respondent was led to believe by agency inaction and indeed, their participation by way of the district clerks, that his actions were lawful.

> "(CONLEY) Did you believe that you had violated any rules when you burned that?
>
> "(HAYWORTH) No, I did not.
>
> "(CONLEY) And what was that belief based upon?
>
> "(HAYWORTH) From the way we've past been doing these things, I mean, uh, transferring papers and burning quotas from one District to another.
>
> "(CONLEY) Had anyone at any time, prior to this burn, ever said, 'Mr. Hayworth, you've been doing it wrong, and from here on, if you do do it like that, you're going to be fined?' . . . or cited, or whatever the word?
>
> "(HAYWORTH) No. ...No." (Tr. 40-41)

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Finally, the very principles of equity and public policy demand the exercise of estoppel in this case. With regard to the transfers of acreage practice, the applicable regulation fails to specify the proper procedures for making a transfer. OAR 340-26-013(5)(d). Regarding the time a validation number is necessary, the applicable regulations are not very clear, especially given an established practice which has been allowed to go on in which after-the-fact validations are allowed in cases of a second quota release during a first burn. OAR 340-26-010(2)(a) appears to require a prior validation to burn, while the express language of subsection (c) appears to allow validation of the permits so long as a validation number is obtained sometime during the day the field is burned. Given the DEQ regulation's failure to particularize the appropriate conduct deemed to be lawful, coupled with a practice in the field by authorized district clerks to allow a pattern to develop to augment those regulations, the DEQ must be estopped from enforcing the regulation.

Growers should be able to know <u>in advance</u> of making a transfer or obtaining a validation number exactly which system his actions will be judged by. Where the regulation is deemed to require the need for prior validations and the established practices of the DEQ agents either supplements or even contravenes those rules, then the growers no longer are given fair warning of what conduct is prohibited and such procedures allow for erratic and prejudicial exercizes of agency authority. Certainly,

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no administrative agency should have the power to act arbitrarily, capriciously, or inconsistently with valid past actions. Domogalia et al v. Dept. of Rev., 7 OTR 242, 246 (1977).

The Hearing Officer should find either that respondent complied with the established practice of obtaining a valid permit or that the Department is estopped from enforcing the regulations on the books contrary to the established practice.

FIFTH EXCEPTION

Respondent excepts to the Hearing Officer's legal conclusion that respondent burned in violation of ORS 468.475(1).

ARGUMENT

A reading of ORS 468.475(1) indicates it is not applicable to this case. Respondent had a prior permit from the Department and he had previously paid his acreage fees. It is those requirements to which the subsection and its cross references refer. Even if it is determined that the statute does apply, given the above arguments, respondent was in full compliance with the statutory obligation of a valid field burning permit.

SIXTH EXCEPTION

Respondent excepts to the Hearing Officer's conclusion of law that no defense was established under ORS 468.300.

ARGUMENT

Clearly, for the statutory provisions of ORS 468.300 to apply, there must first be a violation. This legal conclusion must inherently fall if the arguments cited above are accepted.

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SEVENTH EXCEPTION

Respondent excepts to the Hearing Officer's conclusion of law that respondent is liable for a civil penalty.

ARGUMENT

As is the case with the preceeding exception, this conclusion of law must fail if the arguments of respondent cited above are accepted on this appeal.

CONCLUSION

Based upon the foregoing arguments, the Department should not be allowed to penalize those growers who are within the accepted custom and practice of the DEQ. Mr. Hayworth, who has had no prior violations of these rules in over 25 years of field burning should not be found in violation of the rules in this case.

Respectfully submitted,

RINGO, WALTON & EVES, P.C.
Attorneys for Respondents

By _____
Robert G. Ringo
OSB No. 51092

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CERTIFICATE OF MAILING

I certify that I served the foregoing Appeals Brief on Department by depositing a true, full, and exact copy thereof in the United States Post Office at Corvallis, Oregon, on February 16, 1983, enclosed in a sealed envelope, with postage paid, addressed to:

Larry Shurr, Enforcement Section, DEQ, 522 SW Fifth Avenue, Portland, OR 97204.

Attorney of record for the Department.

Robert G. Ringo
One of Attorneys for Respondents

* * * * * * * * * * * * * * *

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March 23, 1983

Ms. Linda K. Zucker
Hearings Officer
Environmental Quality Commission
522 S.W. 5th Avenue
Portland, OR 97204

Re: DEQ v. Hayworth Farms, Inc. (No. 33-AQ-WVR-80-187)

Dear Ms. Zucker:

Enclosed is the Department's brief in the above case. I appreciate your and Mr. Ringo's courtesy in allowing an extension of time for this purpose.

Sincerely,

Michael B. Huston

Michael B. Huston
Assistant Attorney General

mlm

cc: Robert G. Ringo
Robert L. Haskins
Van A. Kollias
Larry Schurr
Field Burning Program

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY OF THE STATE OF OREGON, Department, v. HAYWORTH FARMS, INC., an Oregon corporation, and JOHN W. HAYWORTH, Respondents.	)	No. 33-AQ-WVR-80-187 DEPARTMENT'S BRIEF

STATEMENT OF THE CASE

In the fall of 1980, the Department of Environmental Quality cited respondent for burning 233 acres without a valid permit (validation number) and levied the minimum civil penalty of $4,660.00 or $20.00 per acre. Respondent requested a hearing, which was conducted by the hearing officer on April 28, 1981. Based upon the hearing record, the hearing officer issued Findings of Fact, Conclusions of Law and Final Order, affirming the violation and civil penalty.

Pursuant to OAR 340-11-132, respondent requested that the Environmental Quality Commission review the hearing officer's decision. On February 13, 1983, respondent filed an Appeals Brief setting forth exceptions to the hearing officer's decision.

With this brief, Department answers respondent's brief and respectfully urges approval of the hearing officer's decision.

STATEMENT OF THE FACTS

The Department accepts the statement of facts as set forth in the hearing officer's report. The Department also accepts respondent's statement of facts with the following exceptions:

1. There is conflicting testimony in the record as to whether respondent called the Harrisburg district clerk and if so, exactly what was requested or directed. This remains a factual issue in the case.

2. Respondent states in his brief that the second burning, which was the subject of the alleged violation, involved "an additional 160 acres." The record clearly establishes that the second burning involved 233 acres, and respondent has not previously contested this fact. Therefore, the Department assumes that respondent's statement is simply an error.

ANSWER TO FIRST EXCEPTION

The Department's Notice of Assessment was not defective, and even if it were, respondent was not prejudiced thereby.

ARGUMENT

Under the heading of "Mitigating and Aggravating Factors," OAR 340-12-045(1) states in part as follows:

> "In establishing the amount of a civil penalty to be assessed, the Director may consider the following factors and shall cite those he finds applicable. (Emphasis added.)

In this case, respondent was assessed the minimum penalty of $20.00 per acre burned. Despite this fact, respondent contends that the failure of the Department to cite any of the rule's mitigating and aggravating factors renders the notice fatally defective and the entire proceeding subject to dismissal.

The Department respectfully submits that respondent's contention is unfounded for two reasons. First, neither the

language nor purpose of the rule requires the citing of factors, particularly when the minimum civil penalty is assessed. Secondly, even if the notice were technically defective, respondent was not harmed by that defect and therefore is not entitled to any remedy.

Under the language of OAR 340-012-045(1), consideration of the listed factors is discretionary with the Director. As to the purpose of the rule, it is clear that the rule only relates to determining the amount of a penalty, not to whether a penalty should be assessed in the first place. Thus, the factors of the rule become significant only when a penalty higher than the minimum is contemplated.

Nonetheless, even if the rule is construed to compel the citing of factors in all cases, failure to do so in this case did not in any way prejudice respondent. It is a fundamental principle of law that harmless or nonprejudicial errors, particularly of a procedural nature, will not render a decision invalid. 73 CJS § 210 Public Administrative Bodies and Procedure; see e.g., ORS 183.482(7) (which provides for judicial remand of an agency order if "either the fairness of the proceedings or the correctness of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedures.") In this instance, specific application of the penalty factors could only have resulted in the same or a worse outcome for respondent.

ANSWER TO SECOND EXCEPTION

The hearing officer properly found that respondent did not direct the transfer of his acreage into another district.

ARGUMENT

This case is complicated by the fact that, in the aim of flexibility, the affected field burning program personnel and growers had engaged in informal practices that may have fallen short of the full requirements of the stautues and administrative rules. (To aid the Commission, a summary of field burning definitions and procedures is attached as Appendix I). As his primary defense, respondent contends that such practices excused what would otherwise be a clearly unlawful burning. Even assuming for the moment that such a defense has any merit as a legal proposition, respondent's case still falls short in one key respect--respondent failed to establish tht he acted consistently even with the informal practices. Or as the hearing officer more succinctly puts it, "What is also apparent from the record is that whatever flexibility had been established, respondent exceeded it." Hearing Officer's Findings, p. 5.

It appears that the field burning personnel and growers in question had indeed developed a practice of transferring allocations by telephone and without the requisite written application. Nonetheless, in this case, the record shows that respondent either did not make any such telephone request or at least did not do so in the clear manner required by the existing practice.

Both Agent Falk (Harrisburg RFPD) and Agent Tish (Junction City RFPD) testified that they did not recall receiving any request from respondent to tranfer his allocations on the day of the alleged violations, at least not prior to respondent burning

the subject 233 acres. (Falk Tr. 74; Tish Tr. 90). Both agents testified as to their procedure to make such transfers. Neither agent took any action to effect such a transfer, because neither was compelled to do so in the absence of a request by respondent. Agent Tish testified that she had made transfers of allocations for respondent before, that the transfers always met the rules, and that they were made before the transferred acreage was burned, in accordance with the rules. (Tr. 90-91).

Respondent's testimony contradicts that of Agent Falk in that respondent claims to have definitely called Agent Falk. Yet, even assuming full credibility on the part of respondent, his testimony still reveals that he did not explicitly request a transfer or in any other way clearly communicate that that was the intent of his call. This fact stands in stark contrast to the testimony that even the established practice of telephone transfers required a level of certainty. Both agents offered clear testimony that when they received a transfer request, they would record and report the grower's name, the registration number, and the amount of acres involved. (Falk Tr. 90; Tish Tr. 93).

Thus, as stated by the hearings officer: "If acreage transfer practices allow a degree of informality, they nonetheless require, at a minimum, a clear request to transfer from district to district." Hearing Officer's Finding, p. 7. The Department submits that the record does not support respondent's contention that he made such a request in this case.

ANSWER TO THE THIRD EXCEPTION

The hearing officer properly found that respondent failed to demonstrate an established practice for his actions.

ARGUMENT

A. Established Practice Regarding Transfers.

Again, neither the hearing officer nor the Department deny the existence of an established practice regarding transfers. Rather, the Department simply asserts, and the hearing officer concurred, that respondent exceeded even the established practice. The Department's analysis of this issue is set forth above in response to respondent's Second Exception and need not be repeated here.

B. Established "After-the-Fact" Validation Practice.

On the issue of after-the-fact validation, the hearing officer has ably summarized the established practice as follows:

> "The Harrisburg District Clerk testified that while there may have been instances of other farmers seeking after-the-fact validation for burning, it was usually Respondent. Others did it, if at all, under limited circumstances: Either there existed a prior arrangement between the grower and the field district to issue a valid number 'automatically' in the event of release of additional quota, or the grower already had a validation number to burn a particular field, but some farming circumstance made it more appropriate to burn a different field within the district, and the change would not result in the burning of acres in excess of the number originally authorized."

Comparing respondent's conduct to this established practice, it becomes apparent once again that "Respondent had previously stretched even the informal rules to their limits." Id.

Testimony showed that only under rare and unusual circumstances had a fire district issued a validation number to a

grower after the field was burned. These rare circumstances all occurred outside of the Junction City RFPD and prior to the 1980 field burning season. In those cases, either (1) a prior arrangement had been made between the grower and the fire district to "automatically" issue a validation number in the event that an additional quota was released by the Department; or (2) the grower already had a validation number to burn a particular registered field, but because of some unusual conditions at that field, the grower burned a different registered field, not in excess of the number of acres originally authorized, but without first notifying the fire district. In those rare circumstances, acknowledged violations and the impact or potential impact on the smoke management program were negligible, and no excess burning occurred.

Contrast the potential impact of those situation described above with that of respondent's action to burn 233 acres with no approval or prior arrangement with the fire district. If the other 50 to 70 growers in the area took a similar action, the result would be that acreage would be burned many times in excess of the amount that would ordinarily be released for burning. With less than ideal atmospheric conditions, such excessive burning could seriously affect the health and welfare of the public and would undermine the smoke management program.

ANSWER TO FOURTH EXCEPTION

The hearing officer properly found that respondent burned without a valid permit.

ARGUMENT

It is virtually conceded by all parties that respondent did not obtain a permit in compliance with the applicable statutes and administrative rules. Nonetheless, respondent asserts that the doctrine of equitable estoppel bars the Department from pursuing the violation because respondent relied upon differing practices in which the Department acquiesced. After a thorough analysis of the alleged practices, the hearing officer concludes that respondent exceeded even the limits of these lesser standards of conduct. The Department concurs and urges adoption of the hearing officer's reports in this respect.

However, even if it is determined that respondent did act in accordance with the informal practices, the Department asserts that the doctrine of equitable estoppel is not properly applied in this case. Estoppel is a limited doctrine applied, particularly with respect to governmental agencies, only as necessary to avoid gross inequity. Johnson v. Commission, 2 OTR 504 (1964). The Environmental Quality Commission has previously ruled that the doctrine should not be applied to prevent enforcement of laws designed to protect the public health. See DEQ v. Faydrex, Inc., Slip Opinion, pp. 68-70 (EQC Hearings Section, October 24, 1980); DEQ v. Barker, Slip Opinion, pp. 4-5 (EQC Hearing Section, April 7, 1980); DEQ v. Davis, Slip Opinion, pp. 24 (EQC Hearing Section, 1978, reversed on other grounds by EQC, May 26, 1978). While the Oregon courts have not examined the doctrine in the public health context, they have in other instances limited its applications in ways

significant to this case. Most notably, the courts have held that the conduct of public employes cannot be used to excuse a party from complying with the mandatory requirements of law. Bankus v. City of Brookings, 252 Or 257, 259-60, 449 P2d 646 (1969); cf. District Court v. Multnomah County, 21 Or App 161, 534 P2d 207 (1975).

Even assuming the doctrine has any application in a case such as this, the Department submits that respondent has failed to establish the essential elements of the doctrine, which have been described as follows:

> "To constitute an equitable estoppel or estoppel by conduct (1) there must be a false representation; (2) it must be made with knowledge of the facts; (3) the other party must have been ignorant of the truth; (4) it must have been made with the intention that it should be acted upon by the other party; and (5) the other party must have been induced to act upon it." Earls et ux v. Clarke, 223 Or 527, 530-531, 355 P2d 213 (1960).

Respondent has failed to establish either element #1 or element #3 of the doctine. As to element #1, there is no evidence in the hearing record of any false representation by the Department of its fire district agents. As respondent concedes in his Appeals Brief, his case for equitable estoppel rests on the agency's silence and inaction.

As to element #3, the record and respondent's own assertions firmly show that respondent knew, or should have known, that he was not acting in compliance with the field burning regulations. As respondent points out, he has been an active, long-term participant in development of the field burning program and rules. In his testimony, respondent stated that as

a member of the Smoke Management Committee of the Oregon Seed Council he received and reviewed the Department's rules prior to their adoption. (Tr. 7-9).

One of those rules, which became effective April 21, 1980, states that:

> "No person shall conduct open field burning within the Willamette Valley without first obtaining a valid open field burning permit from the Department and a fire permit and validation number from the local fire permit issuing agency for any given field for the day the field is to be burned." OAR 340-26-010(2)(a) (Emphasis added.)

Thus, even if the prior rules were less clear, the new rule, which respondent received and reviewed, clearly established the requirement that a permit be obtained in advance of burning.

Thus, respondent's vast background in the field burning program simply confirms that he could not have been ignorant of the true requirements. Equitable estoppel is available only when the party's reliance is in good faith and reasonable. In this case, if respondent chose to ignore the obvious requirements of the law, he did so at his own risk.

ANSWER TO FIFTH EXCEPTION

The hearing officer properly concluded that respondent burned in violation of ORS 468.475(1).

ARGUMENT

Respondent appears to contend that ORS 468.475(1) loses all application once a party has obtained a preliminary permit. This argument totally ignores the fact that any permit, both by its express terms and by the administrative rules adopted to implement ORS 468.475, is valid only upon receipt of a validation

number for the particular burning in question. The Environmental Quality Commission is expressly authorized to adopt such rules under ORS 468.460. The construction of ORS 468.475 advanced by respondent would undermine the entire function of the statute.

Respondent's other arguments have been answered above.

ANSWER TO SIXTH EXCEPTION

The hearing officer properly concluded that no defense was established under ORS 468.300.

ARGUMENT

The Department agrees that the application of ORS 468.300 depends upon the existence of a violation. The Department's arguments in support of the hearing officer's conclusion that a violation occurred have been offered above.

ANSWER TO SEVENTH EXCEPTION

The hearing officer properly concluded that respondent is liable for a civil penalty.

ARGUMENT

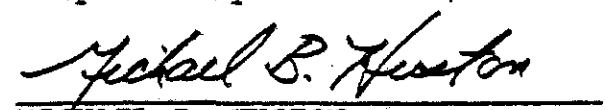
Again, the Department's arguments in support of the hearing officer's findings that underlie this conclusion are offered above.

CONCLUSION

For the reasons offered above and in the hearing officer's report, the Department submits that the $4,600 civil penalty against respondent should be affirmed. In burning 233 acres without obtaining a proper transfer or validation, respondent

exceeded both the formal requirements of the law and any informal practices that may have been established.

Respectfully submitted,



MICHAEL B. HUSTON
Assistant Attorney General
Of Attorneys for the Department

APPENDIX I

CLARIFICATION OF DEFINITIONS AND PROCEDURES

(Reference 1980 Field Burning Rules, OAR Division 26)

A. "Basic Quota", or "Quota" : The numbers of acres established in Table I of OAR 340-26-015 for each fire district. When the Department releases a "one quota" release to that fire district, then the district may issue permits/validation numbers to growers to burn an equivalent number of acres to that established amount. The Department may release multiple or fractional quotas to fire districts. The term "quota" only applies to a fire district, and has no direct application to a grower.

B. "Grower Allocation" : The maximum number of acres which a grower may burn during a particular season in a particular fire district. The grower's allocation is generally less than the total number of acres which the grower registered to burn in that fire district. The grower decides which registered fields he wishes to burn, up to the acreage limit of that grower's allocation. Transfer of acreage into, or out-of the fire district may change a growers allocation in that district.

C. "District Allocation" : Generally, the sum of all of the grower's allocations within a fire district. Also, the maximum number of acres that a fire district may release to be burned during the burning season. The "district allocation" may be adjusted, due to transfers into or out of the district.

D. "Validation Number" : The number issued to a grower by the fire district which validates a grower's field burning permit. It is made up of three parts which include (1) a numeric designation for the date that the validation number is issued, (2) the time the validation number is issued, and (3) the number of acres which the grower is being authorized to burn.

The validation number is placed on the grower's field registration form alongside the particular registered field that the grower is being allowed to burn.

E. "Quota Transfer" : The transfer of a basic quota, or multiple or fractional amount, between two fire districts. That transfer must be made under the supervision of the Department. An example of such a transfer would be if fire district A wished to transfer a quota to fire district B because, for example, fire district A either (1) had no growers who wished to burn at the time the Department released the quota, or (2) if district A had already burned its full district allocation. After notifying and obtaining the permission of the Department, fire district A could transfer their quota to fire district B. No validation numbers could then be issued in fire district A. Fire district B could then issue validation numbers to growers with fields registered in fire district B to burn up to the sum of the quotas of A plus B. The fire district would follow its normal procedure to determine the priority in which validation numbers would be issued to the growers. The Department may prohibit such a transfer.

F. "Allocation Transfer" : Generally, a transfer of a grower's allocation, or portion thereof, out of one fire district, into another fire district, for farm management purposes. An example would be if a grower had 100 acres registered in each of two fire districts, district A and district B, and his allocation in each district was 80 acres. If, for example, the acreage in district B was more productive than the acreage in district A, the grower could transfer 20 acres of his allocation from

district A to district B thereby allowing that grower to burn all 100 acres registered in district B, while reducing the number of acres he could burn in district A to 60 acres. After the transfer was complete, the grower would have to follow the normal procedure in fire district B in order to get a validation number before the grower could burn his field.

Transfers of allocations must be done under the supervision of the Department, and all arrangements must be made in advance between the fire districts. Fire district A would have to reduce its "district allocation" by 20 acres; while fire district B would increase its "district allocation" by 20 acres.

Allocation transfers are often arranged by growers early in the season, as soon as a grower can determine that it would be to his advantage to do so. The Department may prohibit such a transfer.

CERTIFICATE OF SERVICE

I, Michael B. Huston, hereby certify that on the 23rd day of March, 1983, I served the within Department's Brief upon respondent's attorney by then depositing in the United States mail at Portland, Oregon, a full, true and correct copy thereof, addressed to said person as follows:

Robert G. Ringo
Attorney at Law
P. O. Box 1067
Corvallis, OR 97330

Michael B. Huston

MICHAEL B. HUSTON
Assistant Attorney General
of Attorneys for Department

AGENDA ITEM K
Additional testimony

Mr. & Mrs. James A. Cochran
1354 Grand Ave.
Medford, Oregon 97501
May 17, 1983

John Hector, D.E.Q.
P.O. Box 1760
Portland, Oregon 97207

Dear Mr. Hector:

I am writing in regard to the Public Hearing to consider a request for a variance from noise control rules for motor sports vehicles and facilities (OAR 340-35-040) at Jackson County Sports Park in White City.

I have written you concerning this subject before and a copy of that letter should be in your files. As stated in that letter I am against a variance from the noise control rules for sports vehicles at the Jackson County Sports Park in White City.

I am the owner of a 400 acre piece of land adjacent to the East side of the Jackson County Sports Park. I also own a 5 acre parcel of land at 4800 Antelope Road. As I understand it, a request for a variance is based on a burm constructed on the West side of the drag strip to protect the adjoining properties from noise created by the activities of the Sports Park, particularly the drag racing. The burm may or may not be an adequate protection against noise for those properties West of the sports park, I cannot say because I do not live or own property on that side. It is definately not a sound control device or a mufflering agent for those porperties to the East of the drag strip. In fact, the noise tends to bounce off the burm creating unnerving noise problems for those properties to the East.

In reading an article in the Medford paper, it was stated that many people testified at a public hearing in Medford, stating that they found that the burm was an adequate proptection and the noise was not bothersome. I believe you will find that the majority of those poeple either did not even live in the area, own property in the area, or if they did, they lived to the West of the sports park.

I feel that property owners in close proximity to the noise created by the sports park, and who are involuntarily subjected to the noise created by the sports park should have more say in whether or not a variance

from the State regulation demanding mufflers on motor sports vehicles is granted, than those voluntarily subjecting themselves to the noise but living someplace else. If jackson County Sports Park wishes to construct another burm on the East side of the drag strip, I would not be against giving them the opportunity to prove whether or not a burm will surpress noise to an acceptable level in conformity with mufflerregulations of the State of Oregon on sports motor vehicles. As constructed at the present time, The Jackson County Sports Facility offers no noise protection to those properties to the East and Northeast. Without this protection provided I can see no reason why the D.E.Q. should consider Jackson County Sports Park a special case from the rest of the State of Oregon and grant a variance from the State regulations that all motor sports vehicles must have mufflering devices.

Respectfully Submitted,

Mr. & Mrs. James A. Coderan